



**TOWN OF TIBURON  
PLANNING COMMISSION  
1505 Tiburon Boulevard  
Tiburon, CA 94920  
Action and Approved Minutes  
October 13, 2004 – 7:30 PM**

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## **ACTION MINUTES**

### **CALL TO ORDER AND ROLL CALL**

**Present:** Chairman Collins, Vice Chairman Kunzweiler, Commissioner Fraser,  
Commissioner Hermann

**Absent:** Commissioner Snow

### **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

### **CONSENT CALENDAR**

1. Approval of Planning Commission Minutes – September 8, 2004 **Approved**

### **UNFINISHED BUSINESS**

2. CONDITIONAL USE PERMIT #10403: REQUEST TO INCREASE THE DURATION OF SEASONAL USE FOR A RESTAURANT AWNING STRUCTURE; 5 MAIN STREET (GUAYMAS RESTAURANT); Abrams and Zelinsky, et al, Owners; Spectrum Restaurant Group, Applicant; Assessor's Parcel No. 59-151-41 **Continued to 11/10/04**

### **PUBLIC HEARING**

3. AMENDMENT TO THE PRESERVE PRECISE PLAN (PD#16) TO AMEND A BUILDING ENVELOPE; 4 INDIAN ROCK COURT; Kim Graves and Michael

Herbert, Owners; Suzman Design Associates, Architect and Applicant; File No. 30404; Assessor's Parcel No. 38-400-02 Approved

**ADJOURNMENT**     **9:05PM**

**MINUTES NO. 898  
PLANNING COMMISSION  
October 13, 2004  
Regular Meeting  
Town Council Chambers  
1505 Tiburon Boulevard, Tiburon, California**

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**CALL TO ORDER AND ROLL CALL**

Present:                     Chair Collins, Commissioners Fraser, Hermann, and Kunzweiler

Absent:                      Commissioner Snow

Staff Present:             Planning Manager Watrous and Meeting Recorder Flanagan

**ORAL COMMUNICATIONS**

There were none.

**COMMISSION AND STAFF BRIEFING**

Planning Manager Watrous reported that the Tiburon Glen Precise Development Plan will be reviewed at the next meeting with an addendum to its EIR, along with a scoping session for the General Plan EIR.

Commissioner Kunzweiler asked about recusing himself from the Tiburon Glen hearing and speaking as the president of the homeowners association. Planning Manager Watrous responded that he would discuss the appropriate procedures later with Commissioner Kunzweiler.

Chair Collins asked about the status of the revised standards and criteria for wireless communications facilities. Planning Manager Watrous responded that the Town Attorney is still reviewing the document.

**CONSENT CALENDAR**

**1.     Approval of Planning Commission Minutes –September 8, 2004**

**M/S, Fraser/Kunzweiler (passed 4-0-1) to approve the minutes.**

**UNFINISHED BUSINESS**

**2. CONDITIONAL USE PERMIT #10403: REQUEST TO INCREASE THE DURATION OF SEASONAL USE FOR A RESTAURANT AWNING STRUCTURE; 5 MAIN STREET (GUAYMAS RESTAURANT); Abrams and Zelinsky, et al, Owners; Spectrum Restaurant Group, Applicant; Assessor's Parcel No. 59-151-41**

Planning Manager Watrous reviewed the Staff report. He noted that the draft resolution does not include additional times for inclement weather, and suggested that the Commission might consider including these additional times that are included in the current approval for this use.

Dan Garcia, director of special events at Guaymas, stated that the submitted letter explained the modified request. In response to questions, he stated that Guaymas is owned by Spectrum Foods, and that the restaurant's business has done better in the past. He said that he has not yet seen the awning installed since he only recently began working at Guaymas. He said that he was told that there have been complaints of noise, but he had checked with the police department, which had no report of complaints.

Commissioner Fraser asked whether Guaymas had recently looked at any other alternatives for a permanent roof structure than those previously presented. Mr. Garcia responded that his understanding was that the alternatives were very expensive. He said that BCDC would be involved if there were any structural additions because any additions would be outside the property.

Commissioner Kunzweiler asked how many outdoor seats the restaurant has. Mr. Garcia stated that approximately 175 can be comfortably seated upstairs and 80 downstairs. Commissioner Kunzweiler noted that the use permit for the restaurant states that there are 180 outdoor seats, and the capacity now appears to be twice that.

Commissioner Kunzweiler asked what business conditions have changed since the use permit was approved in 1999. Mr. Garcia responded that there is now a full-time person to recruit banquets and large parties. He realized that the awning did not have to be up as long as previously requested (October to June), and therefore changed the request to the period from November 15 to April 15. He said that he wanted surrounding residents to be affected as little as possible by the use. He asked that the awning be allowed eight times for inclement weather, rather than five times.

Commissioner Kunzweiler noted that the use permit requires that sound is not to be audible beyond property under the control of the permittee, but noted that Point Tiburon residents have complained about the noise. Mr. Garcia responded that he did not know the difference in sound between when the structure is up or not up. He said that he could address this nine months from now to see if there are complaints about noise after the awning has been up for a season.

The public comment period was opened.

David Stadlin stated that he recently rented the upstairs room at Guaymas and he felt that the outdoor upstairs area is underutilized. He supported a solution that would be best for the Town in order to maximize usage and sales tax associated with the restaurant.

There being no further public comment, the public comment period was closed.

Commissioner Hermann stated that he spoke to the Point Tiburon residents, and the issue is noise. He would favor the structure being installed anytime the restaurant desires as long as the noise issue is addressed. He said that Guaymas should explore how the cover could remain in place all year long, but the noise must be mitigated. He said that the canvas material of the awning does not control noise. He felt that this was an arbitrary limit on the restaurant's ability to conduct its business. He said that he was completely in favor of the request, but suggested installing baffles on one side to mitigate the noise to the Point Tiburon residents.

Commissioner Fraser stated he is disappointed Guaymas did not return with more specificity in its alternatives. He said that the Planning Commission has not been presented with any alternatives that were requested at the last hearing. He stated that noise travels uphill, and that Guaymas needs to find a way to mitigate the noise issues. He said that he would feel more encouraged that the noise issues would be addressed; however, Guaymas has not demonstrated the willingness and effort to pursue the Planning Commission's requested alternatives.

Commissioner Hermann noted Guaymas does not own the building and the landlord has not been able to address issues like this during the last year.

Commissioner Kunzweiler stated that he was unsure whether Spectrum Foods could afford the expense of a permanent addition or not. He said noise was the issue at the last hearing, and he was dismayed that there was so little response to this. He said that Guaymas has the best location in Tiburon, but he is disappointed in the current appearance of the building. He stated that the Planning Commission must be mindful of the creeping increase in the scope of the permit. He said that there is a history of agreements and Guaymas asks for more and more. He said that not much has changed since 1999 when Guaymas received its most current use permit. He said that the Planning Commission had asked serious questions which had not been treated seriously. He felt that this item should be either denied or continued, with direction to the applicant to take this back to Spectrum Foods with the Commission's comments.

Chair Collins stated the issue at the last hearing was noise from parties that affected nearby residents. He said that he wants the business to do well. He expected to hear an alternative not to expand the restaurant but some sound-effective way to cover the top to ameliorate the noise, year round.

Commissioner Hermann stated he was not aware of the history of this property. He noted that Spectrum Foods has been in bankruptcy, and thought that perhaps they will not have the resources to build expensive improvements. He added that Main Street Properties will be in transition for the next six to nine months, so he believes it will be difficult to receive a reasonable response from Guaymas. He suggested giving the applicant more time to see if they can work something out with the awning.

Commissioner Fraser stated that the Planning Commission has an opportunity to ask Spectrum Foods to demonstrate a commitment to do something before a commitment from the Town is granted to Guaymas.

Commissioner Kunzweiler stated that it must be possible for the restaurant to construct some type of soundproofing cover that does not stand out like a sore thumb and would not be too expensive. He said that there was no evidence that the applicant had done anything about the noise issue. He suggested that the applicant return to the Commission and explain what the options are.

Chair Collins noted a bankruptcy would not close down a thriving business. He would like Guaymas to state why they could not propose alternatives. The Planning Commission needs a basis to make a decision. He would like to give Guaymas time to respond accordingly.

Mr. Garcia stated that he believed he can return with responses to the Planning Commission. He asked for more information about the noise issue, and whether it involved amplified music, people talking or other noise.

Commissioner Fraser stated that Point Tiburon residents have complained about amplified noise, which has become an annoyance in the evenings. He said that the Commission was looking for a demonstrated effort to minimize noise that emanates from the structure.

Commissioner Kunzweiler stated that Mr. Garcia needed to make management aware of the existing conditions of approval where amplified music is not to be audible beyond the property line. He said that a reasonable approach is necessary.

Chair Collins suggested that Mr. Garcia contact the current Point Tiburon Homeowners Association president and Pt. Tiburon residents and neighbors.

Gary Lucas, property manager for Main Street Properties, stated that he supported the tent going up and will do what is necessary to make that work. He said that the building is a maintenance nightmare due to salt water and exposure to the elements. He said that he will work with Guaymas and Spectrum Foods on this issue.

In response to questions, Planning Manager Watrous stated BCDC reviews any construction work within 100 feet of the high tide line, so all the Guaymas property falls under their review.

**M/S, Kunzweiler/Hermann (passed 4-0-1) to continue this item to the November 10, 2004 meeting.**

### **PUBLIC HEARING**

- 3. AMENDMENT TO THE PRESERVE PRECISE PLAN (PD#16) TO AMEND A BUILDING ENVELOPE; 4 INDIAN ROCK COURT; Kim Graves and Michael Herbert, Owners; Suzman Design Associates, Architect and Applicant; File No. 30404; Assessor's Parcel No. 38-400-02**

Planning Manager Watrous presented the Staff report.

Kim Graves, applicant, presented an amendment to the letter from Kathy Scollin, the neighbor at 2 Indian Rock Court. She added that the intent was to have the fence camouflaged by the olive trees, a foot or two from the side property line. She said that they agree with Ms. Scollin that the fence would be about four feet away from the side property line.

Commissioner Fraser asked why the neighbor wanted the fence moved. Ms. Graves responded that Ms. Scollin wants landscaping to screen her view of the fence and wants Ms. Graves to be responsible for the landscaping.

Commissioner Hermann asked if anyone had raised concerns about the open space area. Ms. Graves responded that she was told that some Belveron residents were concerned. She said that Ms. Scollin will not likely ask for the same amendment because she wants to leave her property as is. She described the differences between the lots in this area and other more steeply sloping lots in the subdivision.

The public comment period was opened.

Christopher Senn stated he fully supports the application. He said that only one fence would be installed between the two properties and the fence would have no wooden cross members to make it is as see-through as possible. He gave an explanation of the scenic easement on the side of his lot.

David Stadlin, president of The Preserve at Tiburon Homeowners Association, stated that the intent is to preserve the open feeling of the subdivision. He said that he can support the request because of the presence of the stone retaining walls and lawn area. He said that the path of the fence along the line of the retaining wall is acceptable, as the fence would not necessarily follow a straight path down the property line.

Chair Collins asked if the homeowners association's architectural committee is required to approve any change to the Precise Plan. Mr. Stadlin responded that the committee can grant exceptions, but he did not know about changes to the Precise Plan.

Planning Manager Watrous discussed methods of approving the fence four feet from the property line. He said that if the envelope stops four feet from the side property line, the neighbor could make a similar request to extend their envelope up to the property line, leaving a corridor in between two fences. He said that the Planning Commission could approve the envelope all the way to the property line, with the fence location away from the property line approved during the Design Review process.

There being no further comment, the public comment was closed.

Commissioner Kunzweiler stated that he feels there is a bit of disagreement within the community about what is trying to be accomplished. He said that to a degree a precedent was set by the approval of a similar request at 6 Indian Rock Court. He said that the intent is not to create a walled-in appearance in the neighborhood. He asked if there was a concern about blocking off corridors for animals in this area. Planning Manager Watrous responded that the drainage easement area at the bottom of all the lots and the scenic easement would still provide access for animals. He said that the areas between the houses are not as heavily used for such corridors.

Commissioner Hermann stated that the original intent of the Precise Plan was to keep an open appearance. He said that he would be concerned if the fences were highly visible, but these are not visible, except from far away. He said that proper landscaping would help diffuse this issue. He said that he was inclined to ask the applicant to return with a plan showing more landscaping and a more precise location of the fence.

Commissioner Fraser stated that during the review of the amendment for 6 Indian Rock Court this appeared to be a workable plan for 4 Indian Rock Court. He said that there is general support from the neighbors and the homeowners association for this application. He said that the Commission can approve the precise plan amendment and give direction for issues to be addressed during the design review process. He said that it was not the Commission's role to review the details of the fence design, and he felt that there was no need to micromanage this project.

Planning Manager Watrous noted that the design and location of the fence would be reviewed during the design review process, and is not a part of the precise plan amendment. He added that the fence would be reviewed by Staff, not the Design Review Board.

Chair Collins stated that the fence would be imperceptible from Belveron. He said that the Town approved the application at 6 Indian Rock Court on its own merits, and this is a separate application. He said that this property already has lots of landscaping a part of a fence. He felt that this application would not set a precedent, but he could support approval of the application.

**M/S, Kunzweiler/Fraser (passed 4-0-1) to adopt the resolution recommending approval of the project to the Town Council, with amended conditions of approval that Staff is to review the plan for vegetation for sufficient coverage to blend in with the hillside and to be compatible with the neighborhood and that the western envelope would extend to within four feet of the west side property line.**

**ADJOURNMENT**

The meeting was adjourned at 9:05 p.m.

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RICHARD COLLINS, CHAIRMAN

ATTEST:

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DANIEL M. WATROUS, SECRETARY

**Action and Approved Minutes – Planning Commission Meeting**

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