



**TOWN OF TIBURON  
PLANNING COMMISSION  
1505 Tiburon Boulevard  
Tiburon, CA 94920  
Action and Approved Minutes  
Regular Meeting  
January 23, 2008**

---

**ACTION MINUTES**

**CALL TO ORDER AND ROLL CALL 7:30 PM**

Chairman Aguirre, Vice Chairman O'Donnell, Commissioner Fraser, Commissioner Kunzweiler  
**All Present**

**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.

**There Were None**

**COMMISSION AND STAFF BRIEFING**

Staff Update  
Commission Information Items

**PUBLIC HEARING**

1. GREEN BUILDING PROGRAM REGULATIONS: CONSIDER RECOMMENDATION TO TOWN COUNCIL TO ADOPT MUNICIPAL CODE AMENDMENTS TO CHAPTER 13 (BUILDING) AND CHAPTER 16 (ZONING) AND TAKE RELATED ACTIONS TO ADOPT GREEN BUILDING AND ENERGY EFFICIENCY REGULATIONS AND ADOPT ADDITIONAL ZONING TEXT AMENDMENTS RELATED TO REMODELS AND WIRELESS COMMUNICATION FACILITY PERMIT DURATIONS **Continued without Discussion until February 13, 2008**
2. CONSIDER RECOMMENDATION TO THE TOWN COUNCIL FOR APPROVAL OF TEXT AMENDMENTS TO CHAPTER 16 OF THE TIBURON MUNICIPAL CODE (ZONING) FOR CHANGES TO THE NEIGHBORHOOD COMMERCIAL (NC) AND VILLAGE COMMERCIAL (VC) ZONING DISTRICTS; FILE NO. Z2008-02  
**Recommended Approval to Town Council (4-0)**

**DISCUSSION ITEMS**

3. REVIEW AND COMMENT ON DRAFT RE-WRITE OF CHAPTER 13B OF THE TIBURON MUNICIPAL CODE (HISTORICAL LANDMARKS) **Approved as Amended (4-0)**

**MINUTES**

4. PLANNING COMMISSION MINUTES – Regular Meeting of January 9, 2008 **Approved as Amended (4-0)**

**ADJOURNMENT 8:20 PM**

**APPROVED MINUTES NO. 957  
PLANNING COMMISSION  
January 23, 2008  
Regular Meeting  
Town of Tiburon Council Chambers  
1505 Tiburon Boulevard, Tiburon, California**

---

**CALL TO ORDER AND ROLL CALL**

Chair Aguirre called the meeting to order at 7:30 P.M.

Present: Chairman Aguirre, Vice-Chairman O'Donnell, Commissioners Fraser and Kunzweiler

Absent: None

Staff Present: Community Development Director Anderson, Planning Manager Watrous, and Minutes Secretary Lisa Harper

**ORAL COMMUNICATIONS** - None

**COMMISSION AND STAFF BRIEFING** - None

**PUBLIC HEARING**

1. CONSIDER RECOMMENDATION TO THE TOWN COUNCIL FOR APPROVAL OF TEXT AMENDMENTS TO CHAPTER 16 OF THE TIBURON MUNICIPAL CODE (ZONING) FOR CHANGES TO THE NEIGHBORHOOD COMMERCIAL (NC) AND VILLAGE COMMERCIAL (VC) ZONING DISTRICTS; FILE NO. Z2008-02.

Chair Aguirre opened the public hearing.

Planning Manager Watrous gave the staff report, said the Town's General Plan, *Tiburon 2020*, includes a large number of implementation programs that describe actions to be taken by the Town to implement the goals and policies of the General Plan. Specifically, Programs LU-a and DT-a state as follows:

LU-a: LU-a The Town shall periodically review and, if appropriate, revise its Municipal Code and other regulations to reflect the goals, policies, densities, intensities and the land use designations of this General Plan.

DT-a: The Tiburon Zoning Ordinance shall be revised to be consistent with the goals and policies of this Element and to implement the guidelines of the *Downtown Tiburon Design Handbook*.

Program DT-a states that the Tiburon Zoning Ordinance to be revised to be consistent with the goals and policies of the Downtown Element of the General Plan and to implement the guidelines of the *Downtown Tiburon Design Handbook*. Since adoption of *Tiburon 2020*, staff has been bringing forward amendments on a priority-base, phased implementation schedule. General Plan implementing zoning amendments were adopted in February and April of 2006 and in April 2007. The proposed amendments constitute the latest phase of implementation, focusing on the Downtown Element.

Staff is looking at amendments that would reflect the language already in the Downtown Element, such as reconstruction of buildings changes, minor FAR additions, Policy 10 and drive-through and take-out restaurants and their effect on residential properties, Policy DT 13 and 16 to discourage ground floor office use and an exception process providing they have compelling evidence that other uses are not economically viable or physically suitable for the zone.

He recommended the Commission open the public hearing, take public testimony, and if appropriate, adopt the resolution.

Commissioner Kunzweiler voiced concern and requested an explanation of DT-6: Reconstruction of Downtown Commercial Buildings, and said the revised wording omits parking and he noticed it is put back into other places. Planning Manager Watrous said the language in DT-6 eliminated the reference to parking because trying to provide parking for individual properties is difficult.

Commissioner Fraser voiced the same concern, said he read through the staff report, went back to the General Plan which referred him to the Zoning Ordinance, and he questioned how the Town defines applicable parking for the downtown area, as it has gone from bad to worse, the retail establishments are no longer validating for consumers, and in the hopes of trying to create commerce downtown, if there is no parking plan, the Town may be doomed. He suggested somehow put wording in the General Plan that focuses parking for the benefit of merchants and the community.

Planning Manager Watrous said DT-6 has to do with reconstruction of downtown buildings to the same floor area, staff has not established there is a parking problem but has seen this as more of a potential of becoming an issue. In updating the Zoning Ordinance, staff will first re-evaluate how parking is calculated and how it is handled in Tiburon. In the past, there has been convoluted formulas or tabulation where staff knew a specific property had a certain number and another had a certain number. He thought now is a good time to re-think how the Town is requiring parking and trying to recognize the overall facilities downtown. It is part of what staff is looking at, but not as part of these amendments.

Chair Aguirre thought it is fair to assume the Policy deals with reconstruction and if there is a particular use that will create a particular need for parking, the Town still has the CUP process. Planning Manager Watrous agreed, but agreed Commissioner Fraser's point was valid, there are some real issues looming and a paradigm shift; rather than requiring people to provide parking, the pendulum is moving in the

other direction and the Town is asking that people provide alternate means of transportation, all of which is being reviewed.

Commissioner Fraser said as the Commission articulates a point of view about how we would like space to be utilized, in the absence of not saying something, he did not think it brings attention to the issue that is present. He thought parking is not getting better, but worse. He believes it is something which needs to be reviewed and asked if there was a way to weave parking back into the dialogue.

Director Anderson said the time when this particular provisions applies to a downtown building is when it has been destroyed; it is not when someone wants to tear down a building and build something new. He said if the Commission is uncomfortable without the language, it could be re-inserted, but he did not think it would add a lot to what the ordinance says, but agreed it has some flexibility. The feeling was that in a disaster, you would not want to drag someone through that process.

Planning Manager Watrous said staff will be reviewing and working on the Zoning Ordinance update. The parking standards section along with the sign ordinance needs to be redone and there will be opportunities to consider how to deal with it.

Commissioner Kunzweiler referred to DT-10: Drive-Through, Fast Food and Take-Out Restaurants:

(d) “Drive-through restaurants, and restaurants that primarily offer fast-food and/or take-out service, are prohibited. Beverage or specialty food providers, including but not limited to coffee and tea houses, juice bars, and ice cream/frozen yogurt shops, are not included in this prohibition.”

He said because this has to do with a particular Tiburon shopping center, he asked if they needed to include a sandwich type/deli business with indoor tables. He thought the list was long and one could argue that the deli is very much like a take-out business, and our intention is not to cast them out or make them non-conforming. He felt those types of businesses are neighborhood-serving, but he the length of the list was troubling to him.

Chair Aguirre questioned how to interpret the language, “take-out service”. Planning Manager Watrous said it primarily relates to take-out and what one would not want to see is take-out pizza or a Subway shop where one is taking out meals exclusively and there are no products available to purchase. He did not believe the deli falls under fast food, but acknowledged it does have take out. It would be interesting to look at what business comes into the center and determine the amount of take-out items or definition of fast food.

Director Anderson noted the Planning Commissions have had these discussions, and referred to the request for a hot dog shop which was rejected. He said individual businesses are reviewed on a case-by-case basis and the language simply provides a little more than what was there before.

Commissioner Kunzweiler said he was concerned there were also not others listed in the example and is troubled having a Zoning Ordinance that would appear to put some businesses on the border of non-compliance. Chair Aguirre said you could look at the sentence and say ice cream is specialty food provider and hot dogs are not. Commissioner Kunzweiler thought the Commission might be better off without the examples or list everything that is there today. Director Anderson said the first sentence indicates what the old General Plan states and there was energy spent on improving the wording at the

time. He said No one could find a reasonable solution to prevent chain stores, but if not helpful, it would still remain a policy in the General Plan.

Commissioner O'Donnell suggested removing the second sentence, and Planning Manager Watrous agreed with the suggestion and said staff and the Planning Commission could then look to the General Plan for guidance.

Public Comments:

Brian Chong said he received a notice regarding Policy DT-10 and the fast-food wording. The last thing he would want to see is a McDonalds or a Subway restaurant in Tiburon. He read the wording, said he eats out in downtown often and the concern was that if a crepe shop or something charming or classy was located downtown, that the majority of business would not be take-out. He would much rather have that than an ice cream shop and asked that high-quality shops be approved rather than chain stores.

Commissioner Kunzweiler said the suggestion has been made to remove the second sentence and his recommendation would be the following:

- Remove the second sentence under DT-10 (d);
- DT-6, omit parking as proposed by staff;
- DT-8, no changes;
- DT-10, no changes;
- DT 13 and 16, no changes; likes the fact that exceptions can be granted.

Commissioner Fraser supported Commissioner Kunzweiler's position.

Commissioner O'Donnell said he agrees with the suggestion for removing the second sentence under DT-10 (d), thinks singling out particular uses could create problems and it is better left to the Planning Commission. He referred to DT-13 and 16: Ground Floor Commercial Office Use and one of the things not on the list was real estate offices, which is a ground floor business. He said there about 4-5 real estate offices on the ground floor in Tiburon, was leery of the strong language in Section 16.211, understands exceptions can be given, but it seems some current businesses might wind up in non-conforming situations.

Chair Aguirre asked if he was referring to uses that would require a conditional use permit, and Director Anderson said there is no prohibition on these uses. The policy and intent is that these uses be strongly discouraged. Real estate offices, banks, and office uses were not the first choice for ground floor retail along Main Street. For example, Upper Tiburon Boulevard would not include the Melissa Bradley Realtor use and the map shows the delineation of the downtown planning areas. He noted that Upper Tiburon Boulevard on the water side begins at Sharks Deli and goes to Ark Row, and on the other side it starts at Bank of America and goes to the Library.

Commissioner O'Donnell said the businesses are already there and he felt the language was harsh. Director Anderson said it does not penalize existing businesses and there are subtle distinctions. For instance, on Main Street and Ark Row, it applies to all of the uses. So, if a commercial office moves in one could move in and not need any permit. What this does is set up a process whereby any ground floor business must go through a process to keep their offices on Main Street. The other policy only applies to new or reconstructed buildings on upper Tiburon Boulevard. If an existing building is demolished, the

Town will say the ground floor will be retail. If it is currently a retail space and changes to a real estate office, Planning Manager Watrous confirmed it would require a use permit.

Commissioner Fraser said he did not recall Melissa Bradley coming before the Planning Commission and thought the prior use was a retail store. Planning Manager Watrous confirmed the prior use of the building had been office.

Commissioner O'Donnell said he thought it was generally a little muddled, although staff is probably making good recommendations. Commissioner Kunzweiler thought the permit process is not bad, agrees it is an odd laundry list of what the Town wants areas to be, but the Planning Commission has to deal with it on a case-by-case basis.

Chair Aguirre supported the changes proposed by Commissioner Kunzweiler.

**ACTION:** It was M/S (O'Donnell/Fraser) to adopt a resolution of the Planning Commission recommending to the Town Council adoption of amendments to the Tiburon Municipal Code (Chapter 16, Zoning), as amended, deleting the second sentence of Section 16.211.1 (d). Vote: 4-0.

2. **GREEN BUILDING PROGRAM REGULATIONS: CONSIDER RECOMMENDATION TO TOWN COUNCIL TO ADOPT MUNICIPAL CODE AMENDMENTS TO CHAPTER 13 (BUILDING) AND CHAPTER 16 (ZONING) AND TAKE RELATED ACTIONS TO ADOPT GREEN BUILDING AND ENERGY EFFICIENCY REGULATIONS AND ADOPT ADDITIONAL ZONING TEXT AMENDMENTS RELATED TO REMODELS AND WIRELESS COMMUNICATION FACILITY PERMIT DURATIONS **Continued without Discussion until February 13, 2008.****

### **DISCUSSION ITEMS**

3. **REVIEW AND COMMENT ON DRAFT RE-WRITE OF CHAPTER 13B OF THE TIBURON MUNICIPAL CODE (HISTORICAL LANDMARKS)**

Director Anderson gave the staff report, said Tiburon adopted its historic landmark regulations in 1973. These regulations have since been codified as Chapter 13B of the Tiburon Municipal Code. Since adoption, the regulations have been used to designate five buildings/sites as local historic landmarks. Other sites have been considered using the designation process, but have not been formally designated for various reasons.

The Town Council, Planning Commission, Heritage & Arts Commission and Town staff have at times expressed frustration over the cumbersome wording and convoluted format contained in Chapter 13B. The regulations, which are nearly 35 years old, could also use an overall updating. Staff initiated a re-write of the regulations earlier this year in order to improve their user friendliness.

He said the Heritage & Arts Commission met last night and provided its comments, and recommended the Council adopt it. It does not have a lot of substantive changes, but the re-write improves its readability.

He noted substantive changes being, if an application is filed for property to be designated as a landmark and which the Town owns, the Council wants to see it first. This was inserted in the re-write, and staff is looking only for comments and recommendations.

Commissioner Fraser said this made sense and he supported the Commission's recommendation. Commissioners O'Donnell and Kunzweiler agreed and commended staff for their re-writing of the chapter.

Chair Aguirre requested some wordsmithing and proposed the following under 13B-2 (a), 7<sup>th</sup> line;

“Other than with respect to applications involving Town property, once the Director of Community Development has accepted the application as complete for processing purposes, it shall be referred to the Heritage & Arts Commission as set forth in subsection (b) below. ~~unless subsection (b) below is applicable.~~ The Director of Community Development may, in his sole discretion, refer said application to the Planning Commission or any other Town board or commission for comment prior to referral to the Heritage & Arts Commission.”

He said (c) should be flip flopped and become (b) and moved up under (a). Subsection (b) would then become (c) and the last sentence would read, “If the Town Council grants its consent, then the application shall be referred to the Heritage & Arts Commission as set forth in subsection ~~(e) below~~ (b) above.”

Chair Aguirre referred to subsection (d) and asked staff to state what the notice provision is in the sentence: “...noticed as provided in subsection ~~(e)~~ (b) above,”

Chair Aguirre referred to 13B-3 (d); “The designation shall not require the expenditure of an unreasonable amount of money, either public or private, to carry out the purposes of this chapter. He asked why not requiring funds from a private source would have an impact on the analysis. Director Anderson said the key word was “expenditure”; that if someone wanted to donate a private property to the Town and the Town felt it was unreasonable to expend, it would not accept it. He said the Town has refused private property in the form of homes because of its unreasonable cost to improve it.

Chair Aguirre referred to Section 13B-4 (c); and asked the sentence to be amended to read, “That only certain specified uses may be ~~made~~ allowed or that certain specified uses shall be prohibited.”

**ACTION:** It was M/S (Kunzweiler/O'Donnell) to recommend the approval of the Historical Landmarks provision, as amended. Vote: 4-0.

## **MINUTES**

### 1. PLANNING COMMISSION MINUTES – Regular Meeting of January 9, 2008

Commissioner O'Donnell requested the following amendments:

- Page 4, 2<sup>nd</sup> to the last paragraph:

“Vice-Chair O'Donnell was concerned with the added bureaucracy of the system, noting that many of the checklist items are minor, such as topsoil replacement and some are redundant to current building practices, such as recycled steel for studs and using recycled”

~~steel for studs.~~ He said that there is a difference between a regulation and incentive and what concerns him is putting more regulations on applicant instead of creating an incentive system.”

Commissioner Fraser requested the following amendments:

- Page 3, 2nd paragraph, end of the 2nd line:

“Commissioner Fraser asked if the proposed ordinance was in alignment with those adopted by other cities, noting that contractors are often frustrated with new ordinances that differ by addition to each jurisdiction to having their own process. ~~when each jurisdiction has their own process.~~ Assistant Planner Phillips replied that the intent is to align Tiburon’s ordinance with those in place at the County of Marin and the City of San Rafael, except for some minor additions. Planning Manager Watrous noted that the Town Council directed staff to not “reinvent the wheel” and to be as similar to other cities as possible.”

- Page 5, last paragraph, last sentence:

“He was not sure that he could honestly evaluate the checklist, but noted that implementing an ordinance in support of green standards was the right thing to do.”~~said that a long-term ordinance and its understanding were imperative.”~~

Commissioner Kunzweiler had the following amendment:

- Page 6, 2nd paragraph, 2<sup>nd</sup> line:

“Commissioner Kunzweiler noted they had similar discussions on the wireless communications facility ordinance and had formed a subcommittee to spend some time on the issue, work with staff and then return with information.”

ACTION: It was M/S (Kunzweiler/Aguirre) to approve the minutes of January 9, 2008, as amended. Vote: 4-0.
--

## **ADJOURNMENT**

The Planning Commission adjourned the meeting at 8:18 p.m. to the next regular meeting on February 13, 2008.

\_\_\_\_\_  
AL AGUIRRE, CHAIRMAN

ATTEST:

\_\_\_\_\_  
DAN WATROUS, SECRETARY (ACTING)

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

January 23, 2008