

**CITY OF CALISTOGA
PLANNING COMMISSION
REGULAR MEETING MINUTES**

**Wednesday, August 12, 2009
3:15 PM
Calistoga Community Center
1307 Washington St., Calistoga, CA**

**Chairman Jeff Manfredi
Vice-Chairman Clayton Creager
Commissioner Carol Bush
Commissioner Paul Coates
Commissioner Nicholas Kite**

“California Courts have consistently upheld that development is a privilege, not a right.”

Among the most cited cases for this proposition are Associated Home Builders, Inc. v. City of Walnut Creek, 4 Cal.3d633 (1971) (no right to subdivide), and Trent Meredith, Inc. v. City of Oxnard, 114 Cal. App. 3d 317 (1981) (development is a privilege).

1
2 **Vice Chairman Creager** called the meeting to order 3:15 PM. for conducting a Tour of Inspection.
3

4 **C. TOUR OF INSPECTION**
5

6 **PA 2009-01, CDR 2009-01:** Shortly thereafter, the Planning Commission left the Community
7 Center to inspect the project site for the Enchanted Resorts development proposal to be located
8 at 515 Foothill Boulevard.
9

10 The purpose of this inspection was to view the physical characteristics of the site and proposed
11 layout of buildings only. The following City representatives were in attendance on the tour of
12 inspection: Vice Chair Creager, Commissioners Coates, Kite and Bush. Absent: Chairman
13 Manfredi. Members of the project team and the public were also in attendance. Staff member in
14 attendance was Associate Planner, Erik Lundquist.
15

16 **Vice Chairman Creager** reconvened the Regular Planning Commission Meeting at 5:35 P.M.
17

18 **A. ROLL CALL**
19

20 **Present:** Vice-Chairman Clayton Creager, Commissioners Carol Bush, Paul Coates, and
21 Nicholas Kite. **Absent:** Chairman Jeff Manfredi. **Staff Present:** Director Gallina, Planning and
22 Building Director, Ken MacNab, Senior Planner, Erik Lundquist, Associate Planner, and Cynthia
23 Carpenter, St. Helena Planning Administrative Assistant. **Absent:** Kathleen Guill, Planning
24 Commission Secretary.
25

26 **B. PLEDGE OF ALLEGIANCE**
27

28 **D. PUBLIC COMMENTS**
29

30 **E. ADOPTION OF MEETING AGENDA**

31 There was motion by **Commissioner Bush**, seconded by **Commissioner Coates** to approve the
32 agenda as submitted. **Motion carried: 4-0-1-0.**
33

34 **F. COMMUNICATIONS / CORRESPONDENCE**
35

36 **Vice-Chairman Creager** announced correspondence that has been passed out tonight regarding
37 the following Agenda Items:
38

39 Design Review 2009-03 – Chevron Canopies & Corporate Identity:

- 40 • Dieter Diess
- 41 • Pam Kinzie
- 42 • George Caloyannidis
- 43 • Nick Kite/Wine Way Inn

44

45 Conditional Use Permit Amendment U 2000-06(A):

- 46 • Edward Lantz
- 47 • Jack & Midge Geary
- 48 • Cheryle Stanley
- 49 • Eduardo Yanez
- 50 • Julie Garcia
- 51 • Irais Lopez
- 52 • Marta Caldera
- 53 • Ricardo Vera

54

55 H NEW BUSINESS

56

57 **1. PA 2009-01, CDR 2009-01:** Pre-Application Conference/Conceptual Design Review for the
58 Enchanted Resort Project. This project is located within an 88 acre hillside. The applicant
59 proposes to amend a portion of the previously approved 35-lot subdivision to accommodate a
60 resort as well. As presented, the project proposes to accommodate 13 home sites, a resort hotel
61 with 36 cottages featuring 110 hotel units, a restaurant, ballroom, fitness center, and spa facilities.
62 In addition, the applicant proposes a residence club featuring 20 homes which offers buyers an
63 undivided fee-simple interest in a specific property, as well as access to a residence club. The
64 project site is located at 515 Foothill Boulevard, which is within the Rural Residential Hillside
65 General Plan Land Use Designation and Zoning District. (Property APNs 011-310-031 through
66 011-310-041 & 011-310-044; 011-320-007; 011-320-039 through 011-312-069).

67

68 **Commissioner Kite** recused himself from discussion of this project.

69

70 **Associate Planner Lundquist** provided an overview of the project and issues identified to date,
71 as well as, areas of Commission focus for discussion.

72

73 **Aaron Harkin**, Project Manager for Enchanted Resorts, introduce his project team and presented
74 the Commissioners and attending community members a conceptual overview of the layout and
75 concept of their plan.

76

77 **Rick Riess** of Icon Resorts assured the Commissioners that their intent is to create a resort
78 facility that is sustainable, attractive, understated, and able to fit into the rural character of
79 Calistoga. It is not their intention to create a hard, angular eyesore that runs contrary to the
80 town's rural character.

81

82 **Bruce Wright** of SB Architects provided various examples of their projects around the world,
83 providing examples from both local projects, like the Calistoga Ranch, to resorts in Sonoma and
84 further abroad, in Dubai. They work around the world, but feel most at home in the North Bay.

85

86 It was noted that the concepts provided are in the very early stages of development and are not
87 the final project. The intent of the developers and contractors is to give an overview of the ideas
88 and concepts in mind, allowing for community and City input as they shape their vision into more
89 concrete plans and development ideas.

90

91 **Aaron Harkin**, the Project Manager for Enchanted Resorts concluded the presentation and
92 stressed that the vision for this property, the housing development, and the resort area, is one that
93 will be intermingled with the natural beauty and wildlife in the area. As was seen in the 3D
94 imaging, their goal is to make the resort complementary to the surrounding vegetation and
95 geography of the land; not the other way around. Mr. Harkin feels certain that any negative
96 impacts can be mitigated and made to be less than significant. He is excited about this project,
97 and he hopes that the City and community members will be excited about the possibilities as well.

98

99 **Associate Planner Lundquist** stressed again that this project could have numerous benefits to
100 the City and community, but it is critical that the project be developed carefully in order to assure it
101 is complimentary to the surroundings, the City, and community members.

102

103 He further noted that the General Plan Land Use Designation and Zoning of the property doesn't
104 allow resort-type development. However, he reiterated that the idea of a resort on the property,
105 as well as the need to change the General Plan and Zoning in order to allow resorts, has been
106 entertained in the past.

107

108 He urged the Commissioners to carefully consider the various points of possible concern in order
109 for planning staff to provide clearly defined feedback on the project from the Commission.

110

111 **Vice-Chairman Creager** opened discussion and asked for feedback from those who attended the
112 site visit earlier in the day.

113

114 **Ann Scott**, 4281 Scott Way, attended the site visit. She noted that as a small town, there is a
115 need to consider their limited resources, such as water. She was concerned about the impacts on
116 the wildlife, fire safety, and vegetation. She also noted that there are predictions of an El Nino for
117 this coming winter, and the run-off would be significant. She further expressed her reservations
118 regarding the impact all of this new development would have on traffic.

119

120 **Charles Delimur**, 1771 Diamond Mountain Road, has mixed feelings about the project. He is
121 very impressed with the presentation provided by the development team for the project and feels
122 that they provided information on what looks to be a terrific project. That said he still has some
123 reservations. He was nervous about the initial 35 units first proposed, but noted that they would at
124 least be tucked into the vegetation, and not terribly noticeable. However, this new proposal will
125 significantly change the scope of the project and potential negative impacts, especially the impact
126 from development up near the ridgeline. It will impact light, noise, and views.

127

128 **Richard Swenson**, 1309 Diamond Mountain Road, feels the project is a bunch of bull. He
129 doesn't believe this project, nor the developers behind the project, truly plan to be stewards of the
130 land. They're slick. They aren't interested in stewardship. They want to attract travelers of the
131 very highest-end, the people who would use Calistoga as their second residence, not their actual
132 home. The elegant, the rich. What about the common person who lives here? What can this
133 possibly do for the common person in Calistoga?

134

135 He noted that employment will be generated, but feels that the folks who generally work in such
136 establishments don't live locally anyhow. He's not heard a thing about providing housing for the
137 local workforce, nothing! He surely couldn't ever visit that kind of resort. It takes over three
138 thousand bucks to get into the gate. He doesn't believe that the developers are being truthful.
139 There will be noise issues, impacts on wildlife, and other areas with negative impacts. What is in
140 this for the folks who call Calistoga their home? He can't see anything in it for them.

141

142 **Charles Knight**, 1296 Diamond Mountain Road heard that this project would be on City water. Is
143 that true? Are there any wells up there? What is the plan for water up there?

144

145 **Aaron Harkin**, project manager, answered the question. He explained that there are actually
146 three wells on-site. Currently, the wells are used for irrigation. They will be using the wells for
147 water for the development, but he isn't certain about the exact amount of water that will be used
148 by the development until more information and research has been done.

149

150 **Vice-Chairman Creager** explained that the 35 units have been approved for hook-up to City
151 water. The wells, if he understands correctly, are to be used for irrigation purposes.

152

153 **Associate Planner Lundquist** concurred, explaining that research and reports with regards to
154 the predicted water-use will be compared to available water in the City's resources, and if there is
155 available water to cover the water and waste water needs of the development, then the
156 Commission will be given proposals for consideration.

157

158 **Mr. Knight** noted to the Commissioners that researchers can make errors, and what looks to be
159 abundant water for this project could possibly be an error, and if that is the case, as sometimes
160 occurs with such research and reporting, could the City impose some kind of clause that would
161 stop water use? He wants to have some kind of assurance that if that happens, and water use is
162 higher and has a worse impact on neighboring wells, that he will be able to maintain his water
163 use, and they will have to find alternative water sources.

164

165 **Norman**, 1520 Diamond Mountain Road, feels his property could very well be the most impacted
166 by this project. He is concerned about noise and water use, and how his view might be impacted
167 by this new development.

168

169 **Vice-Chairman Creager** asked for clarification as to the number of private residences proposed.

170

171 **Bruce Wright**, Project Architect explained that instead of the initial 35 residences proposed, the
172 project now is proposing only 13 residences.

173

174 **Rudy VonStrasser**, 1510 Diamond Mountain Road, noted that ideally, 35 homes would never
175 have been approved for building 30 years ago, but since that is where it stands, he can't really
176 see how a resort added to the development would really create much more impact than the
177 proposed and permitted 35 homes. He explained that he is very concerned about water use, and
178 he wants a condition of approval that the project won't be permitted to use well water for their
179 development. He noted that in his experience, you can find a consultant to tell you what you want
180 them to tell you. Regardless of what a consultant might say, there's only so much water in the
181 ground.

182 Also of concern are the echo and acoustic properties in the area that really amplify sound. He can
183 hear much more clearly the sounds a quarter of a mile away in his area than if he were down on
184 the valley floor in Calistoga. He can't explain the details as to why sound travels so much more
185 up on Diamond Mountain but it does, and it's been noted before.

186

187 Lastly, he'd like to know if there is any way to get rid of the two run-down houses at the bottom of
188 the hill. He noted that they won't be there in the near future if this is permitted, so why not get rid
189 of them sooner rather than later? It's a real eyesore and one seen immediately upon entering that
190 side of the City of Calistoga.

191

192 **Nick Kite**, 1019 Foothill Blvd., is concerned about permitting this project. He noted that this
193 development is driven by money. He concedes that the estimated Transient Occupancy Tax
194 (TOT) revenue is super, but he wants to see more information about what the City might be able
195 to do with some of that money. Can some of it be used for affordable housing?

196

197 He also feels that there is a lot of rural residential hillside. Converting this portion will set a
198 precedent for rural residential hillside property all over town. What if the other owners in the area
199 wish to convert their hillside too? If you will allow it for the big boys (developers), what about
200 some smaller entity who wants to convert as well?

201

202 **Kristin Casey**, who lives at 1132 Denise Drive, is opposed to this proposal because it sets a
203 precedent. If it doesn't set a precedent, then it's unfair. She disagrees with the idea that there are
204 a lot of rural hillside residential areas. She noted only a small area of such land in Calistoga.

205

206 She pointed out that large-scale development has not been permitted in the past on residential
207 hillside zoning areas because Calistoga has a historic desire to keep them rural. That said, what
208 does the City want to do? Does the City truly want to get rid of the rural residential hillside
209 designations in favor of a more easily developable designation so as to permit commercial
210 development in those areas? She feels strongly that once the City allows it in one area, it will find
211 more and more property owners asking to change their designations too because of the precedent
212 set by the City. *(See Attached Kristin Casey letter dated and received on August 12, 2009)*

213

214 **Rex Albright**, Executive Director for the Calistoga Chamber of Commerce recommended that the
215 City move forward with this project as recommended in the staff report. The Chamber of
216 Commerce feels that the project will not be readily visible from the City. They feel that the
217 development group is honest in their desire to maintain the natural beauty of the land and be good
218 stewards.

219

220 He explained that it is the intent of the developer to consider the possibility of affordable housing,
221 as well as discussion about other things that this development might be able to provide money for,
222 such as parks and parking areas. He noted that until developers are permitted to move forward,
223 they can't provide funds for community projects that are currently just sitting on the table, unable
224 to be realized because of a lack of funds. He believes that it will benefit the City and the
225 community and have relatively little impact on the surrounding areas or on Calistoga itself.

226

227 **Vice Chair Creager** closed the public comment portion of this item.

228

229 **David Gilbreth**, Project Team Attorney, requested the opportunity to address several of the
230 comments and concerns that were raised by the public. First and foremost, he wanted to address
231 the idea that should the City approve the proposal it would be setting a precedent. He noted that
232 legally, what the City chooses to do to one property or group of properties isn't a guarantee that
233 they will do the same for other similar properties in the future.

234
235 Second, he explained that his company and the project representatives have spent a great deal of
236 time, energy, and money identifying residential properties within the area, and he feels that there's
237 no other place that can sustain a project such as this. He also noted that on other pieces of
238 property the environmental impacts can't be mitigated. This property is unique; the only one that
239 can support such a development.

240
241 He is asking that the City not prematurely deny this project. He would like to have the opportunity
242 to prove how they can mitigate possible negative impacts of this project, to evaluate it, show the
243 City how it can work and how it's a unique project.

244
245 Mr. Gilbreth noted that one community member felt that there was nothing in the project for the
246 City. He doesn't agree. 4.5 million dollars of TOT and other potential benefits are, in his opinion,
247 a definite contribution to the City. There is a lot of good that can come from this project;
248 affordable housing, jobs, money for the City, a spectacular asset to the City. It generates a great
249 deal for the community. He rejects the concept that there's nothing in it for the community. He
250 respects the various points of view but doesn't have to agree with it.

251
252 As to the issue of water, he explained that this project has no intention of putting a burden on the
253 City's water or the local wells. He can't possibly know every aspect of this but can say with
254 certainty that until there is more information available from research should they be permitted to
255 move forward, he doesn't anticipate the need, nor is there any intent, to use or unduly tax the
256 City's water resources.

257
258 **Associate Planner Lundquist** noted that now that the applicant has been able to provide a fairly
259 comprehensive overview of their project with enough detail therein, the City can begin the process
260 of fleshing-out potential areas of concerns, and this will take place in part by creating a full EIR,
261 and not an EIR provided by the applicant or their representatives, but an EIR originating from the
262 City. The City's General Plan has historically had overlays in order to protect their most important
263 assets and lands in order to slow down the process, and facilitate the ability to really consider
264 carefully any project approvals for the designated overlay lands. He is confident in this
265 methodology.

266
267 **Vice-Chairman Creager** asked Mr. Lundquist for clarification about obtaining water use through
268 the City.

269
270 **Associate Planner Lundquist** explained that the City is in charge of permitting well-water usage
271 and can deny such use if enough evidence is provided that a given project will unduly tax the
272 supply available. That's the City's call and it is used in this sort of situation to make certain water
273 is available.

274
275 Residential areas are permitted to apply for wells, so should it come to that, there is potential that
276 all of the residential lots could, in fact, apply for variances in order to obtain and use a well.

277 **Director Gallina** noted that in her planning experience, even though a General Plan identifies
278 numerous policies that need to be implemented, if the City were to so choose. She indicated that
279 no city can possibly implement each and every policy in the General Plan at once. Program
280 implementation usually occurs over a period time. However, it is important to note that as the City
281 reviews this development proposal, staff will go through the General Plan and identify policies and
282 programs that need to be addressed with this project. For example, the City's Municipal Code
283 does not have a hillside regulation as identified in the General Plan. It should be noted that even
284 though the Municipal Code does not specifically provide for hillside regulations, the City will be
285 very sensitive to the concerns surrounding hillside development. Therefore, staff will be all the
286 more vigilant when considering hillside development in order to address concerns about view
287 shed, traffic, water, and so forth.

288
289 With regards to the rate of growth and use of City resources, the City does have a Growth
290 Management System in place that permits 8 acre feet per year of commercial development.
291 Should the Council choose to move forward for this project, the City can create a Memorandum of
292 Understanding that will outline the actual permitted water use for this project (based on future
293 research that will be provided by the applicants as they move forward), and that allotted water will
294 be subtracted from the overall commercial development permitted. This will ensure that water use
295 is accounted for and the City doesn't permit development that goes above the available water
296 stores.

297
298 **Vice-Chairman Creager** stressed that while he has no problem with second-home community
299 developments in general, it is the people who live and work in Calistoga that should be the
300 primary beneficiaries of available water for development, and not part-time residents who don't
301 really have as much of a vested interest in the town. Even though residential development is
302 part of the project, it isn't created or intended for the full-time Calistogan, but visitors and part-time
303 residents. In his mind, that is commercial, and water used for this project ought to come from the
304 allotted amount per year for commercial, not residential, water use as stipulated by the City.

305
306 He then noted that the Commission has been charged to address the five main
307 concerns/questions proposed by the Planning Department staff. Moving forward, the Commission
308 discussed the five proposed concerns in order to provide information and recommendations to the
309 City Council. It was also noted that while only five questions were postulated, the Planning
310 Director suggested that there are far more questions and concerns that the Commission may wish
311 to weigh-in on.

312
313 It was the Commission's general view that there is great potential for this project to affect the City
314 in both positive and negative ways.

315
316 The project would create many positives for the City:
317 ○ Providing jobs
318 ○ Transient Occupancy Taxes and revenue
319 ○ A world-class attraction in the City that would generate more visitors to the City
320 ○ A resort that benefits the City rather than 35 exclusive mega-homes that would not benefit the
321 City and the residential units proposed having been lowered from the initial 35 to 13.

322
323 It was also noted, however, that there is a great potential for negative impacts on the following:
324

- 325 ○ Water use (citing the possibility that each residential unit could apply for a variance in order to
- 326 have a well, creating up to 35 wells instead of the proposed three.)
- 327 ○ Traffic – not only would the various visitors and residents create traffic, wear and tear on the
- 328 roadways (causing the City to pay large sums of money for upkeep), and environmental
- 329 impacts on the air-quality, but also the additional impacts of the numerous people who work
- 330 full-time running such an establishment. That’s a huge impact on traffic.
- 331 ○ View shed for the hillside would certainly be impacted. There is simply no way to completely
- 332 hide and mitigate the compromising of the views provided currently should the development be
- 333 approved and built.
- 334 ○ Noise will be an issue.
- 335 ○ Affordable housing will be needed in order to allow those people who work at this resort to
- 336 actually afford to live in the City where they work.
- 337

338 **Commissioner Coates** noted, however, that while all of the above stated impacts have potential
339 negative impacts on the City, a Memorandum of Understanding and the research needed to
340 mitigate these potential issues would allow the City to go through each concern, one by one, and
341 address them publically and fully. That is the biggest way that the City can ensure their citizens
342 that all possible affects are researched fully and mitigated as much as possible before approving
343 such a project. The citizens can feel safe knowing that the City will follow this course of research
344 and public discussion. The citizens will be able to voice their concerns every step of the way.

345
346 It was agreed that a comprehensive EIR must be provided and expanded to cover more concerns
347 noted by the public. Also agreed upon was that this project does fit within the guidelines of the
348 City’s General Plan.

349
350 **The Commission** was in agreement that the design of the proposed project fits within the nature
351 and ambiance of Calistoga as proposed. Some concern was expressed about the number of
352 visitor accommodations proposed and infrastructure required to sustain the project, but stated that
353 this issue would resolve itself when the project was better defined and environmental issue and
354 appropriate mitigation are identified. It was also agreed upon that this project has the potential
355 to enhance the entrance corridor.

356
357 The possible impacts on the environment are much too large a question to answer at this time, but
358 the Commission agreed that a comprehensive EIR will address the concerns voiced by the
359 citizens and staff.

360
361 **Vice Chairman Creager** proposed that the Commission allow the applicants the opportunity to
362 address the various concerns that have been raised by Planning staff, the citizens of Calistoga,
363 and the Planning Commission.

364
365 Discussion on this item concluded.

366 I. PUBLIC HEARINGS

367
368
369 1. **U 2000-06(A):** Consideration of a Conditional use Permit requesting an amendment to a
370 previously approved Use Permit U 2000-06, which would allow amplified music / live
371 entertainment indoors or outdoors any time during business hours by La Prima Pizza, located at
372 1923 Lake Street (APN 011-535-010) in the “CC-DD” Community Commercial-Design District

373 overlay Zoning District. This item is exempt from CEQA (California Environmental Quality Act)
374 under Section 15301 of the CEQA Guidelines.

375

376 **Commissioner Coates** recused himself at this time due to the proximity of his home to the
377 project location.

378

379 **Senior Planner MacNab** provided a brief background and historical context of the application for
380 amplified live music by La Prima Pizza Restaurant. La Prima has asked for unconditional
381 permitting of amplified music indoors and outdoors. The basic layout of the proposal staff is
382 recommending was presented. It was noted that while decibel levels are helpful in quantifying
383 how loud a sound is, it is impossible to state with any conviction that there is no possibility for
384 neighboring residences to be able to hear the indoor music. They might be able to hear music in
385 varying levels of decibel measurements depending on the kind of music, the instruments used, the
386 weather, etc.

387

388 **Vice-Chairman Creager** suggested that another method of measuring the sound level of the
389 indoor amplified music would be to take a census among the neighboring residences periodically
390 as a form of data used when considering whether or not La Prima is within normal levels for noise.
391 He doesn't feel comfortable with the idea of having a specific decibel level as a maximum
392 because it leaves almost no wiggle room to mitigate the situation if the neighborhoods are still
393 inundated with loud music, even while La Prima might be in compliance with a decibel level range
394 approved by the Commission.

395

396 **Betty Nunez**, the applicant, and she addressed the Commissioners, stating that she is concerned
397 about how the application presents itself; she fears that it makes it sound like La Prima is asking
398 to play blasting, loud music and that is not the case. She would like to clarify that they are
399 interested in hosting small group celebrations, say 30 people or so, and want to have a DJ in for a
400 couple of hours. When she can't allow people to use her establishment for such parties, it hurts
401 her business. She wants a fair chance to fight the downturn in the economy, and providing this
402 service to her customers is one way to enhance business.

403

404 She also noted that most of these kinds of requests are proposed during the summer months.
405 They also like to host the occasional private event as well. They want to have a local's night,
406 maybe a teen's night with no alcohol and dancing. She feels that they can still have a lot of fun
407 with these events and manage at the same time to keep the noise level within reason.

408

409 She proposed that much of the historic complaints are just that historic. They come from the
410 previous establishments that were located there prior to La Prima's establishment of a pizza parlor
411 seven years ago. In fact, it is her belief that it is one or two extremely sensitive neighbors who
412 make the calls to the police, and she provided details about the most recent complaint in early
413 August. She stated that on that particular occasion, the police came out to ask them to be quiet
414 and there wasn't even any kind of live music or DJ present at the birthday celebration. There
415 were only kids and adults celebrating together and the only music was their standard background
416 music, which, she noted, has been played for seven years with no complaints, until now, which
417 she feels is no coincidence but a product of their recent application for amplified music.

418

419 **Vice-Chairman Creager** asked Ms. Nunez to comment on the specifications provided as
420 guidelines for amplified music on the outdoor deck. She noted that generally, most of the outdoor
421 music is during the summer when the weather is good. After that, when it's colder, it's all indoors.
422

423 **Commissioner Kite** asked if Ms. Nunez is happy with the current specifications or is she wanting
424 more leeway?
425

426 She explained that yes, she is fine with the specific guidelines laid out to her, however she isn't
427 comfortable with the idea that absolutely zero outdoor music is permitted, ever. She has had to
428 turn away numerous parties wishing to have music outdoors for a celebration, or perhaps a
429 wedding rehearsal supper. This is business she is losing because she can't tell them it's okay just
430 to make sure the music is as low as possible and only for a few hours. She wants to be able to at
431 least allow that kind of party now and then in order to keep the business. It is also her opinion that
432 having live music indoors, at least during the earlier hours when people are eating, is disruptive to
433 their eating experience. It's too loud and distracting inside at those times. But a later time, a later
434 gathering would be okay indoors.
435

436 **Mr. Nunez** explained that he is in total agreement with everything his wife stated. He also wanted
437 to add that it is, in his opinion, absurd that a group can't have a gathering that has been planned
438 for months, on a weekend, early in the evening without somebody complaining! He referenced a
439 recent celebration in Calistoga. He wasn't certain of the date or the occasion for the celebration,
440 but it was a planned celebration with a three-person band in attendance. He was there as well,
441 selling pizza with other vendors.
442

443 He watched that band get shut down, on a Saturday, around six in the evening, because one
444 person in the area complained! That's not fair. That's not reasonable. It's a City, on a Saturday, a
445 weekend day, and it's early evening and there can't be any music outside? A person can
446 complain and shut the celebration down? How is that right?
447

448 **Mr. Nunez** assured the Commissioners that it is not the intent of La Prima to have Judas Priest,
449 Iron Maiden, or Metallica-style (and sound-level) music. He proposed that the negative letters
450 received regarding their proposal aren't even aligned with their actual proposal! What they are
451 intending, and asking permission to do, isn't what the numerous letters are referring to; that
452 seems unfair to him, and a misrepresentation.
453

454 People come to Calistoga to have fun. If they can't, they'll go elsewhere. Perhaps they ought to if
455 they can't find fun here in town, on a weekend, early in the evening, without the risk of somebody
456 complaining and shutting down the whole thing.
457

458 **Commissioner Kite** asked if what they are asking for is more in keeping with the application,
459 which states indoor, outdoor, amplified, seven days a week; or is it more like the written
460 statement? Mr. Nunez explained it is more like the written statement and that the formal
461 application is a bit more severe sounding.
462

463 **Vice Chairman Creager** opened the public hearing for comment. Numerous citizens wrote letters
464 to the City in support of or opposition of the applicant's request. Several of those citizens also
465 turned out for the Planning Commission meeting and reiterated their feelings both for and against
466 the proposal. The most common theme among those opposed to the idea is the fear that there

467 will be loud music at any given hour, infringing on their peace, their quiet streets, and no real way
468 to monitor it or regulate it without involving the police, and even then there is a fear it will continue
469 unabated.

470

471 It is unfortunate that La Prima is in a poor location for the accommodation of outdoor live music.
472 They are at the edge of the City, right up against residential neighborhoods and some residents in
473 those homes are not willing to deal with even the occasional outdoor music infringing on their rural
474 quiet. Indoor music was acceptable almost entirely across the board for those in opposition of the
475 proposal; however, the outdoor music was steadily opposed.

476

477 Also noted as a major concern among several people in attendance is the idea that the restaurant
478 wants to somehow change their business. They're a restaurant. They are permitted to be a
479 restaurant. They are not a nightclub. Neighbors do not want to see this kind of morphing of a
480 business from one use to another.

481

482 However, there were also members of local businesses and the Chamber of Commerce who
483 explained that they sometimes need a place to host a party that has both seating and food. Of
484 course in the valley numerous wineries offer this, but at a very hefty price. La Prima's prices are
485 more reasonable, but it's difficult to host a party at a place that isn't permitted to host.

486

487 **Dennis Gamble**, a direct neighbor to the property, provided a list of numerous neighbors who
488 were in agreement with his opposition of the proposal. Mr. Gamble also provided numerous
489 records of police activity due to complaints about La Prima. In one example, it was noted by the
490 responding officer that Mr. Nunez was verbally combative when the officer pointed out that his
491 previous request to turn the music down and the assurance of Mr. Nunez that he would do so and
492 would stop the music at 10:00 p.m. did not happen. Evidently, Mr. Nunez became combative at
493 that point. The Officer goes on to say he feels that the restaurant is simply too close to the
494 residential areas surrounding the parcel. Those police records were submitted for the official
495 record.

496

497 **Mr. Gamble** further stated his agreement with a previous statement made by a citizen that their
498 concerns are just as important as the concerns of the people who lived in the neighboring homes
499 around the pool that was recently opened. The developer had to do a noise study, at their own
500 expense. He believes that the owners of La Prima ought to have to do the same study, at their
501 own expense, in order to corroborate their statements that they won't be making any trouble or
502 upset the neighbors with loud music. He'd love to see what those findings might be.

503

504 Tom Andrews

505 Drawsky – Franz Valley Road

506 Rex Albright

507 Sonya Spencer – 1901 Lake Street

508 Marie Torrigino - 1873 Lake Street

509 Frank Hawkins - 1910 Carli Drive

510

511 **Vice Chairman Creager** closed the public hearing and invited a rebuttal statement from the
512 applicant. Ms. Nunez explained that the incident mentioned by Mr. Gamble, where a permit was
513 not provided to the officer, was lost in communications with the Senior Planner, who granted the
514 permit over the phone and faxed a copy for Ms. Nunez to sign. She signed it and faxed it back

515 but was told after the fact that the fax was not received. She believed she had a permit; otherwise
516 she would not have permitted the party.

517
518 **Commissioner Kite** questioned if this use proposed for the restaurant is ancillary to the use or if
519 it will be becoming the primary use for La Prima.

520
521 **Mr. Nunez** reiterated that it is ancillary, that it is on occasion, and that it is not their intent to
522 change their venue or become something other than a restaurant. He also explained his version
523 of what took place with the responding officer on the night mentioned by Mr. Gamble. The
524 responding officer at that time was the 4th officer to come by, and Mr. Nunez explained, again, that
525 they had a permit and would turn the music down by 10:00. The permit was granted until 10:00
526 p.m. As for the accusation of putting a blackberry in the officer's face, he felt there was no way a
527 Mexican guy could do that kind of thing and not get arrested.

528
529 He pointed out that there are six bars in town, and they have a bar, but they don't keep the bar
530 open until one a.m. Also, they have been permitted to have live music. La Prima isn't asking to
531 become a bar.

532
533 **Commissioner Kite** asked about karaoke, music, dance, etc., asking if that's what they plan to
534 do.

535
536 **Mr. Nunez** explained that he is trying to do this in the correct way, in a way that is legal and
537 neighborly. They do not want to turn their establishment into La Prima Disco.

538
539 **Vice-Chairman Creager** noted that this has become a much more difficult discussion than he'd
540 imagined it might be. It is a difficult situation. He felt that he heard the need for mediation, for
541 meetings between the neighbors and business, perhaps with a mediator, to explore this situation.

542
543 **Director Gallina** had a conversation with Ms. Nunez prior to the application's submittal, and at
544 that time she had suggested to her to meet with the neighbors prior to the application in order to
545 iron out some of these issues. Evidently, that meeting did not occur. Perhaps it would be best,
546 she suggested, if the project were continued to a future meeting in order to allow Ms. Nunez to
547 have that meeting with the neighbors.

548
549 It would be beneficial if the neighbors and Ms. Nunez could agree to work together to experiment
550 with the noise levels. It is within the Commissions rights to ask the applicants and neighbors to
551 meet and discuss this project. While the Commission cannot compel the applicants to meet or
552 discuss this with the neighbors, the Commission can provide enough time for that meeting to take
553 place should both parties choose to do so.

554
555 **Commissioner Kite** feels that there must be a balance between the rights of the businesses and
556 the rights of the neighbors. He also noted that with regards to the music it is important to consider
557 each project on its own merit and not assume that just because one restaurant is permitted live
558 music, doesn't immediately allow all restaurants to have live music.

559
560 He feels outdoor music is problematic. However, there are days when Calistoga is celebrating,
561 having music, making noise, and he feels that the neighbors ought to permit La Prima to be a part
562 of that. However, he wants to make sure that whatever is decided, the owners agree to hold up

563 their end of the bargain. He wants to see music an ancillary use to the restaurant. The Vice-
564 Chairman concurred.

565

566 **Vice-Chairman Creager** suggested that perhaps a sub-committee of two could be formed in
567 order to help create some form of proposal that is easier for both parties to discuss, and to ask for
568 more of or less of something based on what is before them, and stick to what is before them.

569

570 **Vice-Chairman Creager** asked Commissioner Kite if he was willing to craft a draft proposal for
571 consideration. Commissioner Kite agreed.

572

573 It was moved by **Commissioner Kite**, seconded by **Vice-Chairman Creager**, to continue this
574 item to the first or second regularly scheduled meeting, and in the interim form a sub committee
575 consisting of Vice-Chairman Creager and Commissioner Kite to create a draft proposal for the
576 accepted parameters of music at La Prima Pizza. This will be made available to both the owners
577 and public. Furthermore, it was moved that the Planning Department issue one special-event
578 permit allowing La Prima a one-time event with live music both indoors and outdoors in order for
579 both the owners and the public to better understand the sound level relative to their respective
580 locations. **Motion carried: 3-0-1-1.**

581

582 **2. DR 2009-03:** Consideration of a Design Review application to install two 24' x 34' fueling
583 canopies (each approximately 16 feet in height) over the existing fuel dispensing pumps and to
584 change the corporate color scheme of the dispensing pumps and convenience store from yellow
585 and red (Shell) to blue and white (Chevron) at the gas station located at 1108 Lincoln Avenue
586 (APN 011-254-003) within the "DC-DD", Downtown Commercial-Design District Overlay Zoning
587 District. No changes to use or operations are being proposed as part of this application. This
588 proposed action is exempt from the California Environmental Quality Act (CEQA) under Section
589 15303 of the CEQA Guidelines.

590

591 **Commissioner Kite** recused himself from the discussion of the project.

592

593 **Senior Planner MacNab** provided an overview of the project and explained that there are only
594 portions of the Design Review that are ready for consideration this evening, so the Commission is
595 being asked to consider the signage proposed and pump markings. If after that the Commission
596 wishes to provide feedback regarding the canopies, that would be fine, and members of the public
597 may have comments as well.

598

599 **Vice Chairman Creager** asked how this particular application was different from previous
600 applications by other similar entities, other gas stations, and how is it similar?

601

602 **Senior Planner MacNab** explained that due to the previous applications the tone and
603 specifications were set for future applicants and the regulations that were created prior now
604 dictate the current applications. The applicant is willing to work with the City to keep the heights
605 and sizes of the structures lower than what they'd prefer, and they also agreed to create the
606 canopies in such a way as to structurally support photo-voltaic panels in the future. However,
607 there are no calls for a complete redo because this application is simply a modification of what is
608 already permitted or has already been permitted.

609

610 **Vice Chairman Creager** opened the discussion by inviting a statement from the applicant.

611 **Aslam Ali**, representing the applicant, noted that the applicant is working hard with the Planning
612 Department in order to comply with regulations and still obtain permits for new signs and the
613 canopies. As of yesterday, Mr. Ali believed that both the canopies and the signs were permitted,
614 however this afternoon he discovered that there were reservations with regards to the canopies,
615 and he isn't quite clear as to why.

616
617 He proposed that what the applicant is asking for is no different than what the gas station across
618 the street has; the same kind of canopy, the same kind of changes. The applicant is willing to
619 settle for smaller signs, to make changes to the sizes of the canopy, etc. The applicant would like
620 the Commission to look into the possibility of having the canopies.

621
622 It was explained to the Commissioners that the need for a canopy is important for the environment
623 in order to lower the issue of contaminants in water run-off, both primary and secondary. He
624 stressed that their company is very willing to make any changes in order to comply.

625
626 **Senior Planner MacNab** clarified that the applicants are requesting that the request for the
627 canopies be considered only under Design Review, and not require a Use Permit.

628
629 **The Vice Chairman** opened the public hearing for comment.

630
631 **Dieter Diess**, a resident of Calistoga, asked that the Commission look at this proposal not as just
632 another gas station on a corner in some town, but as the gateway to the historic heart of
633 Calistoga. That gateway is important and ought to be protected and enhanced, not detracted
634 from. He notes that the canopy design of the station already present, and feels that to then add
635 the proposed canopies for this station will in effect make the entrance to the historic areas of
636 Calistoga two gas stations. He'd like to see the gas stations try to design and modify the typical
637 feel and look of the gas station.

638
639 **Christopher Layton**, 1010 Foothill Blvd., expressed concerned about the engineer's statement
640 because he's not certain that there is a real need for the canopies, however the **Vice Chairman**
641 noted that installation of the canopies to prevent tainted water run-off is indeed a required
642 mitigation,

643
644 **Christopher Layton** provided examples of tasteful options that address the needs of the stations,
645 but still maintain a natural beauty for the entrance to the City. He noted the "old time" feel of the
646 proposed ideas he has provided.

647
648 **Nick Kite**, 1213 Foothill Blvd and as a very close neighbor to the gas station, noted numerous
649 concerns he has with this proposal as is. He provided a letter to the Commissioners as well,
650 which was included in the staff report. Specifically, he noted that he feels that the applicant's
651 requests are simply being made in order to boost their business and use large, ugly signage to
652 announce to people as far away as possible the location of their gas station. It's corporate
653 ugliness at its worst. As for the lighting at night, while the Commission requests in their conditions
654 that the lights be turned off, this station is open all day, every day of the year. When will they turn
655 off their lights? He is opposed to the station being open all night because of the nuisance it
656 causes to the neighbors who must deal with idling trucks, noisy conversations, loud music and
657 such issues in the middle of the night. Not only must he hear it, but his paying guests are subject

658 to it as well. He is wholeheartedly against the proposal as is and hopes that the Commission will
659 not accept this monstrosity of signage proposed by the applicant.

660

661 **Mr. Kite** also asked if the addition of the canopies and signage isn't an intensification of use of the
662 permit that is already in place. If they were proposing additional, larger signage, etc. then that
663 would trigger the need for Design Review and Conditional Use Permit. He noted that it is possible
664 to see the illumination of the new signs as constituting an intensification of use. In fact, he would
665 urge the Commission to carefully question the applicant about their plans for the inside of the
666 store. Do they plan to offer further food options than they currently have? That's an intensification
667 of use, and they should not be permitted to make that kind of change, regardless of whether or not
668 the signage is approved. He urges they deny the application. Should the Commission approve
669 the application, he would urge them to make certain that the new spanner not be any larger than
670 the current one, and only signage changes made. He believes that making the spanner larger
671 would be an intensification of use and would trigger Design Review and Conditional Use Permit
672 applications. Last of all, he would ask that the signs not be permitted to be illuminated.

673

674 In conclusion, he feels the comments by the applicants about how the neighbors don't mind, or
675 that it's just a canopy, underlines his belief that they are not sympathetic to the actual needs and
676 wishes of the neighbors as well as the City as a whole, and ought to alert the Commissioners to
677 what their attitude is in general as they apply.

678

679 **Yazmin Ali**, 20 Oak of Pleasanton, owns the property in question. She wanted to explain that the
680 proposal to install the canopy is driven by the change from Shell to Chevron, as well as the
681 mitigation of impact on the environment. She also stated that during the rainy season, it is good
682 for the community. She feels the canopy will add to the look of the City.

683

684 She explained that in response to concerns about changes inside, she isn't planning on making
685 any changes in the store. She isn't planning on choosing Chevron's option to have a store that
686 would be designated as "extra mile" which would make changes inside. They do not wish to
687 participate and will be keeping their current offerings in the store.

688

689 **Ms. Ali** also stressed that they are very willing to work with the staff and City to make whatever
690 changes or arrangements needed in order to have the necessary canopy and still comply with the
691 needs and desires of the City.

692

693 Lastly, **Ms. Ali** explained that the spanners are brand-specific and Shell's spanners are different
694 than Chevron spanners, however she isn't aware of the spanners being larger in any way. Mr. Ali
695 explained that they are choosing the smaller version of the spanners in order to keep the sizes
696 comparable to what they currently have.

697

698 The **Commissioners** generally agreed that the proposed color changes and signage are
699 permissible and are of a design that could be approved. However, they also were in general
700 agreement that the canopy design must be considered separately for a Use Permit in order to
701 further discuss and consider the design elements. Furthermore, they were not in support of
702 lighting the signs.

703

704 **Vice Chairman Creager** suggested adding to the proposal on the table that the Commissioners
705 ask somebody local to help the applicants to design a new canopy plan. He noted that some time

706 ago, there was a church proposed that was, in his mind, hideous and a local architect offered his
707 services pro-bono in order to create a new design that was agreeable to the church members as
708 well as the City. He asked if all parties were agreeable to allowing local architects to work with the
709 applicants to create a new proposal to resubmit to the Planning Commission.

710
711 **Director Gallina** expressed her belief that the signage ought to be included in this new design
712 process because perhaps they will be changed in order to better fit in with the new design.

713
714 **Senior Planner MacNab** also clarified that the addition of the canopies, when considered with
715 relation to the code, could be considered an intensification of use if the canopies are considered
716 as adding additional floor area to the existing building. That is debatable. However, he further
717 stated that it is his belief that the location of this gas station at the entrance to the historical portion
718 of Calistoga should provide ample reason for these changes to be considered under both Design
719 Review and Conditional Use Permit. He concurred that Mr. Kite's statement that this constitutes
720 an intensification of use, but he also noted that this is based on just one staff member's
721 interpretation. Lastly, the Commission consideration during Design Review as well as Conditional
722 Use Permit would lengthen the process for the applicants.

723
724 **Director Gallina** agreed that as Commissioner Coates noted, the applicants are working hard to
725 work with the City and it would be good to have a member of the Planning Commission meet with
726 both the applicants and the architects in order to represent the City and be able to report back to
727 the City.

728
729 It was moved by **Vice-Chairman Creager**, seconded by **Commissioner Coates**, to continue
730 consideration of the Design Review application to approve installation of two fueling canopies over
731 two existing fueling pumps, and to change the corporate color scheme of the dispensing pumps
732 and the convenience store from yellow and red to blue and white, and consideration of an
733 alternative canopy cover for the station located at 1108 Lincoln Avenue to the Meeting of
734 September 23, 2009 and to establish a Committee made up of Commissioner Bush, George
735 Caloyannidis, Dieter Diess, and Christopher Layton to work with the applicant to consider, during
736 an interim period, an integrated design scheme for the canopy and corporate coloration. **Motion**
737 **carried: 3-0-1-1**

738
739 **J. NEW BUSINESS (Continued)**

740
741 **1. GMA 2010.** Provide a recommendation to the City Council regarding the General
742 Development Objectives for the 2010 Growth management System Allocation process.

743
744 It was moved by **Vice-Chairman Creager**, seconded by **Commissioner Coates** to continue this
745 item to the regularly scheduled meeting of August 26th, 2009.

746
747 **K. MATTERS INITIATED BY COMMISSIONERS - None**

748
749 **L. DIRECTOR'S COMMENTS / PROJECT STATUS – None**

750
751 **M. ADJOURNMENT**

752

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753 There was motion by **Vice Chairman Creager**, seconded by **Commissioner Coates** to adjourn
754 the meeting to the next regularly scheduled meeting of the Planning Commission on August 26,
755 2009, at 5:30 PM. **Motion carried: 4-0-1-0.** The meeting adjourned at 10:15 p.m.

756

757

758

759 _____
Charlene Gallina, Acting Secretary to the Planning Commission

760 Prepared By Cynthia Carpenter, St. Helena Planning Administrative Assistant

761