

Town of Tiburon STAFF REPORT

AGENDA ITEM _____



.....

TO: **PLANNING COMMISSION**

FROM: **SCOTT ANDERSON, DIRECTOR OF COMMUNITY DEVELOPMENT
DANIEL M. WATROUS, PLANNING MANAGER**

SUBJECT: **Z 2005-02: TOWN-INITIATED ZONING ORDINANCE AMENDMENT TO
ADD A SECTION REGULATING ANTENNAS AND WIRELESS
COMMUNICATION FACILITIES; CONSIDERATION OF WIRELESS
COMMUNICATION FACILITIES STANDARDS**

MEETING DATE: **SEPTEMBER 14, 2005** REVIEWED BY: SA

.....

BACKGROUND

In the mid-1990's, the increasing use of wireless communications technology led to a demand for the installation of facilities that provide services to wireless telephones and other electronic devices. These service providers began to install networks of facilities throughout Marin County, including requests to construct such facilities in Tiburon.

The Tiburon Zoning Ordinance requires that a conditional use permit be obtained in order to install a wireless communications facility (WCF). Between 1994 and the present, the Town of Tiburon has issued only nine (9) conditional use permit approvals for WCFs. A list by address of these facilities is attached as Exhibit 1. One additional application has been filed but is currently incomplete. Within the past 20 years, the Town has also issued conditional use permits for two (2) ham radio facilities, neither of which remain in existence.

The policies and principles contained in the Tiburon Zoning Ordinance for the review of use permit applications do not address many of the details associated with such facilities. In 1996, in response to the growing number of WCF applications, the County of Marin adopted a set of Interim Standards and Criteria for Wireless Communications Facilities to provide guidance in the review of applications for these facilities. On January 2, 1997, the Town Council adopted a slightly modified form of the County Interim Standards and Criteria to be used in the review of applications for these facilities in Tiburon.

After using these Interim Standards and Criteria to review four separate WCF applications, the Planning Commission recommended that certain modifications should be made to the Standards and Criteria to more accurately reflect the range of concerns which need to be addressed by the Town in the review of applications for such facilities in Tiburon. The Town Council approved these revised Interim Standards and Criteria on June 13, 1997. A copy is attached as Exhibit 2.

Since that time, the Planning Commission has reviewed several applications to establish WCFs in Tiburon, as well as time extensions to continue the operation of these facilities. During the review of several of these time extensions, it became clear that portions of the Interim Standards and Criteria needed updating.



Town of Tiburon

STAFF REPORT

In 2004, work began on an update of the Interim Standards and Criteria. On February 24, 2004, a draft was presented to the Planning Commission which primarily contained amendments to the requirements for permit duration to deal with time extensions. At that meeting, the Planning Commission determined that it would be beneficial to take a more comprehensive approach to revising the Interim Standards and Criteria, which would involve evaluating similar regulations for other municipalities. An ad hoc committee, consisting of Planning Commissioners Collins and Fraser, was established to oversee this process. Minutes of the meeting are attached as Exhibit 3.

Since that time, the committee and Town Staff have spent numerous hours collecting information from other cities and meeting with wireless service providers and concerned citizens. The latest revised draft Standards for Wireless Communications Facilities and the draft implementing ordinance have been prepared and attached as Exhibits 4 and 5.

ANALYSIS

One of the changes made to the current approach to the regulation of WCFs is that the Standards would be supplemented by an implementing ordinance that would be included in the Tiburon Zoning Ordinance. These two separate documents are addressed below.

Standards

The format of the draft Standards is similar to that of the existing document, although many of the sections have been substantially expanded or modified. A series of appendices, including definitions of specific terms, a copy of the municipal code section pertaining to WCFs and Town documents related to the application and review process, has been attached to pull together as much information pertinent to the WCF review process as possible into one larger, more useful document.

The main portion of the draft Standards consists of two sections:

1. *Application Submittal Requirements:* This section describes a fairly exhaustive list of information needed to be submitted regarding the overall network of the applicant's facilities in the Tiburon Planning Area and vicinity and for the specific WCF location requested. This section allows the Director of Community Development to waive the requirement for submittal of otherwise required information based on project-specific factors, but also states that the Planning Commission and/or Town Council maintain the authority to subsequently require submittal of any information that the Director of Community Development initially deemed inapplicable.
2. *General Requirements:* This section includes standards that are applied to the specific location and design of a WCF. Some of the standards are general in nature regarding the overall location and design of facilities, and others include

Town of Tiburon

STAFF REPORT



detailed standards relating to EMF radiation exposure limits, vegetation and screening, noise and traffic, roads and access, and lighting.

Two portions of this section have been substantially expanded to provide more detailed discussion about WCF locations and designs. The "Location and Structure Standards" subsection includes descriptions of preferred and less desirable WCF locations (preferred in commercial areas, not permitted in residential or open space areas or on historic buildings, discouraged from locations near residential areas and schools); structure standards (monopoles, towers and stand-alone structures discouraged, use of existing structures encouraged); and co-location and shared-location standards (both generally encouraged).

The subsection on "Visual Compatibility and Design" describes how to design WCFs that would be "consistent with the general scale of structures and buildings in the surrounding vicinity and properly related to the development of the vicinity as a whole." This includes recommendations on making the design of facilities to appear as an integral part of the building, architecturally consistent with the style of the building, and in general to be the least visually obtrusive as possible.

The Standards also include a section requested by the Planning Commission establishing a policy for WCFs proposed by other public agencies, which reads as follows:

"These *Standards* are binding on other public agencies to the fullest extent allowed by law. The Town hopes, expects and requests that public agencies that might be, or are, legally immune from the Town's land use regulations will nevertheless respect and abide by these *Standards*. "

This language was requested in response to the previous MERA application and for the possibility that other agencies might propose WCFs on publicly owned land within the Tiburon Town limits. It is recognized that nothing in the Standards or any other Town regulation would be able to prevent the installation of another public agency's WCF project; this policy is intended to communicate to other public agencies the Town's very firm desire that the Standards be followed under any circumstances.

Ordinance

Other jurisdictions have developed a set of Standards that are adopted by resolution, with a separate ordinance that would establish certain aspects of the WCF review process within the zoning ordinance. This allows the Standards to be updated more easily as needed without having to go through the more cumbersome process of a zoning code amendment.

The proposed implementing ordinance would spell out the basic conditional use process for WCF applications. The category of a "wireless communication facility" would be added to the list of "conditionally-permitted uses" for each of the zoning districts in the Tiburon Zoning



Town of Tiburon

STAFF REPORT

Ordinance. The use permit process would require that a WCF application would be in substantial compliance with the Standards, but would include an exception process based on federal regulations and case law.

The ordinance would also include the following sections:

- A definitions section, which attempts to identify and define the range of antennas and facility-based wireless communication installations currently available to the public. This includes TV antennas, satellite dishes, amateur (ham) radio antennas, as well as cell phone and other personal and institutional communication facilities.
- A list of certain types of antennas that are exempt from this review process (including many smaller television and satellite antennas) and specific provisions for review of amateur radio antennas separated from the WCF Standards.
- Expanded noticing requirements beyond those of other conditional use permits, requiring mailed notices to all property owners within 600 feet of a proposed WCF site within 15 days after an application is filed with the Town.
- An amended section controlling the length of an approved WCF permit. The first permit would be valid for one year, with a mandatory renewal every five years.
- Provisions addressing the federally pre-empted arena of interference caused by WCFs.
- Provisions regarding removal of discontinued facilities and non-conforming facilities, as well as the keeping of a list and map of approved WCFs.

CORRESPONDENCE

As of the date of this report, one letter, from Gunnar Wetlesen, has been received; it is attached as Exhibit 6.

ENVIRONMENTAL REVIEW

The zoning text amendment and adoption of standards has no potential to result in an adverse environmental impact and is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

RECOMMENDATION

Staff recommends that the Planning Commission take public testimony on this item, close the public hearing, deliberate upon the draft ordinance and WCF Standards and make any desired modifications, and recommend adoption to the Town Council.

Town of Tiburon

STAFF REPORT



EXHIBITS

1. Inventory of approved wireless communications facilities in Tiburon
2. Interim Standards and Criteria for Wireless Communications Facilities, adopted by the Tiburon Town Council on July 2, 1997
3. Minutes of the February 25, 2004 Planning Commission meeting
4. Draft Wireless Communications Facilities Standards
5. Draft Wireless Communications Facilities Ordinance
6. Letter from Gunnar Wetlesen, dated August 9, 2005

H:\dwatrous\Staff Reports\WCF Standards amendment.report3.doc