

**PLANNING COMMISSION
REGULAR MEETING
JULY 09, 2003 – 7:30 pm**

ACTION MINUTES

CALL TO ORDER AND ROLL CALL

7:30 pm

Present: Commissioner Collins, Commissioner Greenberg, Commissioner Stein, Vice-Chairman Snow, Chairman Smith

Ex-Officio: Community Development Director Anderson, Planning Manager Watrous, Advance Planner Bryant

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.

COMMISSION AND STAFF BRIEFING

Staff Update
Commission Information Items

PRESENTATION

1. Community Marin 2003 – Nona Dennis

CONSENT CALENDAR

2. Approval of Planning Commission Minutes – June 11, 2003 **Approved 5-0**

PUBLIC HEARINGS

3. Z 2003-03: Town-Initiated Text Amendments to the Tiburon Municipal Code Chapter 16 (Zoning Ordinance) and Chapter 16A (Sign Ordinance)
Amendments Regarding Density Bonuses and Wall and Fence Heights Recommended for Approval; Amendments Regarding Indemnification, Uses in the P Zone and Rezoning to OS Zone Continued to August 13, 2003; Amendment Regarding Prohibited Signs Continued to a Date Uncertain

ADJOURNMENT **9:15PM**

MINUTES NO. 881
PLANNING COMMISSION
July 9, 2003
Regular Meeting
Town Council Chambers
1505 Tiburon Boulevard, Tiburon, California

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

ROLL CALL

Present: Chair Smith, Commissioners Collins, Snow, Greenberg, and Stein

Absent: None

Staff: Community Development Director Anderson, Planning Manager Watrous and Advance Planner Bryant

PUBLIC QUESTIONS AND COMMENTS:

There were none.

COMMISSION AND STAFF BRIEFING

Planning Manager Watrous informed the Planning Commission that an application had been filed that day for the Ling Precise Development Plan, to be located off Stony Hill Road above Tiburon Boulevard. He also noted that the Commission had been given a copy of the letter from the State Housing and Community Development Department stating that the Town's updated draft Housing Element was in compliance with State guidelines.

Planning Manager Watrous stated that the Town Attorney had requested that the discussion on the prohibition of certain signs be taken off the agenda and continued to a later date. Community Development Director Anderson also noted that the Marin Municipal Water District had asked that the proposed amendment regarding uses in the P zone be continued as well.

PRESENTATION

1. COMMUNITY MARIN 2003 – Nona Dennis

Nona Dennis gave an overview of the *Community Marin 2003* report. She stated that this report was originally developed as part of the process for updating the Marin Countywide Plan, but contains principles that are pertinent to Tiburon and other cities in Marin County. She stated that the plan was prepared in response to pressures that have increased housing prices and traffic in the county, and concerns about protecting sensitive environmental areas. She said that the report also includes newer concepts, such as sustainability, and issues that had not previously been

addressed in proper detail, including protection of natural habitats.

Ms. Dennis stated that the report focuses on elements with the most environmental implications, including serpentine habitat on Ring Mountain. She also noted that the Paradise Drive area was listed as an area that is undergoing significant changes.

Ms. Dennis stated that there are six overriding ideas contained within the *Community Marin 2003* report: 1) discourage disruptive and inappropriate growth; 2) reduce the amount of commercial development allowed under general plans; 3) encourage and enable housing that is safe, comfortable and affordable; 4) rethink and redesign attitudes toward energy and the use of natural resources; 5) make the protection and restoration of natural habitat a priority; and 6) protect the agricultural heritage of the county.

Ms. Dennis used the Tiburon Glen project as an example of a project to which the recommendations of the *Community Marin 2003* report could be applied, but added that some of the Town's current policies for reviewing such projects are already consistent with those of the report. For example, she stated that the report emphasizes the need to follow best management practices (BMP's) prepared by MCSTOPPP for ephemeral streams; take a watershed-level approach to drainage analysis; protect grassland habitats and oak and bay woodlands; properly manage open space areas; recognize that oversized houses waste natural resources; and consider the specific environmental constraints of the lands above Paradise Drive.

Commissioner Stein encouraged Ms. Dennis to attend the July 14 Planning Commission meeting regarding the Tiburon Glen project. He asked questions about the differences of opinion in the report regarding the potential for rail transportation in Marin County. Ms. Dennis described that issues related to wetlands preservation and the potential growth-inducing impacts around the rail stations that had divided the group preparing the report. Commissioner Stein added that he hoped that the report could do more to discuss issues related to the implementation of affordable housing.

CONSENT CALENDAR

2. MINUTES OF JUNE 11, 2003

M/S Stein/Greenberg (5-0) to approve the Minutes as written.

PUBLIC HEARINGS

3. Z2003-03: TOWN-INITIATED TEXT AMENDMENTS TO THE TIBURON MUNICIPAL CODE CHAPTER A6 (ZONING ORDINANCE) AND CHAPTER 16-A (SIGN ORDINANCE)

Commissioner Greenberg recommended that the Planning Commission take testimony regarding the proposed Sign Ordinance changes, with the caveat to the public that testimony given at this meeting should not be repeated at a later hearing.

Chair Smith stated that he does not want to contradict the request of the Town Attorney. He said that he would prefer to reopen the public comment period rather than have the public testify under this public hearing, as the item was recommended to be pulled off the agenda.

Commissioner Stein asked if the Town Attorney had any problems with taking testimony only on this item. Planning Manager Watrous responded that taking testimony was not part of his discussion with the Town Attorney. Commissioner Stein stated that it could be useful to at least hear testimony, even if no action is taken on the amendment at this meeting.

It was the consensus of the Planning Commission to take testimony on the proposed amendment to the Sign Ordinance during the public hearing.

Community Development Director Anderson proceeded with the Staff report and described the indemnification language that the Town Attorney had requested to be added to the Zoning Ordinance. He reiterated that Items 5 & 6, dealing with changes to the uses in the P zone and potential rezoning of properties into the OS zone were recommended for continuation without discussion to the August 13 Planning Commission meeting.

Advance Planner Bryant described changes in State law regarding density bonuses. He said that applicants may now ask for specific incentives as part of a development proposal, and the Town must grant concessions unless certain written findings are made. He also described several other minor modifications to the density bonus provisions required by changes in State law.

Commissioner Greenberg asked about differentiations within these provisions between condominium projects and single-family residential projects. Advance Planner Bryant responded that the language included in the proposed amendment was identical to that in State law.

Commissioner Greenberg commented on the provisions that would allow for a 25 percent density bonus for a project that would consist of 20 percent affordable housing. Community Development Director Anderson noted that private developers were not exactly clamoring to build affordable housing projects in Tiburon.

Planning Manager Watrous described proposed changes to the regulations for wall and fence height in specific instances of fences constructed on top of retaining walls. Chair Smith stated that, in essence, the amendment would allow the height of such fences to be measured from the high side of the fence, rather than the low side of the fence.

The public comment period was opened.

Chair Smith stated that the issue regarding the proposed Sign Ordinance amendment was whether to add illuminated box signs to the list of prohibited signs. He asked the audience to tailor their comments to the issue at hand.

Cindy Siciliano stated that the views of the people have not been considered in decisions made by the Town regarding signs. She requested that the Town Council take control of the Design

Review Board, and to protect the constitutional rights of people in Tiburon. She said that there was a need to rectify the abuse of discretion by the Design Review Board. She stated that the proposed code amendment was another attempt by Town Staff to gain more control of private property.

Rick Payton asked when the continued hearing would be held, and whether penalties applying to Ms. Siciliano's sign would continue to accrue. Planning Manager Watrous stated that the hearing on the Sign Ordinance amendment would be continued to a date uncertain. Chair Smith stated that the issue of penalties for that sign is not before the Planning Commission, and is being handled through a separate process.

Anita Rozia, Tiburon resident, stated that she hoped to keep the Town from looking like Burbank. She said that she understood Ms. Siciliano's concern, but said that most of the people supporting that sign do not live in Tiburon. She stated that she did not want to see additional lights on signs in the evening.

Jo Grasso, 25 year resident of Tiburon, asked why the sign at the Tiburon Lodge had been allowed. He felt that the Town was discriminating against Ms. Siciliano.

Colleen Evans stated that she works for a Tiburon resident who is upset with the treatment of Ms. Siciliano. She said that the Town was discriminating by ignoring the Tiburon Lodge sign and was picking on Ms. Siciliano.

Jeff Goddard, Belvedere, stated that the sign at Bell Market shines into his house, and that roof signs such as that are prohibited in Tiburon. He suggested a compromise that Ms. Siciliano would turn off the lights to her sign each night at midnight if Bell Market did likewise.

Ron Goldman, 55 Main Street, described how his request for a sign for his business had been denied by the Design Review Board. He felt that Ms. Siciliano's sign added to the diversity of the community. He asked if the timing of the proposed Sign Ordinance amendment was a coincidence, and speculated that it was targeted at Ms. Siciliano. He said that the amendment would give Staff more ammunition to discriminatorily apply the Sign Ordinance.

Jay Davis, Las Lomas Lane, said that he remembered Tiburon when it was not a place where people would complain about signs. He asked what message this amendment was sending to the business community.

With no one else wishing to speak, the public comment period was closed.

Commissioner Collins asked whether the indemnifications clause was needed only for approved projects. Chair Smith responded that if an application is denied, the applicant would sue the Town, rather than having a third party file the suit.

Commissioner Collins asked whether the clause should refer to the applicant rather than the property owner. Community Development Director Anderson replied that the property owner would be responsible, as approvals ran with the property.

Chair Smith noted that other Towns include the indemnification language in the resolutions of approval. Community Development Director Anderson stated that the Commission may want the Town Attorney to investigate that possibility.

Commissioner Stein stated that if the property owner gains a privilege from the approval of an application, a subsequent property owner may not be aware of the need to indemnify the Town. There was a consensus of the Planning Commission that there was a concern about the notification of this obligation to successive property owners.

Commissioner Collins asked whether the Town would want the property owner to defend the Town or have the owner reimburse the Town for defending itself. Chair Smith stated that the Town of Corte Madera has ordinance language covering this process that allows the town to choose either approach.

Commissioner Stein asked for an example of when such indemnification became necessary. Community Development Director Anderson described the case in which the Kol Shofar synagogue received approval to modify its parking lot, after which several neighbors sued the Town. In that instance, the Town Attorney assisted Kol Shofar's lawyers, who performed the bulk of the legal work.

Commissioner Stein said that the proposed code amendment does not address occasions where the Town makes a mistake or a frivolous lawsuit is filed. He felt that the issue should be studied a bit more, and was unsure whether it was fair to shift the burden of the lawsuits to the property owners in all cases.

Commissioner Greenberg stated that property owners get the benefit of an approval, but the applicant should not have to defend against mistakes of the Town. She suggested that the Town Attorney take another look at the proposed amendment language.

Commissioner Stein added that a property owner should not have to pay to defend a lawsuit if the decision made by the Town is clearly erroneous. Chair Smith noted that the language in the Corte Madera ordinance stated that the property owner indemnifies the city except in cases of gross negligence.

It was the consensus of the Planning Commission to have the Town Attorney review the comments of the Commission and the proposed code amendment language.

Chair Smith stated that the proposed density bonus percentages seemed to be consistent with those granted by other cities. He said that it was so hard to build affordable housing, and the only way was to make affordable housing an economically viable option for developers.

Community Development Director Anderson stated that such projects are even harder to accomplish in Tiburon. He said that affordable housing projects usually need monetary support from the public agency, so the Town has control over unreasonable density bonuses.

Commissioner Greenberg asked that language defining the term “qualifying” be added to avoid confusion. Advance Planner Bryant acknowledged that a phrase could be substituted that reflected the actual definition of “qualifying” in those sections.

It was the consensus of the Planning Commission that the proposed code amendment regarding fence and wall heights was acceptable.

M/S Greenberg/Snow (5-0) to direct Staff to prepare a resolution recommending approval to the Town Council of the municipal code amendments regarding density bonuses and fence and wall heights, with the resolution to be brought back to the Commission for adoption at a later date.

M/S Stein/Greenberg (5-0) to continue the hearings on the code amendments regarding indemnification language, uses in the P zone, and rezoning of properties to the OS zone to the August 13, 2003 meeting.

The Commission noted that since the Sign Ordinance amendment was being continued to a date uncertain and would need to be renoticed, no motion was necessary.

Community Development Director Anderson stated that there were no items scheduled for the July 23, 2003 Planning Commission meeting.

M/S Stein/Snow (5-0) to cancel the July 23, 2003 Planning Commission meeting.

ADJOURNMENT

Having no further business, Chair Smith adjourned the meeting at 9:15 p.m.

PAUL SMITH, CHAIR
Tiburon Planning Commission

ATTEST:

SCOTT ANDERSON, SECRETARY