

Planning Commission Meeting

Novato Unified School District Board Room

1015 Seventh Street

July 30, 2007

Minutes

Present: Marie Hoch, Chair
Peter Tiernan, Vice Chair
Madeline Kellner
Maximilian Hopkins
Calvin Willhite

Absent: None

Staff Present: Dave Wallace, Community Development Director
Hans Grunt, Principal Planner
Tim Wong, Housing Coordinator
Jessica Woods, Recording Secretary

PLEDGE OF ALLEGIANCE/ROLL CALL

Chair Hoch called the meeting to order at 7:43 p.m. All Commissioners were present.

APPROVAL OF FINAL AGENDA

M/s, Hopkins/Tiernan (passed 5-0-0) to approve the Final Agenda as submitted.

PUBLIC COMMENT

Ridge Road resident expressed concern about an easement going through Bradley to Center. Residents are not sure if this easement will be a positive or a negative in the neighborhood. She asked the Commission to consider that the easement have a gate in order to close off the area during set hours. She then discussed the General Plan in regard to scenic views and they must incorporate that idea with respect to the 70-foot high structure for Whole Foods. She wanted to know why scenic views are being deleted from this area. She further believed the 125 units should be scaled back and that the Whole Foods project should be relocated.

Carmel Drive resident discussed the appeal process and believed the Planning Commission should investigate the process since a Council member can decide to do a direct referral. She asked the purpose of having a

Planning Commission if Council will say, “*go fly a kite*” and take the Commission’s power away.

CONSENT CALENDAR

1. Approval of Minutes of July 2, 2007.

Chair Hoch asked for a motion.

M/s, Tiernan/Kellner (passed 4-0-1) to approve the Consent Calendar with the Minutes of July 2, 2007 as presented. Hoch abstained.

PUBLIC HEARINGS

CONTINUED ITEMS

2. AFFORDABLE HOUSING ORDINANCE

Consider a draft Affordable Housing Ordinance to replace Division 19.24 of the Novato Zoning Ordinance. The draft ordinance proposes new affordable housing requirements, including fees, applicable to new housing development Citywide.

Tim Wong, Housing Coordinator, summarized the staff report and recommended that the Commission recommend to City Council adoption of a complete update of the City’s Affordable Housing Ordinance.

Housing Coordinator Wong also provided the Commission with a letter from Lt. Jennifer Tejada in regard to calls for service in high-density residential developments for their review.

Commissioner Willhite discussed parking because it is a key item and he wanted to make sure it is a project-by-project request for a variance in regard to parking. Housing Coordinator Wong responded that the City has comprehensive parking requirements to address some issues. In terms of project-by-project, he deferred to the Community Development Director. David Wallace, Director, noted that even if the City Council had reduced standards, projects could still come in and request an exemption, so they would not avoid that process by having other standards. Council directs staff in regard to their work program and staff could further investigate, if that is a concern of the Commission.

Commissioner Willhite discussed occupancy of affordable units as a principal residence and asked staff the enforcement mechanisms and penalties for noncompliance. Housing Coordinator Wong responded that they would not be codified in the ordinance. In terms of enforcement, if it is a rental unit, the property manager would do the management whether it be income or primary resident. For example, if they find an advertisement for renting out a room, they could go after the occupant and that could be grounds for eviction because it violates the lease. Also, an enforcement mechanism would be included in the lease the tenant signs. For ownership units there is an annual self-certification to inform the tenant that it is

an owner occupied program and in no way can they rent out any part of their unit. Those are all written into their resale restriction or ownership agreement.

Commissioner Willhite commented on rental units, and if he was in San Rafael and wanted to build a 30-unit townhouse he must come up with about \$1.25 million up front for the in-lieu fee and asked staff if San Rafael has built units recently. Housing Coordinator Wong responded that San Rafael built inclusionary units in the late 1990s when rent was higher. San Rafael built 100 plus unit rental complexes with this inclusionary requirement in place. Staff understands that currently the rental market is at a low, but at that time when rents do come back to those late 1990 levels, then this requirement will be in place to possibly provide affordable rental units. Commissioner Willhite wanted to know if someone paid over \$2 million. Principal Planner Grunt responded that San Rafael has required units in the development since inception of their inclusionary ordinance.

Chair Hoch reviewed the purpose and findings of the draft ordinance and asked staff what is included in the ordinance that reserves units for those that live and work in the City. Principal Planner Grunt responded that provisions for preferences are not included in the ordinance. In discussion with legal counsel, there were complications for prioritizing, so rather than encumber the inclusionary ordinance with preferences, staff could look at objectives on a case-by-case basis with projects. Staff must take care to make sure they are meeting their fair housing obligations each and every time. Chair Hoch clarified with staff that this ordinance is designed to help people live and work in the City. Principal Planner Grunt responded in the affirmative. Staff noted that it is one of the primary objectives. Chair Hoch clarified that currently it is a lottery. Principal Planner Grunt responded in the affirmative.

Chair Hoch asked staff to define “*public*” and “*common infrastructure*.” Principal Planner Grunt responded that roads, parks, utilities, police and fire would be public and common infrastructure.

Chair Hoch opened the public hearing on this item.

Novato workforce representative had a goal to own a home in Novato. He currently works in Novato and is tired of commuting. He suggested that the City tax all of Novato rather than single out new homebuyers to fund affordable housing. To purchase a home today or after this ordinance, he will pay \$28,000 to fund affordable housing. All fees are passed down to the consumer, not the developers. He believed this is taxation without representation and singling out a minority of people that are not being represented. He added that it should be disclosed for those buying a home in Novato that they are funding \$28,000 for affordable housing. To tax all Novato is political suicide. The nexus in his view is very questionable. There are separate fees to fund fire, police, schools, parks and utilities. This is separate and this funds only affordable housing. They must think about new homebuyers and their names, faces and stories compared to some advertisements being run. The decision making process should be put in context of all Novato. True leadership is the 80 or 90% of those that do not attend meetings; just trying to accommodate those that attend meetings is not appropriate.

Commissioner Willhite is sympathetic to the public speakers position and if affordable housing is truly a major problem as indicated, then perhaps everyone should participate in the solution and suggested a transfer tax on each real estate sale. It could be interesting to do the comparative mathematics to know how much money that would generate. He wondered if that would not raise more money for this particular cause and be more equitably spread out. Novato Workforce representative agreed but noted that it would never pass. It is basic taxation without representation. Several citizens of Novato would like to purchase a new home without paying an affordable housing fee.

Barker Pacific representative worked with Hamilton and it is clear that this proposed policy is at a minimum at the wrong time and the wrong public policy. He agreed there are several other ways to raise funds for affordable housing. This proposed policy change would be counterproductive to what the City is trying to accomplish. Purchasers of affordable housing will affect existing and future residents of Novato. If the City slaps another fee on residential and sways the construction of new residential units, the loss of supply and demand will come into effect. It will push the price of existing housing even further and create a wedge to entry level and those trying to move up. Again, if nothing is built, there is a decrease in the amount of housing or if they push it out a few years before revenues and cost are back in balance, then no dollars are coming in for housing. If they would explore different options such as a fee on sale of homes, dollars will come in whenever homes are sold. This is a disguised tax that is raising taxes on a productive element of the community, home building. Housing is not in a robust state, barely hanging on and prices are stable and slightly declining, especially in the lower end of the market. Barker Pacific Group has a project in Southern California and that community does not have a housing per unit fee, they go about it in a different fashion. This is the wrong time for consideration and the wrong policy.

Novato resident/Trustee of NUSD favored the recommendations brought forward by the Novato Housing Coalition. Housing is a complicated issue for all and there is no easy way to solve the problem. He sees this particular ordinance as one way to address affordable housing, which is a problem. It will help to increase housing for Novato and provide more opportunities to people. It is important that Novato continue to be a diverse community. Also, he has first hand experience with retaining good people who have trouble with the cost of living in Novato as well as recruiting and attracting employees due to the cost of living. He would like to see this ordinance move forward to help resolve the issue of attracting and retaining qualified employees. He further urged the Commission to move forward.

Novato resident and neighborhood advocate discussed the General Plan and safe environment. The community has demonstrated willingness to pass bond measures to pay for better services, public improvements and open space. The goal is to preserve and retain Novato's character and that is where affordable housing comes into focus. The problem is location. Every precinct should have some very low-income housing. She agreed to a tiered method or 10% placed in the pot. Housing does not help with traffic and infrastructure, so it is a real dilemma. Housing placement is the issue in her view. They must preserve the quality of living and split up affordable housing to avoid "ghettoization." More activities must be provided at Hamilton, so if there were a way to place individuals into a diverse environment she would encourage it.

Orion Partners representative believed this ordinance is a little unfair and counter intuitive. It seems like it is aimed at new homebuyers. He agreed with some comments from Commissioner Willhite. He is pro affordable housing and desired some creative solutions. He did not think the fee structure suggested is appropriate. He liked the transfer tax notion in order for all citizens of Novato to pay their fair share. This ordinance is very unfair to projects underway to jump from \$12,000 to \$28,000. He is a commercial real estate agent and is pro green and jobs, but they do not need in this fragile economic environment a jump from \$12,000 to \$28,000. Projects already underway should be grandfathered in to avoid termination.

Chair of Novato Housing Coalition thanked the Commission and staff for a great deal of hard work. The Coalition supports staff's recommendations. Especially the 20% inclusionary requirement, exemption for accessory dwelling units and supports including rental projects. The Coalition would hope to see the Commission pass this as proposed by staff this evening and send it onto Council for their consideration. The staff report from the October 2006 meeting addressed issues of whether fees are added on to sales price of market rate unit, and the market price assigned to market rate units is typical of what the market will bare. In reality, that is what governs sales, not fees. There are certainly development costs, but they do not get added onto market rate prices. The Coalition also supported Commissioner Willhite's suggestion of implementing a transfer tax and using that as a mechanism for funding affordable housing and at the State level, they are trying to take steps to get legislative introduced for that to occur.

Prado Group representative appreciated staff's work and recognizes the ordinance had changes as recently as the changes that occurred last July. He supported affordable housing and goals of sustainability and also supported economic development and making all occur, but policy decisions impact the ability for those to occur. As a housing developer, in reviewing the report, he has concerns about public policy implications that may lead to unintended consequences of not producing the type of housing through this ordinance. To produce more housing and deeper levels, they must look at where the policy is consistent. He asked the Commission to consider whether they fully analyzed the implications of the ordinance. He questioned the numbers and fees on rental housing and levels of affordability for sale housing, whether those are the right relationship as stated in the ordinance. Few facts, one is land costs have increased; construction cost has increased; and profit margins have decreased. This ordinance will decrease land values today. He stated that the housing market has been cooling and how will this policy in front of the Commission that raises the fees actually help to produce more affordable housing. He requested and promoted to the Commission the idea of taking a step back and reviewing an actual case study. The Commission must understand where at the margin it will fall off the edge and not end up with what is desired. They must create incentives to create affordable housing. Also, review phasing type of a policy and have economic backing. This ordinance will lower the land value and that does not motivate individuals to sell land.

Commissioner Willhite stated that it sounds that in order to accomplish affordable housing goals they must increase density. Prado Group representative disagreed. Market rate

developers tend to sell at the highest market price. Whether or not they are able to move forward, and if today, they have a piece of land that does not work economically, then incentives come into play. At times density incentives do not always work. Implication of density bonus is not always desired by the public. Incentives can help, but do not necessarily solve all the issues. Also, the in-lieu ordinance as drafted is not going to give a builder an option to pay an in-lieu fee verses building onsite and that is left to the discretion of the City. He further noted that developers will 99% of the time pay the fee and not build housing.

Carmel Drive resident believed a deal was made at Hamilton in regard to affordable housing. She asked why the State does not provide money to build affordable housing. She desired a moratorium on housing. She asked the City to not approve any more projects because she is tired of conserving water. She asked staff to explain to the Commission what Mr. Safier discussed at the workshop last week. She wanted to know how many teachers, fire or police purchased a home at Hamilton. She urged the Commission to not pass this ordinance.

Novato Housing Coalition member thanked staff and Commission. They have all been working together for over four years on this ordinance. It is one of the tools in the toolbox. Redevelopment money and in-lieu fees could be used to purchase property and work with nonprofit organizations, but after four years they must move forward. She encouraged the Commission to approve the ordinance as proposed by staff tonight.

There being no further public testimony on this item, Chair Hoch closed the public hearing and brought the matter back to the Commission for discussion and action.

Commissioner Hopkins indicated that they put a lot of work into this and there has been some progress made. Tracking a case study that San Rafael has enjoyed seems to make sense. The rental property issue was discussed at length at the last meeting and he is disappointed with the information in the staff report. In regard to a maximum limit, that makes sense in his view. He had no objection to accessory dwelling exemptions. In regard to calls for police service, he desired a live person in attendance to discuss that matter tonight and noted his disappointment for just receiving a letter from the Lt. Tejada.

Commissioner Tiernan noted that they had a number of hearings on this matter He supported the resolution before the Commission and believed it made perfect sense. He felt intermingling “income level” communities is a great idea. Transfer tax is a novel idea and warrants future discussion, but not tonight. He further felt the resolution as written addressed his concerns.

Commissioner Kellner shared Commissioner Tiernan’s comments and felt the Commission heard through various staff reports that this is successful in San Rafael and must be tackled in Novato. Also, this is one tool in the toolbox, not the only tool. They must look from a policy standpoint of other items such as a transfer tax to be adopted at a higher level to address issues. She is supportive of the resolution before the Commission. She recommended that staff look at phasing and what is currently in the pipeline and how this will be phased in.

Chair Hoch discussed the matter with City of San Rafael and a staff person there said 20% is really extreme. It makes a number of projects unaffordable and is at the far end of what can be charged and still make a project work. Downtown there are hundreds of projects not being built. San Rafael in 2006 did not produce very many housing units and the year before they produced quite a few more units, so the numbers jump around, but the potential trend is to not produce very many units.

Commissioner Hopkins asked the Chair what City employee provided that information. Chair Hoch responded that Linda Jackson provided her with the information.

Commissioner Willhite discussed handwritten page 13 in regard to the second paragraph about Meadow Park residents and believed it might be useful to have a drawing or figure that accompanies that discussion to Council. Also, this is an economic experiment and the figures are the reflection of current housing market and public policy that is included. He is worried about unintended consequences on the land availability.

Chair Hoch believed Novato has a beautiful setting and a very difficult environment for development. There is a very strong anti-development in Novato. Water shortage is making it very difficult to create new construction in Marin. The nexus in this particular ordinance is really weak. To say that developers of new housing must pay the cost to build affordable housing is not a nexus. If the result of this ordinance were to further discourage the development of new housing in Novato that would not be appropriate and that is what will occur from this ordinance. She was fortunate to purchase a home in Hamilton. With additional hurdles much less development will occur in Novato. There is a huge amount of bureaucracy included in this ordinance. She understands many believe this is great. She received several phone calls to push this up to 20% and if they push this up to 20% they might not receive any affordable housing. She could not support this ordinance as written tonight. She believed imposing affordable requirements on rental does not make any sense and could hurt rental production which she would like to see increase since she rented for several years before purchasing her home in Hamilton.

Commissioner Hopkins also is having a hard time supporting this ordinance, and if rentals are included in this ordinance that would be a deal breaker in his view. There is no rationale to support inclusion of rental housing. No information in response to the issue was provided to the Commission.

Commissioner Tiernan believed affordable rental units must be set aside. In Marin County there is a limit to the dirt and no question housing and apartments will be built in Novato because there is a limited amount of dirt available. He added that status quo is not appropriate. This policy is a step forward and appropriate. They must have units and actual housing built in the community and a part must be affordable.

Commissioner Hopkins believed to increase the fees for building rental housing will have the opposite effect. Commissioner Tiernan noted that the fees go up to 6 units. Commissioner Hopkins discussed increased cost for building rental housing, and they do not have any

projection, so why then impose a tax on that if it makes no sense. Commissioner Tiernan stated that rental units will be built and affordable units should be interspersed within them.

Chair Hoch asked for a motion.

M/s, Tiernan/Kellner, to recommend approval of an Affordable Housing Ordinance of the City of Novato replacing Division 19.24 of Chapter 19 of the Municipal Code.

Commissioner Tiernan believes this is a step forward. Housing will be built and a portion will be affordable. It is important to have intermingled community. He also believed San Rafael's model is appropriate because it is working. He further believed consistency throughout the County is key.

Commissioner Kellner supported the ordinance and believed the Commission should move forward tonight.

Commissioner Willhite recommended sending to Council for their review. He believed it is not necessarily true that San Rafael was successful because it will take some time to see how it worked out. It is an experiment and it imposes taxes on individuals not in attendance. For him, it will in the end increase his house value. He believed it will be a split market, some subsidized and some market rate. Several people he knows rent in Oakland and Berkeley and they will never move because their rent is \$300 a month. It is cruel because those moving into affordable units do not receive any appreciation. Several lose out on appreciation. It is a social experiment and taxation. He pointed out that it appears to work in Union City, so he believes it would work here, but it will change the housing mix and there will be unintended consequences.

Motion passed 3-2. Chair Hoch and Hopkins opposed.

GENERAL BUSINESS

A. **UPCOMING AGENDAS AND QUORUMS** – No discussion.

ADJOURNMENT

By order of the Chair, the meeting was adjourned at 9:12 pm.

Respectfully submitted,

Jessica Woods
Recording Secretary