

**MINUTES**  
**REGULAR PLANNING COMMISSION MEETING**  
**FEBRUARY 23, 2016**  
**CORTE MADERA TOWN HALL**  
**CORTE MADERA**

**COMMISSIONERS PRESENT:** Chair Peter Chase  
Vice-Chair Phyllis Metcalfe  
Commissioner Dan McCadden  
Commissioner Tom McHugh  
Commissioner Nicolo Caldera

**STAFF PRESENT:** Adam Wolff, Planning Director  
Phil Boyle, Senior Planner  
Doug Bush, Assistant Planner  
Joanne O’Hehir, Minutes Recorder

**1. OPENING:**

- A. Call to Order** – The meeting was called to order at 7:30 p.m.
- B. Pledge of Allegiance** – Chair Chase led in the Pledge of Allegiance.
- C. Roll Call** – All the commissioners were present.

**2. PUBLIC COMMENT**

Sloan Bailey, 34 Mohawk Avenue, Councilmember, said he is making comments solely in his and his family’s personal interest. Mr. Bailey discussed the construction at 30 Mohawk, which he noted is not a discussion item by the Planning Commission and that he is therefore unable to submit his comments. Mr. Bailey said he has strong views about the project and he suggested the project is agenized for a planning commission meeting. He said he can only express his personal views during the public comment period. Mr. Bailey said the house has been torn down to the studs and that all that remains is some of the exterior framing, and he commented on the uncovered parking variance. He said the house has the appearance of multiple dwellings, due to the split driveway, noting that it is unlike any other property in the vicinity.

Mr. Bailey said the neighborhood is frustrated with being unable to comment on a massive reconstruction project, which he said should have been discussed by the Planning Commission. He said the entire dwelling is being renovated with a second unit, on which he commented, and noted that the house is being raised, which will affect the privacy, views and sunlight of neighboring houses. Mr. Bailey discussed the project in relation to the code and said that a hyper technical interpretation of the code is being used in trying to absolve the current owner from the process. He reiterated the problem

of there being no opportunity for the neighborhood to comment on the project and he said that workmen are on site, showering in the garage, which he believes is not permitted. Mr. Bailey discussed his belief that the project should be removed from administrative design review for Planning Commission review.

Lucinda Smith, 46 Alta Way, said she supports Mr. Bailey's comments. She said the project is an eyesore and out-of-character with the neighborhood, and that it appears to consist of two, two-story residences in a neighborhood of single-family residences.

Counselor Propp noted that the item is not included on the agenda and therefore cannot be discussed by staff or the commissioners. She said the project could be agendaized for a future meeting.

Mr. Wolff said that staff has been in contact with the neighbors and property owners and that they are trying to resolve a variety of issues and interpretations of the code. He confirmed that staff will schedule the project as a business item discussion at a future hearing.

In response to Commissioner McCadden, Ms. Propp confirmed that the project at 30 Mohawk cannot be discussed and Chair Chase asked that it be agendaized for the next meeting.

In response to Vice-Chair Metcalfe, Mr. Wolff confirmed that a second unit is under construction at 30 Mohawk.

### **3. CONSENT CALENDAR – NONE**

### **4. CONTINUED HEARINGS – NONE**

### **5. NEW HEARINGS**

#### **A. PUBLIC HEARING TO CONSIDER ADOPTION OF A GENERAL PLAN AMENDMENT (GPA 16-001) TO MAKE PROPERTIES WITHIN EXISTING C-3 ZONING DISTRICTS CONSISTENT WITH THEIR EXISTING GENERAL PLAN LAND USE DESIGNATION, AND A ZONING AMENDMENT (ZA 16-001) TO REMOVE RESIDENTIAL USES AS A PERMITTED CONDITIONAL USE, IN C-3 ZONING DISTRICTS; AND DETERMINING THAT THESE ACTIONS ARE EXEMPT FROM CEQA PURSUANT TO CEQA GUIDELINES SECTION 15061B)(3). (Planning Director Adam Wolff).**

Planning Director Wolff presented the staff report. Mr. Wolff explained that the proposed General Plan Amendment and Zoning Amendment are two distinct items and that the purpose of the amendments is to better reflect the intent of the General Plan. Mr. Wolff provided background information on the adoption of the Land Use Element in the 2009 General Plan, when he said that many of the commercial properties in Corte Madera were re-designated. He noted that there was an intention for the Town to conduct

follow up actions to make the zoning changes consistent with the General Plan designations that were adopted in 2009. Mr. Wolff explained that a variety of commercial designations were re-designated to a Mixed-Use Commercial land use designation, which he discussed in relation to the previous General Plan updates. Mr. Wolff said that new uses were included in the 2009 amendments, including residential uses.

He discussed the language in the General Plan relating to Mixed-Use Commercial designations, including the language applicable to zoning districts. Mr. Wolff said it became apparent to staff that the C-3 zoning district was omitted from every list of applicable zoning districts in any land use designation in town. He discussed the areas designated Zone C-3, including the Tamal Vista corridor, and said that records indicate C-3 appears to have been inadvertently excluded from applicable zoning districts. Therefore, the properties zoned C-3 are inconsistent or incompatible with the General Plan land use designations. Mr. Wolff discussed the problems that have resulted in applications for the C-3 zoning district, including the commission's inability to make a required finding that a project in the C-3 zoning district is inconsistent with the General Plan.

Mr. Wolff explained that staff is proposing to add the C-3 Zoning District to the applicable zoning districts, so the properties in that district are consistent with the General Plan. He said that staff is aware of pending applications for projects in the C-3 Zoning District that will be impacted by the omission of the C-3 Zoning District from the list of applicable zoning districts in the Mixed-Use Commercial land use designation, which he discussed.

Mr. Wolff went on to discuss the zoning amendment proposal. He explained that they are seeking to remove the existing Conditional Use Permit application in the C-3 zone that is necessary for applicants applying for residential units in locations and densities determined by the Planning Commission to conform to the General Plan. He said that, prior to 2009, this was a dormant, inapplicable use because prior General Plans did not allow residential uses in that zone. Mr. Wolff said that, if the amendment is approved and the C-3 zoning district is added to the list of applicable districts, applicants can circumvent the intent of the General Plan to allow residential uses in areas that were designated commercial in 2009. Mr. Wolff discussed the process that would be necessary prior to an application for a residential use being considered in the C-3 district if the zoning amendment is not approved. He said it is staff's view that the removal of the CUP would maintain the General Plan's policies, which he discussed.

Mr. Wolff summed up the two recommendations, noting that two separate resolutions have been provided. Mr. Wolff reminded the commissioners that they would be making a recommendation to the Town Council whether or not they should adopt the General Plan Amendment and Zoning Amendment.

Mr. Wolff suggested additional language is added to the first resolution and he noted that the proposed amendments would not affect the ongoing process in the moratorium area on Tamal Vista

Chair Chase commented on the issue being one of housekeeping.

Commissioner McHugh asked staff if they were concerned that the amendments would adversely impact the current applications. In response, Mr. Wolff said that the applicants would be allowed to apply for Design Review approval if the amendments are made. He noted that the applicants have been noticed and are aware of the discussions and said that they are not applying for residential uses.

Commissioner Caldera suggested that a decision is made on whether to approve the removal of the CUP requirement before considering action on the C-3 district, noting that the General Plan amendment could be affected if a decision is made not to remove the CUP. In response, Mr. Wolff said the intent is to take action simultaneously. He expressed uncertainty that any difference would be made to the outcome, other than a time lapse in the readings by the Town Council.

Chair Chase opened the Public Comment period:

Jane Levinsohn, 32 Tamal Vista, asked how the changes might affect the movie theater site if it is sold at some point in the future should the changes be implemented.

David Kunhardt, Christmas Tree Hill, expressed confusion by the explanation of the reason to remove the CUP from the C-3 zoning district.

Scott Hochstrasser, Land Use Planning Consultant, said he is representing the owner of Market Place. He discussed his confusion about the proposed amendments and noted that a moratorium is in place that affects his client's property. He expressed concern that the C-3 uses do not include uses on his client's property. Mr. Hochstrasser questioned whether it is the right time to make the proposed changes and he asked what the changes mean to the C-3 district and how the use of properties in that district will be affected if the recommended amendments are approved. He recommended the Corridor Study is completed before the General Plan and zoning changes are made.

Dave Corey, Christmas Tree Hill, said he echoes the public comments already made. He said there are important synergies to be achieved by allowing housing in commercial districts, and that he does not support any action that would make it more difficult to allow housing in a commercial district. He expressed confusion by the discussions and said he would support another hearing to gain answers and clarification to questions.

Schultz Jackovitz, applicant for 200 Nellen Avenue, member of the family who own 101, 110 and 150 Nellen Avenue, and 2 Fifer Avenue, said that he and his family are familiar with the C-3 zone. He discussed their application for 200 Nellen, and noted that they are unable to move forward because there is no designation for the zone. He said they

would like to build a new office and retail building and ask that the commissioners approve the General Plan and Zoning amendments so that they can move forward with their project.

Mary Connolly, 51 Chickasaw, said she attended the neighborhood meeting last Saturday and is not confused. Ms. Connolly said the amendments make sense and that the removal of the need for a CUP for residential uses in the C-3 zone allows time to honor the community plans that are being put forth. She said it is fine if it puts the breaks on residences, noting that she will have plenty of new neighbors to meet and welcome when Tam Ridge opens. She asked that the commissioners move forward with staff's proposal.

Chair Chase closed the public comment period.

Mr. Wolff said that the effect of putting the C-3 zoning district back into the list of applicable districts in the General Plan allows property owners in that district to use their properties in ways stipulated by the C-3 zoning regulations, which he discussed, confirming it was an inadvertent omission. Mr. Wolff discussed the conditional uses in the C-3 district and noted that the removal of the CUP for residential uses would not change the intention of the General Plan.

In response to Chair Chase, Mr. Wolff discussed the only change to the Zoning Ordinance, which he said is noted in the staff report.

Commissioner McCadden said that, since the current applications are not for residential uses, he questions the purpose of taking action now. He noted that one of the more significant properties is covered by the moratorium and that the planning and zoning requirements for the area will be flushed out in a relatively short amount of time.

Mr. Wolff discussed the inconsistency between the General Plan, prior to 2009, which did not allow residential uses in these areas, and the language for residential uses that relates to conforming to the General Plan. After 2009, he noted that C-3 was excluded from the General Plan and the right was, again, not conferred to allow residential uses. Mr. Wolff confirmed that it is staff's belief it was not the intention for a mixed use development, which he discussed.

Commissioner McCadden noted that, in addition to support for residential uses, there is also support for prohibiting residential uses in the area. Mr. Wolff discussed staff's belief that there was an intention to allow residential uses through additional policies and analysis. He also noted that a goal in the General Plan's implementation programs is to establish development standards in which residential uses can be combined with commercial uses. Mr. Wolff noted that the General Plan does not address development standards for residential uses in Mixed-Use zones, which he discussed in relation to a conditional use permit.

Vice-Chair Metcalfe stated that, from her review of the General Plan, there is discussion about developing a community plan that has not yet been undertaken, which would provide the necessary structure for residential use in C-3. She said there is no reason not to exclude the conditional use for residential at this time because the community plan has not been developed to define the usage. Vice-Chair Metcalfe noted that tonight's action is a recommendation to the Town Council to take action to ensure the Zoning Ordinance is consistent with the General Plan, which she discussed.

In response, Mr. Wolff confirmed Vice-Chair Metcalfe's understanding is correct in that the proposed General Plan amendment will correct an omission if approved, and that the purpose of the zoning amendment is to ensure there is consistency with the General Plan policies. Mr. Wolff said it was not anticipated that a conditional use would be the route towards mixed-use development in the C-3 zone.

In response to Commissioner Caldera, Mr. Wolff confirmed that the intent of the Zoning Amendment is to remove the CUP for residential use in the C-3 district.

Commissioner McHugh disclosed that he had met with staff on January 26<sup>th</sup> to discuss the issue in order for him to gain a better understanding as to why they should consider the changes. He confirmed they spoke of nothing more than what has been discussed tonight or is in the staff report. Commissioner McHugh said he believes that staff's rationale for the recommended changes make sense and that the General Plan amendment clearly seems a reasonable determination; that excluding C-3 from the zoning lists was an inadvertent omission. He said that if the C-3 zone applied only to the Tamal Vista corridor, he would see a reason not to make a determination tonight. However, Commissioner McHugh said that the issue applies to other properties with current plans that would be affected and that adding the C-3 zone to the applicable sections of the General Plan makes sense.

Commissioner McHugh commented on the removal of the CUP for residential uses. He said he echoes staff's belief that it is important that consistency is maintained with regard to the purpose and intentions of the changes to the General Plan in 2009. Commissioner McHugh noted that, if the CUP for residential uses is not removed, then a scenario could be created whereby a potential residential area could be created without going through the processes contemplated by the General Plan that would provide the guidelines to do it thoughtfully, Commissioner McHugh said it makes sense to remove the CUP until such time that those processes can be determined. He favors both the recommended changes by staff.

Commissioner McCadden said that he echoes Commissioner McHugh's thoughts on the General Plan amendment but that he would support a continuation of the removal of the CUP until the results of the Corridor Study are to hand. He acknowledged that it made sense under certain circumstances to allow a residential use, but that he is reluctant to remove a residential use only to have it reinstated by another action. Thus, Commissioner McCadden said he would rather leave it in place since the current applicants are not affected by that decision.

Vice-Chair Metcalfe confirmed her agreement with Commissioner McHugh. She said that, per the General Plan, a Community Plan should be developed that addresses residential uses and that, until that time, it is not appropriate to allow a CUP for residential uses and so she supports both action.

Commissioner Caldera said that he favors including the C-3 district in the General Plan amendment but that he does not feel ready to remove the CUP.

Chair Chase commented on the CUP not being well defined in the C-3 district, which he discussed. He noted that residential uses should not be excluded permanently and that there is intent for it to be used effectively. However, Chair Chase believes it is safe to remove the CUP in the knowledge that a definition of a way to create a residential use in the C-3 district will be arrived through staff's efforts and the moratorium.

**MOTION:** Motioned by Commissioner McHugh, seconded by Vice-Chair Metcalfe, to adopt Resolution No. 16-007 recommending that the Town Council adopt General Plan Amendment No. 16-001 to include the C-3 zoning district in the list of applicable zoning districts in the Mixed-Use Commercial land use designations with the following addition to the Resolution:

**“WHEREAS** based on the review of the 2009 General Plan and related documents, the omission of the C-3 zoning district appears to have been inadvertent”:

**AYES:** Metcalfe, McHugh, Chase, McCadden, Caldera

In response to David Kunhardt, who requested a point of order, Mr. Wolff confirmed that an apartment complex exists in the C-3 district but that its conformity will not change. Mr. Kunhardt also asked for clarification on whether an extended stay hotel is considered a residential special permit issue, to which Chair Chase replied that he did not believe that is the case.

Commissioner McCadden and Mr. Wolff discussed the consequences of the amendments on existing properties. Mr. Wolff noted that the applications should not be affected as that the action is not retroactive, so no action will be taken on existing non-conforming properties in the C-3 districts.

Commissioner McCadden discussed a scenario whereby a residential property, which already exceeds the FAR, might not successfully apply for a planning project because their property does not conform to the code, which prompted discussion amongst the commissioners. Mr. Wolff noted that residential zones in the C-3 district exist, but that they were not constructed under a CUP. He noted that, if they eliminated some of the units, they would not necessarily have a right to replace them at a future date.

Commissioner McCadden discussed the need to hold off on withdrawing the CUP.

Chair Chase noted that the issues should be resolved with the Tamal Vista Corridor Study and the community plans. Mr. Wolff noted that the General Plan addresses not only a community plan, but also a policy and implementation program for a Mixed-Use commercial district, which he discussed.

**MOTION:** Motioned by Vice-Chair Metcalfe, seconded by Commissioner McHugh, seconded by to adopt Resolution No. 16-008, recommending that the Town Council adopt Zoning Amendment No. 16-001 to remove a permitted conditional use, allowing residential units in locations and at densities determined by the Planning Commission to conform to the General Plan, from the C-3 zoning district regulations:

**AYES:** Metcalfe, McHugh, Chase

**NOES:** McCadden, Caldera

In response to Vice-Chair Metcalfe, Mr. Wolff acknowledged a late letter that was submitted and provided to the commissioners, noting that staff hoped some clarification had been provided with the discussions.

## **6. BUSINESS ITEMS – None**

## **7. ROUTINE AND OTHER MATTERS**

### **A. REPORTS, ANNOUNCEMENTS AND REQUESTS**

#### **A. TENTATIVE AGENDA FOR MARCH 8, 2016 PLANNING COMMISSION MEETING**

- i. CONTINUATION OF PUBLIC HEARING TO CONSIDER APPLICATIONS FOR A NEW 185-ROOM DUAL-BRANDED MARRIOTT HOTEL, INCLUDING A 78-ROOM SPRINGHILL SUITES AND A 107-ROOM EXTENDED STAY RESIDENCE INN. APPLICATIONS INCLUDE A PROPOSED GENERAL PLAN AMENDMENT, ZONING ORDINANCE AMENDMENT, NEW PRELIMINARY AND PRECISE PLANS (INCLUDING DESIGN REVIEW), AND A CONDITIONAL USE PERMIT AT 56 MADERA BLVD.

#### **i. Commissioners**

Commissioner McHugh reported on the February 16<sup>th</sup> Town Council meeting he had attended, with particular regard to the Climate Action Plan. He said the the primary concern had been whether or not the goals could be construed as mandatory. Commissioner McHugh noted that the hearing was the first in a multi-step process and that the Climate Action Plan was not adopted. He noted that there was more than one Council member who expressed unease about the document, which he discussed.

Commissioner McHugh reported that Mayor Bailey made a recommendation to implement meetings with community members to discuss areas of concern.

He also reported that that the Town Council will be agendaizing an item on Christmas Tree Hill paths, noting that there had not been any discussion.

## **ii. Planning Director**

Planning Director Wolff reported that that the Christmas Tree Hill paths should be discussed at the next Town Council meeting, in addition to the Climate Action Plan.

Mr. Wolff discussed dates for future meetings, noting that April 12<sup>th</sup> is inconvenient for some commissioners and the date of March 29<sup>th</sup> was set.

Vice-Chair Metcalfe said she would like a discussion to take place on junior second units.

In response to Chair Chase, Mr. Wolff said the Town Council seemed amenable to a joint Town Council and Planning Commission meeting.

## **III. Tentative Agenda for March 8, 2016 Planning Commission Meeting**

Senior Planner Boyle confirmed that the item on 516 Chapman has been rescheduled.

## **B. MINUTES**

### **i. Planning Commission Meeting Minutes of February 9, 2016**

**MOTION:** Motioned by Vice-Chair Metcalfe, seconded by Commissioner Caldera, to approve the minutes of February 9, 2016:

**AYES:** Metcalfe, McHugh, Chase, McCadden, Caldera

## **8. ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 9:20 p.m.