



**TOWN OF TIBURON**  
Tiburon Town Hall  
1505 Tiburon Boulevard  
Tiburon, CA 94920

Regular Meeting  
Tiburon Planning Commission

7:30 p.m.

**AGENDA**  
**TIBURON PLANNING COMMISSION**

**CALL TO ORDER AND ROLL CALL**

**Chair Kulik, Vice Chair Williams, Commissioners Corcoran, Weller, and Welner**

**ORAL COMMUNICATIONS**

Persons wishing to address the Planning Commission on any subject not on the agenda may do so under this portion of the agenda. Please note that the Planning Commission is not able to undertake extended discussion, or take action on, items that do not appear on this agenda. Matters requiring action will be referred to Town Staff for consideration and/or placed on a future Planning Commission agenda. Please limit your comments to no more than three (3) minutes. Testimony regarding matters not on the agenda will not be considered part of the administrative record.

**COMMISSION AND STAFF BRIEFING**

Commission and Committee Report  
Director's Report

**NEW BUSINESS**

**1. LAS LOMAS LANE (UPPER)**

Review of Proposed Real Property Acquisition and Real Property Disposition for Consistency with the Tiburon General Plan; Portion of Unimproved Las Lomas Lane Adjacent to Assessor Parcels 059-121 -08, 059-122 -56 and 57; Vicinity of Centro West Street and Las Lomas Lane

Documents: [REAL PROPERTY ACQ STAFF REPORT.PDF](#)

**MINUTES**

**2. Planning Commission Minutes - Special Meeting of December 14, 2015**

Documents: [DRAFT MINUTES.PDF](#)

**ADJOURNMENT**

**GENERAL PUBLIC INFORMATION**

### **ASSISTANCE FOR PEOPLE WITH DISABILITIES**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Division Secretary at (415) 435-7390. Notification 48 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting.

### **AVAILABILITY OF INFORMATION**

Copies of Design Review Board Agendas, Staff Reports, project files and other supporting data are available for viewing and inspection at Town Hall during business hours. Agendas and Staff Reports are also available at the Belvedere-Tiburon Public Library and on the Town of Tiburon website ([www.ci.tiburon.ca.us](http://www.ci.tiburon.ca.us)) after 5:00 PM on the Friday prior to the regularly scheduled meeting. Any documents produced by the Town and distributed to a majority of the Design Review Board regarding any item on this agenda, including agenda-related documents produced by the Town after distribution of the agenda packet at least 72 hours in advance of the Board meeting, will be available for public inspection at Town Hall, 1505 Tiburon Boulevard, Tiburon, CA 94920.

Upon request, the Town will provide written agenda materials in appropriate alternative formats, or disability -related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings. Please deliver or cause to be delivered a written request (including your name, mailing address, phone number and brief description of the requested materials and preferred alternative format or auxiliary aid or service) at least five (5) days before the meeting to the Planning Division Secretary at the above address.

### **PUBLIC HEARING ITEMS AND BUSINESS ITEMS**

Public Hearing items and Business items provide the general public and interested parties an opportunity to speak regarding items that typically involve an action or decision made by the Board. If you challenge any decision in court, you may be limited to raising only those issues you or someone else raised at the meeting, or in written correspondence delivered to the Board at, or prior to, the meeting.

### **GENERAL PROCEDURE ON ITEMS AND TIME LIMIT GUIDELINES FOR SPEAKERS**

The Design Review Board's general procedure on items and time limit guidelines for speakers are:

- Staff Update on Item (if any)
- Applicant Presentation – 5 to 20 minutes
- Design Review Board questions of staff and/or applicant
- Public Testimony (depending on the number of speakers) – 3 to 5 minutes for each speaker; members of the audience may not allocate their testimony time to other speakers
- Applicant may respond to public comments – 3 minutes
- Design Review Board closes the public testimony period, deliberates and votes (as warranted)
- Time limits and procedures may be modified in the reasonable discretion of the Chairman

Interested members of the public may address the Design Review Board on any item on the agenda.

### **ORDER AND TIMING OF ITEMS**

No set times are assigned to items appearing on the Design Review Board agenda. While the Design Review Board attempts to hear all items in order as stated on the agenda, it reserves the right to take items out of order without notice.

*NOTE: ALL PLANNING COMMISSION MEETINGS ARE AUDIO RECORDED*

#### **TOWN OF TIBURON LATE MAIL POLICY**

**(Adopted and Effective 11/7/2007)**

The following policy shall be used by the Town Council and its standing boards and commissions, and by staff of the Town of Tiburon, in the identification, distribution and consideration of late mail.

#### **DEFINITION**

"Late Mail" is defined as correspondence or other materials that are received by the Town after completion of the written staff report on an agenda item, in such a manner as to preclude such correspondence or other materials from being addressed in or attached to the staff report as an exhibit.

#### **IDENTIFICATION OF LATE MAIL**

All late mail received by Town Staff in advance of a meeting shall be marked "Late Mail" and shall be date-

stamped or marked with the date of receipt by the Town. Late mail received at a meeting shall be marked as "Received at Meeting" with a date-stamp or handwritten note.

**POLICY**

For regular meetings of the Town Council and its standing boards and commissions:

1. All late mail that is received on an agenda item prior to distribution of the agenda packet to the reviewing authority shall be stamped or marked as "Late Mail" and shall be distributed to the reviewing authority with the agenda packet.
2. All late mail received on an agenda item before 5:00 PM on the Monday prior to the meeting shall be date-stamped and marked as "Late Mail" and distributed to the reviewing authority as soon as practicable. Such mail shall be read and considered by the reviewing authority whenever possible. If the Monday, or Monday and Tuesday, prior to the meeting are a Town-recognized holiday, the deadline shall be extended to the following day at Noon.
3. Any late mail received on an agenda item after the deadline established in paragraph (2) above shall be date-stamped, marked as "Late Mail" and distributed to the reviewing authority as soon as reasonably possible, but may not be read or considered by the reviewing authority. There should be no expectation of, nor shall the reviewing authority have any obligation to, read or consider any such late mail, and therefore such late mail may not become part of the administrative record for the item before the reviewing authority.

These provisions shall also apply to special and adjourned meetings when sufficient lead time exists to implement these provisions. If sufficient lead time does not exist, the Town Manager shall exercise discretion in establishing a reasonable cut-off time for late mail. For controversial items or at any meeting where a high volume of correspondence is anticipated, Town staff shall have the option to require an earlier late mail deadline, provided that the written public notice for any such item clearly communicates the specifics of the early late mail deadline, and the deadline corresponds appropriately to any earlier availability of the agenda packet.

Pursuant to state law, copies of all late mail shall be available in a timely fashion for public inspection at Tiburon Town Hall, 1505 Tiburon Boulevard, Tiburon.



TOWN OF TIBURON  
1505 Tiburon Boulevard  
Tiburon, CA 94920

Planning Commission Meeting  
January 13, 2016  
Agenda Item:

## STAFF REPORT

**To:** Members of the Planning Commission  
**From:** Community Development Department  
**Subject:** Review of Proposed Real Property Acquisition and Real Property Disposition for Consistency with the Tiburon General Plan; Portion of Unimproved Las Lomas Lane Adjacent to Assessor Parcels 059-121-08, 059-122-56 and 57; Vicinity of Centro West Street at Las Lomas Lane

## BACKGROUND

The Town of Tiburon is currently considering the acquisition of a “real property” interest in the form of a public pedestrian access easement over part of the unimproved portion of Las Lomas Lane located immediately below Centro West Street. At the same time, the Town is also considering disposition of a public service easement/recreational trail that would be relocated and superseded by the grant of public pedestrian easement once the latter is recorded.

This item is the Planning Commission’s “general plan consistency” review of the proposed acquisition and disposition of these real property interests. Such reviews are authorized by Government Code Section 65402(a), attached as **Exhibit 1**. The purpose of such reviews is to ensure that a proposed acquisition and/or disposition are consistent with the local General Plan in terms of “location, purpose and extent”.

## ANALYSIS

The local public has used this route for pedestrian use for decades, but the Town had no formal dedication document indicating that the public had a right to use the area, since the ownership was officially with the heirs of Hugh A. Boyle (a Benjamin Lyford descendant) dating from a 1921 deed. In 2005, the Town Council adopted a resolution “accepting” the path as a public recreational trail in the absence of any owner offer of dedication. However, the proposed easement is a superior document that would perfect the public’s rights over this pathway. At the same time, the legal description has been rewritten to better match the actual path of travel used by the public. The prior alignment is proposed for abandonment (vacation) by the Town, with eventual quitclaim to the owners following recordation of the public pedestrian easement.

There has been a significant change in circumstance of the ownership of this undeveloped portion of Las Lomas Lane since 2005. In March 2015, adjoining property owners Bill and Susan Lukens, with the Town’s encouragement, obtained title to the undeveloped (upper) part of Las Lomas Lane through a quiet title action filed in Marin superior court.

Mr. and Mrs. Lukens agreed to offer the Town free of charge a formal public pedestrian easement to ensure the public's continued access through the site, using the existing well-travelled route, and they have paid for all related surveying costs. Mr. and Mrs. Lukens have also placed the parcel under a conservation easement held by the Belvedere-Tiburon Landmarks Society to ensure its undeveloped status in perpetuity. Staff would like to thank Mr. and Mrs. Lukens for their public spirit and generosity in this matter.

*General Plan Consistency Factors (Location, Purpose, Extent)*

Acquisition

The proposed easement would follow a well-established route that connects Centro West Street to Mar West Street, from which other public rights of way and easements connect to Downtown. The purpose of the easement is to perfect public pedestrian access rights over an area historically used by the local residents living in the Old Tiburon and Hill Haven neighborhoods, but which at present lacks any easement or other offer of permanent public rights from the property owner. The extent of the acquisition is an easement of varying width (but generally at least six feet wide) for a length of approximately 300 feet, for a total easement area of roughly 2,000 square feet. The easement follows the existing path with space to either side and is adequate for its intended public pedestrian access purposes.

Relevant General Plan policies goals and policies are as follows:

- DT-D To improve and enhance pedestrian and vehicular connectivity throughout Downtown.
- C-E Bike-Pedestrian Improvements. To improve the circulation system for pedestrians and bicyclists, including safety enhancements.
- C-J Non-Auto Travel. To provide facilities and incentives to encourage non-auto travel throughout the Planning Area.
- C-22 The pedestrian paths and bicycle trails in Tiburon should connect with other paths and trails where practical.
- C-24 Pedestrian routes, particularly for school children, shall be established for all neighborhoods.

Staff concludes that the proposed acquisition would be consistent with the General Plan and would further public interests set forth in the General Plan.

Disposition

The legal description associated with the current recreational trail alignment (as described in Resolution No. 51-2005) does not match the route travelled by users, especially near the top as it approaches Centro West Street. This circumstance would be corrected in the proposed public pedestrian easement legal description. Once the easement is recorded, the Town would vacate

the recreational trail and quitclaim any possible rights over it resulting from Resolution No. 51-2005 to the underlying property owners. The Commission would need to find that the abandonment of the recreational trail would be consistent with the Tiburon General Plan. Staff believes this finding to be self-evident, since the relocated public pedestrian easement would be a superior route that precisely matches the route currently used by the public, and the former route would no longer be necessary.

## **RECOMMENDATION**

Staff recommends the Planning Commission:

1. Take any public comment on this item.
2. Approve a motion finding the proposed acquisition consistent with the Tiburon General Plan and recommending Town Council acceptance of the grant of easement.
3. Approve a motion finding the proposed disposition consistent with the Tiburon General Plan and recommending Town Council vacation and conveyance.

## **EXHIBITS**

1. Government Code Section 65402.
2. Drawing depicting proposed public pedestrian easement area.
3. Drawing depicting the recreational trail area proposed for vacation and quitclaim.

Prepared by: Scott Anderson, Director of Community Development



recommendations and shall prepare a coordinated program of proposed public works for the ensuing fiscal year. Such coordinated program shall be submitted to the county or city planning agency for review and report to said official agency as to conformity with the adopted general plan or part thereof.

*(Amended by Stats. 1970, Ch. 1590.)*

**65402. Restrictions on acquisition and disposal of real property**

(a) If a general plan or part thereof has been adopted, no real property shall be acquired by dedication or otherwise for street, square, park or other public purposes, and no real property shall be disposed of, no street shall be vacated or abandoned, and no public building or structure shall be constructed or authorized, if the adopted general plan or part thereof applies thereto, until the location, purpose and extent of such acquisition or disposition, such street vacation or abandonment, or such public building or structure have been submitted to and reported upon by the planning agency as to conformity with said adopted general plan or part thereof. The planning agency shall render its report as to conformity with said adopted general plan or part thereof within forty (40) days after the matter was submitted to it, or such longer period of time as may be designated by the legislative body.

If the legislative body so provides, by ordinance or resolution, the provisions of this subdivision shall not apply to: (1) the disposition of the remainder of a larger parcel which was acquired and used in part for street purposes; (2) acquisitions, dispositions, or abandonments for street widening; or (3) alignment projects, provided such dispositions for street purposes, acquisitions, dispositions, or abandonments for street widening, or alignment projects are of a minor nature.

(b) A county shall not acquire real property for any of the purposes specified in paragraph (a), nor dispose of any real property, nor construct or authorize a public building or structure, in another county or within the corporate limits of a city, if such city or other county has adopted a general plan or part thereof and such general plan or part thereof is applicable thereto, and a city shall not acquire real property for any of the purposes specified in paragraph (a), nor dispose of any real property, nor construct or authorize a public building or structure, in another city or in unincorporated territory, if such other city or the county in which such unincorporated territory is situated has adopted a general plan or part thereof and such general plan or part thereof is applicable thereto, until the location, purpose and extent of such acquisition, disposition, or such public building or structure have been submitted to and reported upon by the planning agency having jurisdiction, as to conformity with said adopted general plan or part thereof. Failure of the planning agency to report within forty (40) days after the matter has been submitted to it shall be conclusively deemed a finding that the proposed acquisition, disposition, or public building or structure is in conformity with said adopted general plan or

part thereof. The provisions of this paragraph (b) shall not apply to acquisition or abandonment for street widening or alignment projects of a minor nature if the legislative body having the real property within its boundaries so provides by ordinance or resolution.

(c) A local agency shall not acquire real property for any of the purposes specified in paragraph (a) nor dispose of any real property, nor construct or authorize a public building or structure, in any county or city, if such county or city has adopted a general plan or part thereof and such general plan or part thereof is applicable thereto, until the location, purpose and extent of such acquisition, disposition, or such public building or structure have been submitted to and reported upon by the planning agency having jurisdiction, as to conformity with said adopted general plan or part thereof. Failure of the planning agency to report within forty (40) days after the matter has been submitted to it shall be conclusively deemed a finding that the proposed acquisition, disposition, or public building or structure is in conformity with said adopted general plan or part thereof. If the planning agency disapproves the location, purpose or extent of such acquisition, disposition, or the public building or structure, the disapproval may be overruled by the local agency.

Local agency as used in this paragraph (c) means an agency of the state for the local performance of governmental or proprietary functions within limited boundaries. Local agency does not include the state, or county, or a city.

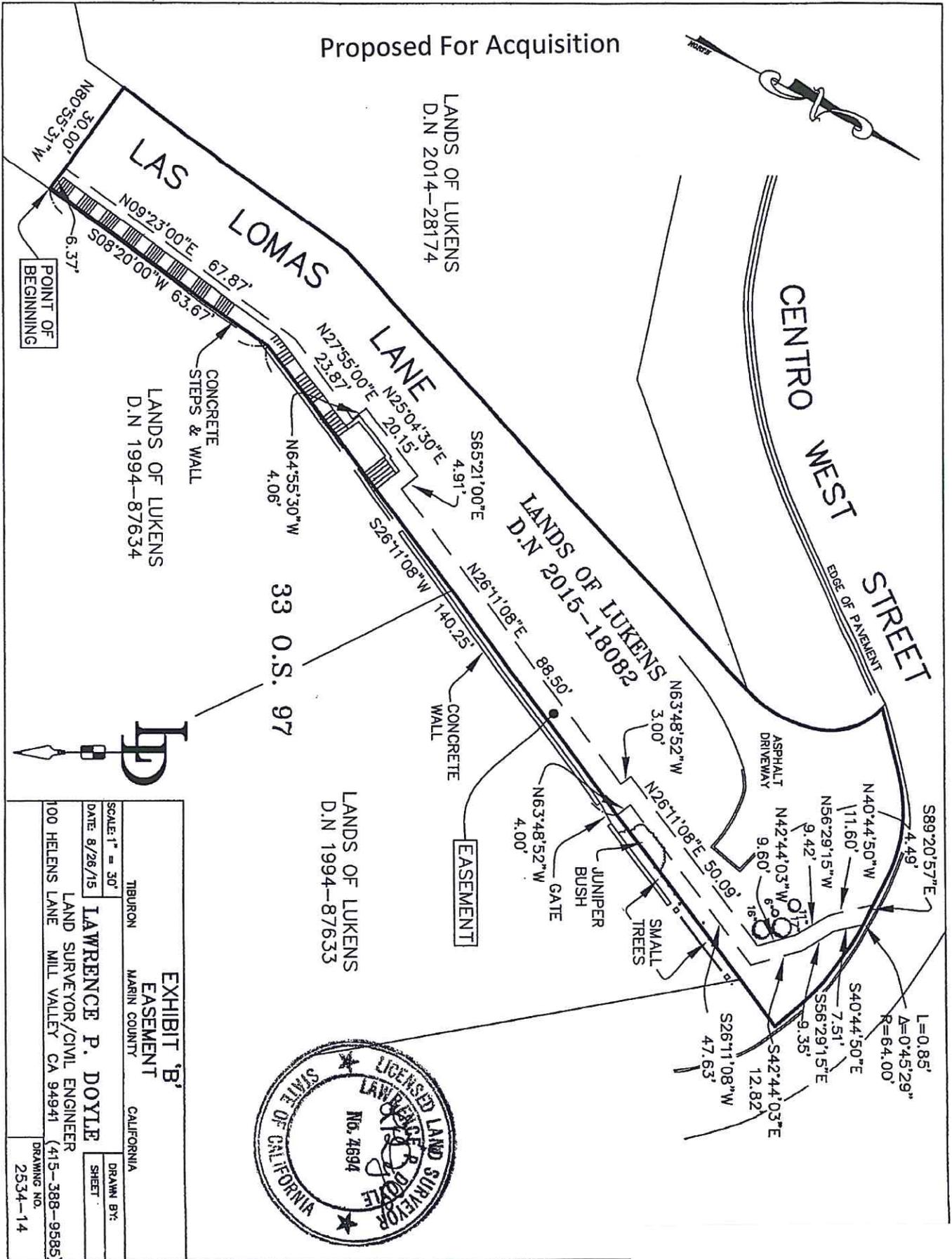
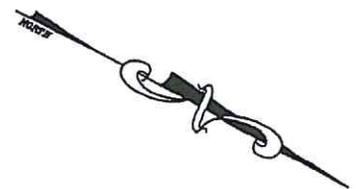
*(Amended by Stats. 1974, Ch. 700.)*

**65403. Optional school/special district CIPs: content and procedure requirements**

(a) Each special district, each unified, elementary, and high school district, and each agency created by a joint powers agreement pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 that constructs or maintains public facilities essential to the growth and maintenance of an urban population may prepare a five-year capital improvement program. This section shall not preclude, limit, or govern any other method of capital improvement planning and shall not apply to any district or agency unless it specifically determines to implement this section. As used in this section, "public facilities" means any of the following:

- (1) Public buildings, including schools and related facilities.
- (2) Facilities for the storage, treatment, and distribution of nonagricultural water.
- (3) Facilities for the collection, treatment, reclamation, and disposal of sewage.
- (4) Facilities for the collection and disposal of storm waters and for flood control purposes.
- (5) Facilities for the generation of electricity and the distribution of gas and electricity.
- (6) Transportation and transit facilities, including, but not limited to, streets, roads, harbors, ports, airports, and related facilities.

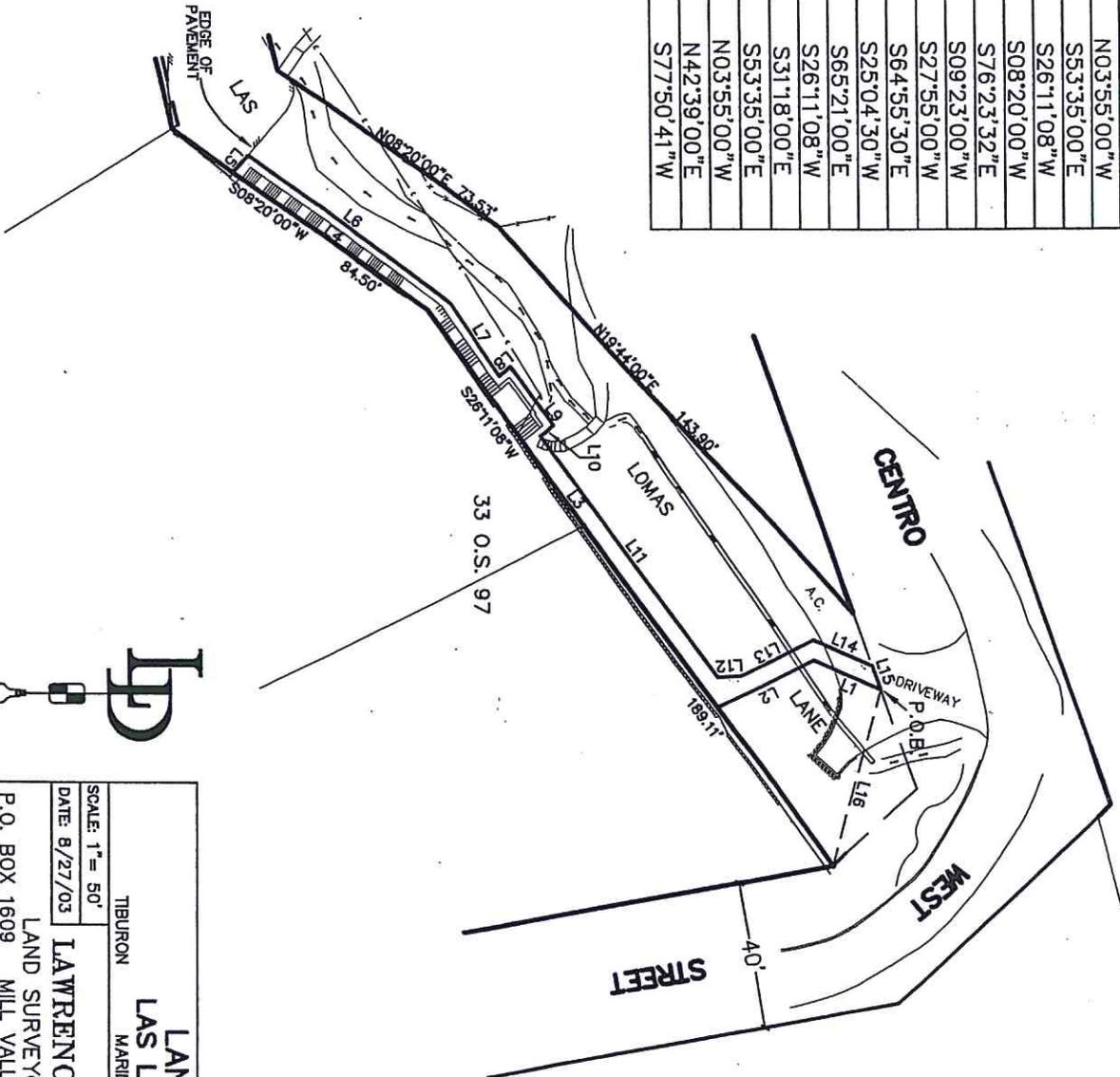
Proposed For Acquisition



<p><b>EXHIBIT 'B'</b> EASEMENT</p>	
TIBURON	MARIN COUNTY
<p><b>LAWRENCE P. DOYLE</b> LAND SURVEYOR/CIVIL ENGINEER</p>	
<p>100 HELENS LANE MILL VALLEY CA 94941 (415-388-9585)</p>	
SCALE: 1" = 30'	DRAWN BY:
DATE: 8/26/15	SHEET:
DRAWING NO. 2534-14	

Proposed for Vacation/Quitclaim

LINE TABLE		
LINE	LENGTH	BEARING
L1	20.30	N03°55'00"W
L2	29.66	S53°35'00"E
L3	135.15	S26°11'08"W
L4	63.99	S08°20'00"W
L5	6.39	S76°23'32"E
L6	67.68	S09°23'00"W
L7	23.87	S27°55'00"W
L8	4.06	S64°55'30"E
L9	20.15	S25°04'30"W
L10	4.91	S65°21'00"E
L11	82.01	S26°11'08"W
L12	6.24	S31°18'00"E
L13	22.45	S53°35'00"E
L14	17.88	N03°55'00"W
L15	6.89	N42°39'00"E
L16	50.19	S77°50'41"W



**LANE PLAT**  
**LAS LOMAS LANE**  
 TIBURON MARIN COUNTY CALIFORNIA  
**LAWRENCE P. DOYLE**  
 LAND SURVEYOR/CIVIL ENGINEER  
 P.O. BOX 1609 MILL VALLEY CA 94942 (415-388-9585)  
 SCALE: 1" = 50'  
 DATE: 8/27/03  
 DRAWN BY: SHEET 1 OF 1  
 DRAWING NO. 968

**DRAFT**  
PLANNING COMMISSION  
MINUTES NO. 1059  
Regular Meeting  
December 14, 2015  
Town of Tiburon Council Chambers  
1505 Tiburon Boulevard, Tiburon, California

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**CALL TO ORDER AND ROLL CALL:**

Chair Kulik called the meeting to order at 7:30 p.m.

Present: Chair Kulik and Commissioner Corcoran, Weller and Welner

Absent: Vice Chair Williams

Staff Present: Director of Community Development Anderson, Planning Manager Watrous and Associate Planner O'Malley

**ORAL COMMUNICATIONS:**

There were none.

**COMMISSION AND STAFF BRIEFING**

There was none.

**OLD BUSINESS**

1. 27 MAIN STREET: Conditional Use Permit to install a canopy on a portion of an exterior deck for an existing restaurant (Sam's Anchor Cafe); File # CUP2015002; 27 Main Street LLC, Owner/Applicant; Assessor's Parcel No. 059-151-35 [Continued public hearing from November 11, 2015]

Associate Planner Kyra O'Malley gave the staff report, stating the applicant proposes to install a permanent 920 square foot canopy on the easternmost portion of an existing exterior deck and extend the hours of operation for outdoor food services from the current "sunset closing time" to 9:30 p.m., seven days a week for the restaurant (Sam's Anchor Cafe) located at 27 Main Street. She stated that since the November 11 Planning Commission meeting, the applicant submitted a memo from Charles M. Salter Associates which summarized the noise study including measurements on multiple evenings varying between times of 8:00 p.m. to 11:00 p.m. in the month of November. She summarized key points from the noise study, including observations from Corinthian Island, reductions in noise due to distance, single-event noise and observations on management controls. She stated that the noise study had not addressed 1) whether surrounding uses would be exposed to noticeably louder noise than currently experienced in the

evenings if the canopy is installed; 2) whether surrounding residents would be exposed to noticeable noise for longer hours or on more evenings than is currently experienced if the canopy is installed; 3) whether the proposed Eisenglass panels contribute noticeably or at all to noise or sound build-up reduction; and 4) why the “single-event noises” standard is used as the basis for comparison of noise levels reaching Corinthian island.

Ms. O’Malley summarized previous discussions about the hours of operation and stated that staff recommended a condition of approval limiting the hours for outdoor food services to end at 9:30 p.m., as well as a condition requiring a periodic review of the use permit. She recommended that the Planning Commission hold a public hearing on this item and hear and consider the attached resolution conditionally approving the conditional use permit with conditions.

Chair Kulik asked if there are any current limitations on when food and drink is served on the deck. Planning Manager Watrous confirmed that there are no limitations, as the property does not currently have a use permit and there is nothing the Town has in place that addresses any time limitations. He added that as part of this conditional use permit the Commission has the ability to address hours of operation for the area which is proposed for the deck, but the Commission does not have the ability to set hours for the rest of Sam’s Anchor Café.

Chair Kulik asked if the staff recommendation was for the last plate to be delivered at 9:30 p.m. or the last order be taken by 9:30 p.m. with the delivery of food being sometime thereafter. Mr. Watrous stated that staff had not gotten into that level of detail, but in most cases when an application states that food service end at 9:30 p.m. that is when the kitchen closes and no food is presented after that time.

Commissioner Welner asked if any of the current operations for adjacent restaurants along the Main Street area exceed this timeframe. Community Development Director Scott Anderson stated that all of the restaurants along the water side of Main Street have use permits. He said that he was unsure of whether they have hour limitations, but noted that the main distinction staff sees is that there is a mechanism for dealing with any problems associated with those uses such as excessive nighttime noise.

Chair Kulik called upon the applicant.

Steve Sears and Brian Wilson, applicants and co-owners of Sam’s Anchor Café appeared before the Commission. Mr. Sears stated that they heard from their neighbors and completely understand their noise concerns. He stated that they hired a sound engineer recommended by the Water’s Edge Hotel and said that Mr. Salter was present to answer questions. He explained the reason for the project was to improve the café. He said that this would be a major improvement for their business, as it would move their dining room out closer to views which would result in a much nicer dining experience and offer shade in the daytime. He noted that they have already offered to eliminate their public address system in the daytime and now close their front bar at midnight so they do not have noise stemming from it until 2:00 a.m. He stated that enclosing the deck would mean that there would now be management on the deck to control activity in the canopy area. He acknowledged the neighbors’ concerns and said that they will do everything

they can to keep the noise levels down through the use of the Eisenglass walls. He believed that the project would be a win/win for everybody.

Brian Wilson stated that it has not been their policy to stop serving outside at sunset, although this might have been misidentified in their application. He clarified that they stop seating people at 9:30 p.m., but do not stop serving food at that time.

Commissioner Weller asked what would happen if the Commission approves the project with the condition that no food service is to be served in the deck space after the set hours, which would be a service or “plate on a table” cut-off and not a seating cut-off. Mr. Sears said that he was not sure how this condition would be worded and that they would be concerned if this service cut-off was included as a condition.

Commissioner Corcoran asked about the different materials for the canopy and siding and their sound effects. Mr. Sears stated that Mr. Salter could discuss this.

Chair Kulik asked Mr. Watrous if the a conditional use permit was not just for the 900 foot canopy area but also extended to the entire 2,700 foot deck area. Mr. Watrous stated that the use permit only included the covered deck area and did not deal with limitations outside of that area. He stated that the conditions of approval have to be reasonably related to what is being requested.

Commissioner Corcoran asked whether there is any discussion or consideration of different types of materials for the project, including different thicknesses of Eisenglass panels and ceiling materials. Charles Salter, Charles Salter Associates, said that the Eisenglass panels would reduce noise by about 20 decibels, which would be a significant noise reduction. He was not aware of different thicknesses of Eisenglass. He said that he proposed an acoustical metal canopy which he has had great success with for many projects. He said that he was less concerned with sound buildup and as long as they have a sound-absorbing ceiling.

Chair Kulik asked Mr. Salter to address the 4 questions on page 2 in the staff report. Mr. Salter referred to the questions and provided a response for each:

1. Whether surrounding uses would be exposed to noticeably louder noise than currently experienced in the evenings if the canopy is installed:

Mr. Salter stated that it should be quieter because the canopy would help block and attenuate the noise. He said that he impressed upon Sam’s management that this was about mitigating potential noise impact and that is what he attempted to articulate in his report.

2. Whether surrounding residents would be exposed to noticeable noise for longer hours or on more evenings than is currently experienced if the canopy is installed:

Mr. Salter said that activities in the canopy area would be low level with people talking at a normal voice level of 60 decibels so there would be no impact. He said that benign

ambient noise would not be heard on Corinthian Island. He noted that it takes loud noise of 80-85 decibels, such as shouting, to be audible and to be an impact, not normal conversations.

Commissioner Welner asked if the insulation of the canopy could cause more people to congregate and therefore generate new noise. Mr. Salter stated that if there were more people talking at a normal voice levels there would be no noise impact. He said that the issue whether it is daytime or nighttime was loud sound both for the hotel as well as for Corinthian Island residents. He said that the speaker system is loud and can be heard and people complain about it and this should be addressed by restaurant management.

Commissioner Weller commended Mr. Salter for the thoroughness of his study but said it was a bit daunting for a non-sound engineer to get through. He asked if there was any attempt to analyze the current sound levels and whether noise on Sam's deck creates a problem for anybody. Mr. Salter stated that he did not study the area in the summer and measured noise last month, including existing ambient and intermittent noise on Corinthian Island. He felt that this would come down to a policing issue and controlling excessive noise, as the restaurant would then be able to add people and there would be no problem for the hotel and for Corinthian Island residents. He noted however that it could take one person out of control being very loud to be very disturbing, so he did not see the number of people or even the hours as being salient, but rather the activities.

Mr. Salter continued addressing the staff report questions.

3. Whether the proposed Eisenglass panels contribute noticeably or at all to noise or sound build-up reduction:

Mr. Salter said that a 20 decibel noise reduction is noticeable.

4. Why the "single-event noises" standard is used as the basis for comparison of noise levels reaching Corinthian island:

Mr. Salter said the reason they use single event noise is that if someone is shouting or talking very loudly at 86 decibels this is intermittent noise that would not be generated by a group of people talking at a normal voice level. He compared that loudness to other intermittent noises and added that they also look at the average sound level and it was below the minimum ambient level and therefore not a noise impact.

Commissioner Welner asked about management of the deck to ensure the sound coming from outside of the canopy late at night does not increase as a result of the canopy being installed. Mr. Sears explained that the dining room would open up with large sliding glass doors so that the outside area would actually be part of the dining room. He said that they have not and will not start telling people that they cannot walk out onto the deck, but with the canopy being part of the dining room their management staff will be out in that area. He said that once the kitchen stops serving on the deck people want to sit out there they manage those customers who are there.

Commissioner Corcoran asked for a more direct answer to the question regarding ending outdoor food service at 9:30 p.m. Mr. Sears stated that realistically the only thing that can be controlled is when they seat somebody and from a practical and service standpoint they cannot seat someone at 9:29 p.m. and tell them they must hurry up and eat. Mr. Wilson stated that it would be hard to draw a line in the sand, but they were willing to commit to the hours they have now, as they seat until 9:30 p.m. Commissioner Corcoran asked what Mr. Sears' position would be if the Planning Commission decided for a clear cut-off time based on service and not based on seating. Mr. Sears said that it would be difficult.

Commissioner Weller disagreed and stated that he had been in many private clubs in other circumstances where customers are told when they stop serving. He said that this does not mean that people have to leave, but means that the establishment will not bring customers anything additional to eat after a certain hour. He said that he had a hard time understanding why it would be difficult to enforce such a rule and stated that it would not apply to the rest of the establishment, but it could.

Chair Kulik asked if a "lights out" time under the canopy area would be easier to enforce. Mr. Sears said that he thought that the Commission was not looking at the situation realistically, as people could move to another part of the deck. Mr. Sears said that they understand that there would be people out there at times of the evening on some nights because it would be enclosed and have heaters, but this would be a dining situation where there will be conversation type noise and there would be management to control it.

The public hearing was opened.

Justin Flake, General Manager of Waters Edge Hotel, said as Mr. Salter stated there is a consistent ambient level of noise that would be produced if the canopy is approved and the question was asked if it will be louder than before. Mr. Flake stated that typically there is no noise during the evening hours, but even with sound reduction he found it hard to believe that there would not be more noise. He stated that there is a lot of intermittent noise on summer evenings when people take their drinks outside if the weather is nice. He said that when the bar was open until 2:00 a.m., drinking crowds stood outside laughing, cackling, getting loud and shouting and management could not get it to stop even with the hotel's repeated calls. He said that he was therefore very concerned that the situation would be totally unenforceable even with limitations on operating hours. He said that he would love trust that management will keep an eye on this, but he was concerned about how this would work from a practical standpoint and whether there would be any recourse for the hotel.

Mr. Flake said that the Commission has not yet addressed issues regarding private parties or music which could result from this project. He thought that the use permit should also cover customers moving from one portion of the deck to another and time limits on other deck areas. He acknowledged the difficulty in making customers leave at a certain time of evening, but felt that the restaurant would need to make the last seating earlier and the neighbors could then count on people being done earlier in the evening, although someone seated at 9:30 p.m. could be there until midnight or closing and would not be stopped from having dinner, then dessert, then drinks, and then coffee at midnight before they finally go home. He thought that there were so many

variables in this situation that any permit should include the time limits he proposed in his letter. He also asked for a method to enforce those times or for some recourse if the limits are not being followed prior to a Planning Commission meeting six months in the future.

Commissioner Weller asked if Mr. Flake had any idea of the cost of the noise mitigation improvements suggested by Mr. Salter. Mr. Flake replied that there several recommendations and they hoped to reduce noise to 30 to 35 decibels in the rooms. He said that the first mitigation would involve sealing some openings between the carpets and walls, which is a relatively easy fix. He said that the other recommendation would involve replacing all of their windows and adding insulation which would cost several thousand dollars per room. He said that just sealing the cracks would theoretically reduce noise to 35 decibels but would not address intermittent shouting from drunken customers.

Commissioner Welner asked if noise can be heard from other restaurants in town that have outdoor seating and how late these restaurants typically stay open. Mr. Flake said that he was unsure of their hours of operation but said that they usually do not have problems with Luna Blue or Servino's. He noted that Sam's is right up against their hotel and has served at very late hours.

Commissioner Corcoran asked if noise would be reduced if a fixed wall was installed facing the hotel instead of the Eisenglass panels. Mr. Flake said that it might help but the question should be referred to Mr. Salter. Mr. Watrous clarified that a part of Sam's deck that extends across the property line so the Water's Edge wall stops short of the property line. He said that the canopy would only extend to the property line and he did not believe that the applicants were proposing an Eisenglass wall along the interior side.

Peter Clark, Clausen Engineers, said that the Eisenglass panels would in fact be around the outer perimeter of the canopy, but not on the hotel side, but they would be receptive to installing an Eisenglass panel there.

Commissioner Weller asked why Eisenglass panels would be used to open up a view to a blank wall. Commissioner Corcoran asked whether creating a solid wall that would connect the ceiling canopy to the deck would help noise issues for the hotel from. Mr. Salter said that the Eisenglass panels facing the hotel could help a little with sound bouncing off of the hotel walls, but noted that there would be issues with ventilation and air flow with a fixed wall. He said that a wall would help a bit but it was questionable whether it would be needed all the time.

Chair Kulik asked if a solid wall of some kind for the eastern portion of the new structure as opposed to Eisenglass was architecturally and acoustically possible. Mr. Clark said that such an idea was viable.

Commissioner Corcoran asked for Mr. Flake's opinion of such a permanent wall. Mr. Flake felt that this was a great idea as an added buffer but he questioned where sound would go with a roof and three sides enclosed by glass in the structure. He reiterated their desire for some method to prevent any unusual circumstances or recourse.

Ray Zambrano, co-owner of the Water's Edge Hotel, thanked the Commission for taking the time and getting into the details of the project because it would definitely affect their hotel. He said that the ability to enforce noise complaints was critical as they have typically gotten no response from Sam's when they have complained about sound issues. He noted that the Town has no noise ordinance. He thought that there should be a double wall against the hotel's wall and simply building the structure and leaving it open to the wall would not address noise issues. He noted that there is an outdoor bar which and the canopy would encourage people to stay outside as long as they are eating and he felt that this should only be a service bar for the covered area.

Charles James said he lives on Corinthian Island and said that the 20 decibel noise reduction from the Eisenglass panels would only occur with the panels down and he was concerned about noise when the panels are rolled up. He stated that the noisiest part of food service was at the end when everyone is cleaning up at the end of the night, and if customers are seated at 9:30 p.m. and stay until 11:00 p.m. there would be additional noise from cleaning up even later. He encouraged the concept of seating people inside after a certain time. He stated that people living on Corinthian Island can hear delivery trucks, trash trucks and other large vehicles very early in the morning and will then also hear noise late into the night. He said that he enjoys Sam's Café and wants them to grow their business but at the same time felt that they have to be good neighbors. He suggested seating people outside Thursday through Sunday which would provide residents with a few days of peace and quiet and possibly not allowing delivery trucks to arrive so early in the mornings to provide residents with a couple of more hours of peace.

Mr. Clark stated that they would be amenable to a wall between the Water's Edge Hotel and would also consider an alternative which would extend the roof up to the Water's Edge which would span the property line. Mr. Wilson added that the outside bar covers much of that side of the deck and also spans the property line.

Mr. Sears stated that they hear concerns about the morning noise from deliveries and suggested people come and talk to them about so they can address it. Community Development Director Anderson stated there are windows of delivery times but nothing as early as 4:00 or 5:00 a.m. is allowed.

Mr. Sears stated that they would be able to manage the sound issue much better with the canopy and with their dining room moved out onto the deck and the noise would be less frequent and less loud.

The public hearing was closed.

Commissioner Corcoran asked what the process would be for the applicant to return and modify any limitations on the hours for ending food service. Mr. Watrous stated that the applicant can appeal a decision regarding conditions of approval adopted by the Commission to the Council. He said that the applicant may request a change to the conditions through an amendment to the use permit. He said that the draft resolution of approval includes a review after one year and the applicant could ask for changes at that time.

Commissioner Corcoran asked if staff considered requiring a certain time that the Eisenglass walls have to be up or down. Mr. Anderson stated that at the time, staff did not know if the Eisenglass panels would have any effect on noise reduction at all and tonight they heard new information that the panels would reduce sound by 20 decibels, which would be a major sound reduction. He said that the Commission could consider a time to drop the panels if there is continued outdoor late night use of the covered area.

Commissioner Weller asked if it was possible to require an applicant to reimburse an adjacent land owner like the hotel for costs associated with mitigating sound. Mr. Anderson said that typically the use permit process does not give the Town authority to require a third party to do something and therefore, it would be more of a voluntary agreement on their part. He stated that the Town would prefer that on-site alternatives be exhausted first and that there need to be some willing agreement first before any such condition was imposed so it would be a voluntarily accepted condition. Mr. Watrous agreed and added that there is a lot of specificity in terms of an agreement on costs and variables in the type of windows or sound insulation, which would make it difficult for the Town to step in to create a blanket condition requiring payment for such improvements.

Commissioner Weller voiced support for Sam's and its continued success in the community. He stated that control over operating times for Sam's as a whole is not within the Town's jurisdiction, but there is an opportunity to look at conditions for this deck area to assist Sam's in being a good neighbor. In hearing what neighbors on Corinthian Island and the hotel have said, he believed that a limitation on service hours in the canopy area was appropriate to try to mitigate extended use of the deck beyond its current use. He said that he was not satisfied with limiting the seating time and thought that it is easy to regulate limits on when food is put in front of people and easier to determine if that condition was violated if there is a complaint. He thought that a 9:30 p.m. limit was appropriate, but considered the possibility of an earlier limit on Sundays. He stressed that this must be a service cut-off and not a seating cut-off. He said that the applicant and hotel seemed to be in agreement about a wall on the back side of the structure that would eliminate sound coming up and out to the hotel. He said that there should be a requirement to drop the Eisenglass panels at 8:30. He recommended approving this application subject to modifying it with requirements to install a wall enclosing the side of the canopy facing the hotel, that the Eisenglass panels be dropped at 8:30 p.m., to limit the delivery of food by 9:30 p.m. and to review the CUP after one year.

Commissioner Welner agreed with Commissioner Weller's comments in terms of conditions of approval. He said he was inclined to recommend a 6 month review of the permit instead of a one year review. Mr. Watrous noted that a 6-month review would be conducted in June and he instead recommended a longer review to allow an evaluation of summertime operations. He noted that staff has the ability to return the matter earlier if complaints are received.

Commissioner Corcoran agreed that there should be a solid wall or roof connection between the hotel and Sam's which would alleviate concerns regarding noise coming from the patio area over to the hotel and create a seal, or if the parties agree upon something different that accomplishes the same purpose the Town would usually support that. He said that he would be amenable to a 9:30 p.m. service stop time or allow service to go later if the Eisenglass panels are closed.

Commissioner Weller said that he was amenable to a 9:30 p.m. limit for food service but he was less certain that the Eisenglass panels should be open until 9:30 p.m. or go down earlier. Commissioner Welner said that he was not inclined to indicate whether or not the Eisenglass panels are down or not because only time will tell whether the panels will be effective in mitigating sound.

Commissioner Corcoran agreed that this was temporary in a sense because of the permit review in a year when the Commission can evaluate whether this is a workable solution or a modification needs to take place. He viewed this less as a summer issue and more of a winter issue, as people could have been eating up until 11:00 p.m., whereas in winter it may not be that big a deal if the walls are down and 2-3 diners are outside eating at 10:00 p.m.

Chair Kulik stated that this is a unique situation where Sam's pre-dates zoning so there are really no limitations of any kind of what they can or cannot do and no enforceability for sound. He stated that Downtown Element Policy DT-3 speaks about promoting the economic vitality of the downtown and the Commission is charged with that. He stated that this proposal could create a magnet for activity that is not part of the status quo. He thought that it was noteworthy that Sam's would voluntarily bring scrutiny through a CUP that where there is currently nothing. He said that an approved permit would be subject to rigorous scrutiny and enforceability of conditions of approval. He thought that many of the changes Sam's has made have been driven by economic reality and functional reality, including moving closing times back from 2:00 a.m. to midnight. He also felt that some goodwill had been shown, with a willingness to change the design, install a solid wall, and removing the PA system which was a point of contention on Corinthian Island. He said that the applicant had made very public promises made of good management and he felt that that their manager would take care of business and address issues as they come up and not be reactionary after the fact. He agreed with most of the proposed conditions, particularly with finding some way to provide for a solid wall between the new canopy and the hotel, a specific time for the Eisenglass panels to go down, a time limit on the last placement of a plate on a table, and a review cycle of 6 months rather than 9 months to capture a full summer of data and see how things are going.

Chair Kulik discussed times for end of service and said that he has been in restaurants where this is done and thought that a 9:30 p.m. service shut off was fair. He proposed having the panels come down at 8:30 p.m.

Commissioner Corcoran proposed a 9:30 p.m. service cut off time and for Eisenglass walls to go down at 11:00 p.m. and thought that service should be extended to a later time if the Eisenglass walls are down. Mr. Watrous said extending food service after panels are down would be more difficult to enforce.

Commissioner Welner stated that it seemed easiest to pick the same 9:30 p.m. time for service cut-off and when panels come down. Mr. Watrous said that the intent of the Eisenglass panels was to reduce sound while people are dining so this would only require the panels to come down at a time when there is no longer any food service.

Commissioner Welner said that he was persuaded by Commissioner Corcoran's comment that in the summer people could be out there anyway, while in the winter when it is cold, they will want to put the panels down.

Commissioner Weller thought that the Commission was losing sight of the fact that what happens out on the deck that is not underneath this canopy was not before the Commission. He said that thinking about whether they can serve or drink or the amount of noise in that other area was an interesting exercise, but was totally irrelevant to what the Commission was considering, which was what can be done inside the area that the applicant has proposed to change. He said that he was prepared to work on is something that would be enforceable, can be monitored and would be consistent with the concerns expressed by the various speakers. He said that he would not favor any extended service beyond a set time and thought that the earlier that the Eisenglass can go down, the better.

Commissioner Weller stated that no one has mentioned is that the hotel would benefit if the 9:30 p.m. limit is adopted, especially in the summer, because sound is currently likely be coming from people closer to the hotel than farther away, while this application would give the Town the ability to limit sound from the area closest to the hotel. He was unsure how to deal with parties as a separate issue, but felt that the other conditions that would deal with noise would address that issue. He hoped that this would work, that Sam's will be successful and continue to be a good neighbor and that this will be a win/win for everybody.

Commissioner Corcoran supported the proposed 9:30 p.m. limit for service cut off and lowering of the Eisenglass. Chair Kulik concurred.

There was discussion about scheduling the CUP review, with a consensus that the review should occur at the first meeting in November.

Commissioner Weller suggested that the resolution should also incorporate the potential for an alternative to the wall if the hotel and applicants agree on an alternative.

Mr. Watrous summarized that the direction is to amend Condition No. 9 to be reviewed at the first meeting in November, adding two conditions: 1) that a solid wall be constructed along the eastern side of the deck between the outdoor bar and the existing restaurant or other similar noise mitigation that is agreed upon by both the applicant and Water's Edge Hotel; 2) that the Eisenglass panels be lowered at 9:30 p.m.

Commissioner Weller asked staff to explain Condition No. 6 in the proposed resolution, given that he was unclear about the noise study's design recommendations. Mr. Watrous stated that there were specific recommendations in the noise study that had to do with the insulation level of the roofing material and flooring material.

Chair Kulik acknowledged the comments and concerns of the Water's Edge Hotel and members of the public who have written letters and shown up at the meetings. He believed that the new Eisenglass panels and other requirements from the Commission would be appropriate mitigation measures for activities that do not currently exist.

**ACTION:** It was M/S (Weller/Corcoran) to adopt the resolution for a Conditional Use Permit to install a canopy on a portion of an exterior deck for an existing restaurant (Sam's Anchor Cafe), as amended to amend Condition No. 9 to be reviewed at the first meeting in November; adding two conditions: 1) that a solid wall be constructed along the eastern side of the deck between the outdoor bar and the existing restaurant or other similar noise mitigation that is agreed upon by both the applicant and Water's Edge Hotel; 2) that the Eisenglass panels be lowered at 9:30 p.m. Motion carried: 4-0.

## **BREAK**

Chair Kulik called for a break at 9:10 p.m. and thereafter reconvened the meeting at 9:15 p.m.

## **PUBLIC HEARINGS**

2. 145 RANCHO DRIVE: File No. PDPA2015004; Request to amend the Cypress Hollow Precise Development Plan (PD #45) to create a secondary building envelope on Lot 9 of the Cypress Hollow Subdivision; Rapport Investment Group, LLC, Owner; Chuck Utzman, Applicant; Assessor's Parcel No. 034-392-10

Associate Planner O'Malley gave the staff report and said the project is a proposed amendment to a precise development plan (the Cypress Hollow Precise Development Plan) for property located at 145 Rancho Drive. The property owner proposes to establish a secondary building envelope for the purposes of installing a lawn area surrounded by new walls. No changes are proposed to the existing building envelope. The property is currently developed with a single-family dwelling and is bordered by single-family dwellings and heavy vegetation.

The property owner proposes to establish a 940 square foot secondary building envelope on the south side of the property to allow construction of the proposed improvements, including walls varying in height from 4 feet, 2 inches to 5 feet, 5 inches and 36 inch wooden guardrails. Walls of this height located outside a building envelope are not permitted; hence the request for an envelope-related amendment.

Staff believes it is in compliance with the Cypress Hollow Precise plan and the Tiburon General Plan, but recommended a condition that the secondary building envelope would be just for the walls, lawn area and no other structures allowed. Staff recommended that the Planning Commission recommend approval of the amendment of the Cypress Hollow Precise Development Plan to the Town Council.

Garrett Burdick, co-owner, introduced Brian Pensack, co-owner and said that they were available for questions.

Commissioner Weller asked about the height limits for the proposed fence and walls. Mr. Watrous said that a 6 foot height limit is typical and the applicant wishes to build a 5 foot, 5 inch wall. Mr. Burdick confirmed this and said that they also would put a railing on top of the wall. Mr. Watrous stated that the railing would not count toward the maximum height.

The public hearing was opened.

Ian Altman said that his home is directly uphill from the project. He asked about the height of the retaining wall and for information about its engineering. He said that there was no evidence of any screening landscaping and said that he would prefer more privacy from his detached studio building.

Ms. O'Malley noted that the plans call for a wall height of 4 feet, 2 inches. Mr. Watrous added that since Mr. Altman is uphill from the site, he would just see the top of the wall.

Mr. Altman said that he would see some of the lawn area. Commissioner Weller asked if it was possible for Mr. Altman to install his own landscape screening. Mr. Altman said yes, potentially.

Mr. Burdick stated that they will be working on engineering for the retaining wall. He offered to provide further screening such as a small fence or wall that would go on top of the retaining wall or a couple of bushes and said that he was open to working with his neighbor.

Commissioner Weller asked why artificial grass was proposed as opposed to natural turf. Mr. Burdick said that he was excited about the use of artificial grass because it does not require water, given the drought and that over time artificial grass has improved in its quality.

The public hearing was closed.

Commissioner Welner supported the project, stating that the Planning Commission's role is to ensure the project is consistent with the intent of the precise development plan and General Plan, which it is.

Commissioner Corcoran concurred with Commissioner Welner and said that the project would not have a significant impact on surrounding properties and appeared to be one of the few spots on the lot where a flat outdoor space could be created.

Commissioner Weller and Chair Kulik both concurred. Chair Kulik added that the applicant is amenable to adding vegetation for blockage and said that he could find the project consistent with the precise development plan and the General Plan.

<p><b>ACTION:</b> It was M/S (Welner/Corcoran) to adopt the resolution recommending approval of the amendment to the Cypress Hollow Precise Development Plan to the Town Council. Motion carried: 4-0.</p>
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3. 35, 37 & 39 LYFORD DRIVE: File #s PDPA2015003 & CUP2015005; Request to amend the 35, 37 & 39 Lyford Drive Precise Plan (PD #35) and approve a Condominium Use Permit for the division of the single parcel into separate lots for each of the three detached dwelling units on the property; Richardson Bay Land Company, Owner/Applicant; Assessor's Parcel No. 058-301-49

Planning Manager Watrous gave the staff report, stating that the amendment seeks to create three (3) separate condominium parcels to allow separate ownership of each of the existing single-family dwellings. The Precise Plan was originally approved in 1974 to develop a 1.7 acre parcel with three detached single-family dwellings that are clustered at the southern end of the site. Each dwelling contains an attached one-car garage and a separate detached 4-car garage is shared by the three residences. An open space easement deeded to the Town of Tiburon covers the northern portion of the site.

Mr. Watrous said this is a slightly unusual version of cluster development that did not create separate parcels. This type of development fell out of fashion in development circles and does not exist elsewhere in Tiburon. The proposed project would make it more akin to what is a typical Precise Development Plan with individual lots and individual homeowners, and no physical changes are proposed for the property.

Staff recommended that the Commission hold the public hearing on this item adopt the resolution recommending conditional approval of the Precise Plan amendment and the resolution approving the condominium use permit.

Commissioner Weller asked why the project was for condominiums as opposed to a planned unit development, as condominiums normally have ownership of air space rights and common ownership of structures. Mr. Watrous said that the application was for detached condominiums, as there were no air space issues but a situation where both the open space parcel and of the detached garage would be shared by the different property owners. He added that creating individual lots with individual setbacks is difficult when the homes have been clustered so closely and this would make more sense than to try to create building envelopes where homes are already so close to each other.

Commissioner Corcoran said there was discussion that the applicants have agreed to give existing tenants first right of refusal to purchase the dwellings and provide relocation assistance, but this was not in the resolution. Mr. Watrous said that these items were volunteered and not necessarily something the Town specifically requires. He explained that staff usually asks for information in this process as to what the applicant is proposing to do in terms of future home sales, but the Town has not made this a specific requirement.

Commissioner Weller asked if the Town has a methodology for ensuring that when CC&R's are created there is a mechanism to ensure that sufficient financial responsibility and maintenance responsibility relating to the common areas will be implemented. Mr. Watrous said that he was not sure if the Town would require that level of financial information, but does review the CC&R's to ensure there are provisions for maintenance aspects. Mr. Anderson added that there is a requirement also that the Town has the ability to make the repairs and bill them to the homeowners if for some reason the owners fail to maintain the common area.

Andrew Allen, applicant, stated that he and his wife are the owners of the Richardson Bay Land Company. He thought that the staff report was thorough and they were available to answer any questions. He said that they submitted CC&R's which contain maintenance provisions.

Chair Kulik asked how the 4-space parking building would be divided. Mr. Allen said that each of the 3 houses will get one garage space and the 4<sup>th</sup> space would be reserved for storage of condominium tools and maintenance equipment.

Chair Kulik opened the public hearing. There were no speakers and he closed the public hearing.

Commissioner Corcoran found that the project was consistent with the intent of the original precise plan and in keeping with the General Plan.

Commissioner Weller agreed and said that the division of this project into 3 single-family ownership interests was a legitimate request, was consistent with the intent of the precise plan and all other requirements of the Town.

Commissioner Welner and Chair Kulik concurred.

**ACTION:** It was M/S (Welner/Weller) to adopt the draft resolution recommending conditional approval of the Precise Plan amendment to the Town Council. Motion carried: 4-0.

**ACTION:** It was M/S (Weller/Corcoran) to adopt the draft resolution approving the condominium use permit. Motion carried: 4-0.

4. CIRCULATION ELEMENT UPDATE: Consider recommending to the Town Council adoption of an updated Tiburon General Plan Circulation Element; Consideration of a Negative Declaration of Environmental Impact

Director of Community Development Anderson gave the staff report, stating the Town adopted its current Circulation Element in 2005. In 2014, the Town retained the consulting firm of Nelson-Nygaard Consulting Services to assist it with a comprehensive update of this element. Later than year the Town Council adopted limited amendments incorporating “complete streets” concepts in to the element as required by state law.

Mr. Anderson stated Project Manager Brian Canepa is present and has been extremely helpful to staff in all aspects of the update including the traffic model, performing and analyzing traffic counts, and other tasks that staff does not have the expertise to perform. He said that one reason for the element’s update was the worsening peak hour traffic occurring on Tiburon Boulevard over the past several years. It was hoped that this update process would potentially identify some additional methods of easing congestion to augment what the CART (Community Action to Reduce Traffic) Committee had come up with after its two-year long process when they released their summary report in 2013.

As part of the Circulation Element update, the consultant performed extensive traffic counts and intersection analyses, updated the Town’s traffic model and projected future conditions. These tasks were completed prior to the launch of the Yellow School Bus Challenge 2.0. Early evidence suggests there has been a substantial improvement in traffic flow along the boulevard during peak hours since that program went into effect.

Mr. Anderson said that the staff report enumerated some of the major changes to the Circulation Element such as a new guiding principles section, a discussion of “complete streets” that has been moved up to the front of the document, a complete update of the Existing Conditions section, and the goals, policies and program sections have also been updated, expanded and consolidated where needed. Also, there is an updated Proposed Circulation Improvements section that now includes both supply side and demand side strategies spelled out more clearly.

Mr. Anderson described recommendations regarding lowering acceptable peak hour level of service (LOS) criteria at various intersections, but noted that the LOS metric is now falling out of favor and no longer is allowed to be used during environmental review (CEQA) as a tool to identify transportation impacts. He also noted that although the Yellow School Bus 2.0 program has gone into effect and appears to have significant positive impact, it was too early to gauge its sustained success, especially until there is a secure, long-term funding mechanism for the program and a longer period of time to measure its effects on traffic congestion.

Staff has enumerated in an annotated version of the Circulation Element whether a policy is new, modified, or simply renumbered from a prior policy. An Initial Study was prepared as well as a draft negative declaration for the project. Staff’s conclusion after the close of the comment period is there is no substantial evidence in the record to support a fair argument there would be a potentially significant impact on the environment from updating the Town’s Circulation Element. Staff recommends the Commission receive and consider the report, hold a public hearing, discuss and make any changes, and adopt the resolution recommending adoption of the negative declaration and the Circulation Element update to the Town Council.

Commissioner Weller asked what drove the Town to lower its expectation or desire of the intersection throughput as recommended and whether it was legitimate to retain the objective of having those intersections be relatively trouble-free as a means to continue to assess alternatives. He said that he understood moving from the supply side to the demand side solutions, but it seemed to him that lowering the expectation was an admission of defeat.

Mr. Anderson said that at some point the Town must face reality that all intersections will not be able to operate at LOS C or LOS D at peak hours. He said that there are brief periods of time where intersections do not work that well, often because of frequent tripping the side street crosswalk buttons, there are cars lining up getting to schools, and simply congested periods of time mostly centered around school pick up and drop off activities. He said that for most of the 24-hour day, Tiburon Boulevard operates just fine, but when working on a worst case peak hour intersection analysis, as the LOS metric does, the result is often LOS D or E and not LOS C.

Brian Canepa, Nelson-Nygaard, noted that from a transportation professional’s standpoint, the Highway Capacity Manual and LOS metric used is widely considered an extraordinarily poor way of judging traffic operations. As an example, he said that an LOS analysis of Mar West Street will make it appear pretty poor operationally because it uses the worst-case turning movement of the drivers stopped at the stop sign on Mar West Street rather than the smoothly flowing traffic on Tiburon Boulevard.

Commissioner Weller asked why the Town would retain this measure if the Town’s consultant thinks it is an inadequate measure and the state is rejecting it. Mr. Anderson said that staff believes it still has utility for the Town and that while not a perfect tool, even the state has not decided what metric will replace it. He indicated that the state is leaning toward vehicle miles travelled (VMT) as a likely successor, but that decision has not yet been made and is speculative. Mr. Canepa agreed and said that LOS still continues to be the established standard for now and VMT seems like the most plausible alternative, but not necessarily. Therefore, the Town wanted measurements based on current practice and not risk using some experimental metric that might not be accepted as an industry standard in the future.

Chair Kulik opened the public hearing. There were no speakers and he closed the public hearing.

Commissioner Welner said that he was inclined to recommend approval of the element.

Commissioner Corcoran agreed and thanked staff and the consultant for the presentation.

Commissioner Weller commented that staff has done an excellent job making necessary changes and identifying outstanding traffic issues, and thought that the document adequately explains what can and cannot be done to mitigate things. He supported a recommendation of approval to the Town Council.

Chair Kulik concurred and referred to the consideration of bicycle speed limits on Old Rail Trail and asked how this would be enforced. Mr. Anderson said this issue is something the Police Chief has struggled with for years, and Mr. Anderson was unsure whether posted speed limits on Old Rail Trail would be realistically enforceable or would come to pass at all.

Chair Kulik also noted that the Town often encourages contractors to travel outside peak periods and he asked if this was something that could be required in the building permits. Mr. Anderson said that the Town has work hour limits on building permits, but this is more of a noise and courtesy issue for neighbors. He said that this concept has limited potential to reduce traffic because while the Town can limit hours when work occurs, it cannot control when workers arrive at a site using the public streets. He said that this issue was considered during the CART process to try to make contractors more aware, and to possibly adjust their arrival and departure times. He stated that staff will try to make headway wherever possible on congestion reduction strategies, but it was a long process with many small steps that cumulatively might gain some traction on congestion reduction.

ACTION: It was M/S (Corcoran/Weller) to adopt the resolution recommending adoption of the updated Circulation Element and negative declaration to the Town Council. Motion carried: 4-0.
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**NEW BUSINESS**

5. REVIEW OF PROPOSED REAL PROPERTY ACQUISITION: Review for Consistency with the Tiburon General Plan of a potential real property acquisition; Portion of Point Tiburon Bayside Association common area for public pedestrian access easement

purposes; common area associated with Assessor Parcel Nos. 059-380-01 through 059-380-67; Mar West Street and Paradise Drive

Mr. Anderson gave the staff report, stating this item is another General Plan consistency review regarding acquisition of a real property interest by the Town. The Town has received an executed agreement from the Bayside Homeowners Association that would grant to the Town an easement through Association property that would take people from Mar West Street as they come down Las Lomas Lane or from either direction on Mar West Street across the Bayside Association to the driveway leading to the Point Tiburon Plaza parking lot. It is a fairly well-used, informal route now, but there is no easement that is held by the public over that segment.

Mr. Anderson stated that the Commission's role is to review the proposed acquisition for its consistency with the General Plan in terms of location, purpose and extent. The easement would entail public pedestrian access over a 10-foot wide strip of land that would allow people to walk across the private Association property and reach other areas in the downtown. The general alignment has been used for many years by the public, but it is not set forth in any easement. The location is perfect and he thinks this is the best route to get people as quickly as possible to the downtown from areas above.

Mr. Anderson stated that the easement is approximately 10 feet wide by 500 feet long or about 5,000 square feet in total area. He identified in the staff report the General Plan goals and policies that support this acquisition, and stated staff's recommendation would be to find that this proposed acquisition is consistent with the General Plan.

Commissioner Welner asked if the easement would be a gift or an acquisition. Mr. Anderson said the Town would pay \$15,000 for the easement under the terms of the Agreement.

Commissioner Weller asked about the financial obligations, maintenance costs, as well as liabilities the Town is taking on by accepting this. Mr. Anderson stated that the Town Council would be fully apprised of these obligations during its review of the Agreement.

Commissioner Welner asked Mr. Anderson to provide background on how the trail easement was initiated. Mr. Anderson stated that the Town has been working on this acquisition for some years and that pedestrians have been using the alignment for a long time, but unfortunately under California law it is difficult to gain any non-revocable public rights over private property without overcoming a nearly insurmountable burden of proof regarding continuous public access going back into the 1960's.

Commissioner Welner asked if there were concerns that the access might be restricted at some point. Mr. Anderson said that this is always a possibility unless some documented right is in place. He said that the Town was looking ahead and trying to perfect many of the pathways and trails that people have used for a long time over private property that could potentially be restricted or eliminated with changes in ownership or attitude of current owners. He noted that this unfortunate situation has occurred on the Ridge Trail more than once and public access has been lost, and the Town is more concerned about the potential loss of public access than was the case 20 years ago.

Chair Kulik opened the public hearing. There were no speakers and he closed the public hearing.

Commissioner Weller said that his questions were answered he found that the proposed acquisition is consistent with the General Plan and he supported recommending approval to the Town Council. Commissioners Corcoran and Welner and Chair Kulik concurred.

ACTION: M/S (Weller/Welner) to find that the proposed acquisition is consistent with the Tiburon General Plan. Motion carried: 4-0.

**MINUTES**

5. Planning Commission Minutes – Regular Meeting of November 11, 2015

ACTION: It was M/S (Corcoran/Welner) to approve the minutes of the November 11, 2015, as written. Motion carried: 4-0.

**ADJOURNMENT**

The Planning Commission adjourned the meeting at 10:10 p.m.

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DAVID KULIK, CHAIR  
Tiburon Planning Commission

ATTEST:

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DANIEL M. WATROUS, SECRETARY