



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

Action and Approved Minutes  
Regular Meeting  
Tiburon Planning Commission  
June 11, 2008 – 7:30 PM

## ACTION MINUTES

### TIBURON PLANNING COMMISSION

#### CALL TO ORDER AND ROLL CALL    7:30 pm

Chairman O'Donnell, Vice Chairman Kunzweiler, Commissioner Fraser, Commissioner Frymier  
**All Commissioners 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. Testimony regarding matters not on the agenda will not be considered part of the administrative record.    **There Were None**

#### COMMISSION AND STAFF BRIEFING

Commission and Committee Reports  
Director's Report

#### REVIEW AND COMMENT ITEMS

1. DRAFT BICYCLE PEDESTRIAN MASTER PLAN UPDATE: Receive Presentation by Alta Planning + Design and Provide Comments [LT] **Reviewed and Commented**

#### DISCUSSION ITEMS

2. DRAFT CAPITAL IMPROVEMENT PROGRAM FOR FISCAL YEAR 2008-2009

BUDGET: Review for Consistency with General Plan [NN] **Reviewed and Commented****PUBLIC HEARING**

3. GREEN BUILDING PROGRAM: Consider Recommendation to the Town Council for Approval of a Green Building Program, Including Amendments to the Municipal Code, Chapter 16 (Zoning) and Adoption of Green Building Compliance Standards, Rating Systems and Incentives [SA] **Recommended Approval To Town Council (4-0)**

**MINUTES**

4. PLANNING COMMISSION MINUTES – Regular Meeting of May 28, 2008 **Approved As Amended (4-0)**

**STUDY SESSION**

5. VARIANCES AND FINDINGS **Continued To A Date Uncertain**

ADJOURNMENT **10:30 PM**

APPROVED MINUTES NO. 966  
PLANNING COMMISSION  
June 11, 2008  
Regular Meeting  
Town of Tiburon Council Chambers  
1505 Tiburon Boulevard, Tiburon, California

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**CALL TO ORDER AND ROLL CALL:**

Chair O'Donnell called the meeting to order at 7:32 p.m.

Present: Chair O'Donnell, Vice Chairman Kunzweiler, Commissioners Fraser and Frymier

Absent: None

Staff Present: Director of Community Development Anderson, Public Works Director Nguyen, Associate Planner Tyler, Assistant Planner Phillips, and Minutes Clerk Levison

**ORAL COMMUNICATIONS:** None

**COMMISSION AND STAFF BRIEFING:**

Director of Community Development Anderson provided the following briefing:

- The Harbor Light Project Draft Environmental Impact Report has been distributed to the Commissioners for review. Hearings on the EIR are scheduled for July 9 and July 23, 2008.

- The Town's revised Sign Ordinance has received comprehensive updates and has been released in draft form with a link available on the Town's website. It is scheduled to be reviewed by the Design Review Board in June and hopefully will come before the Town Council later this summer.
- The Resolution of Intention to Initiate Rezoning of Unincorporated Territory in the Southeastern Portion of the Tiburon Peninsula, adopted at the May 28, 2008 Commission meeting, was not appealed to the Town Council and will move forward. The preliminary CEQA reading is that an EIR tiered off the EIR from the 2005 General Plan EIR is appropriate.
- The Zoning Ordinance update is well underway; staff has received nearly all draft chapters from the consultant and hopes to present it in front of the Commission by late summer or early fall 2008.
- The Housing Element update, due to the State in June 2009, is due to get underway very soon.
- Staff is anticipating a Planning Commission appointment to fill the vacancy left by Chairman Aguirre at the Town Council meeting on June 18, 2008. Five appointments to the newly created Parks, Open Space, & Trails Commission are also expected to occur.
- He asked the Commissioners to please check their availability for upcoming meetings.
- This Saturday, June 14, is the Annual Town Council/Homeowner's Summit. The Council will meet with HOA presidents and other representatives from 10 a.m. to 12 noon.

## **REVIEW AND COMMENT ITEMS:**

### **1. Draft Bicycle Pedestrian Master Plan Update**

Associate Planner Laurie Tyler introduced Eric Anderson of Alta Planning + Design. Alta Planning + Design, the document's lead author.

Mr. Anderson gave a PowerPoint presentation to the Commission describing the major elements of the plan. He said the purpose of the update is primarily to establish funding for bicycle and pedestrian improvements. The State has specific requirements for bicycle plans as outlined by the Bicycle Preservation Account and the updated plan enables the Town to qualify for certain grants and monies that would not otherwise be available.

Several other on-going planning efforts in Marin County, including the Non-Motorized Transportation Pilot Program and Safe Routes to School project, tie in to the updated plan which is strategically timed to take advantage of funding for these programs. Alta Planning + Design is considering other projects such as the County-Wide Signage project.

Mr. Anderson noted that community involvement is an invaluable part of updating the plan and that his firm met several times with the Bicycle and Pedestrian Advisory Committee (BPAC) as well as representatives from the Town Council, staff, and various community groups. He summarized the policies of the updated plan as: maintaining and expanding current bicycling and walking systems; improving bicycle parking and amenities; continuing and expanding safety education; and continuing the presence of an official advisory committee.

Typical projects of any Bicycle Pedestrian Master Plan include off-street multi use pathways, on street bikeways, signed bike routes, bike parking and racks on buses, sidewalk infill, crosswalk improvements, safety signs, stairways and connections of pathways to schools wherever possible. Tiburon's plan also incorporates improvements specific to the area's unique topography.

Vice-Chair Kunzweiler asked if bicycle parking at the downtown ferry is adequate based on the number of cyclists actively using the ferries. Mr. Anderson said his understanding is that most people biking to the ferry carry their bike on board with the intent to use it at the other end but that the ferry terminal is a pinpointed consideration for expanding bicycle parking.

Vice-Chair Kunzweiler asked for clarification on the bicycle ridership numbers for the Town as he understands it to be an extrapolation of the Tiburon peninsula population only and asked about the difficulty in ascertaining the number of non-Tiburon residents riding through the area. He said that the vast numbers of non-resident cyclists have a significant impact on the area. He also noted that while Paradise Drive is not an official route, weekend bicycle traffic is substantial.

Mr. Anderson confirmed that the ridership estimate found in Chapter 4 of the Draft Plan is based on census data solely from Tiburon and that estimate is primarily due to CalTrans requirements. He felt that while there are some inherent limitations to that technique, the goals of the plan would still address the same issues. He also said that difficulty arises in targeting specific areas like Paradise Drive whose bulk lies in unincorporated County areas and so the strategy was to draft the plan to work harmoniously in conjunction with the BPMP for the County.

Vice-Chair Kunzweiler said he also feels addressing Trestle Glen is important as the current striping and demarcations are somewhat ambiguous, leaving riders with little guidance. Commissioner Frymier concurred, relating her confusing and unsettling experience whilst riding there and said she felt it is an enormous liability to the Town in its present state. Mr. Anderson said that a 2003 study addressed several options for improving bicycle safety on Paradise Drive.

Commissioner Fraser said he had the opportunity to work closely with Mr. Anderson on this plan through BPAC and commended him for his excellent listening skills throughout the process.

Commissioner Frymier asked what the major differences are between this year's updated plan and the first and current BPMP created in 2001. Mr. Anderson said that the progress made in bicyclist and pedestrian planning since 2001, as well as increased funding resources, has allowed them to further develop the goals and policies of the initial plan. Community Development Director Anderson added that the initial plan was very brief, contained the bare minimum number of elements as required by Caltrans to qualify as a BPMP, and was thrown together hastily in order to qualify for the grants and programs available at that time. He said the initial plan proved successful in that regard but that this draft is really the first comprehensive BPMP the Town has prepared. Mr. Anderson also said that since 2001 several approval and funding agencies have adopted new requirements, which this updated plan reflects.

Commissioner Frymier asked why Tiburon's BPMP is the last in Marin County to be updated and if there was a strategy to that timing. Mr. Anderson said that his firm grouped different planning regions together to facilitate a cohesive county-wide plan and they are concurrently working with Tiburon, Sausalito and Mill Valley.

Chair O'Donnell commended Mr. Anderson for his work on the updated plan. He said he particularly enjoyed the concepts of public paths, steps and various accessibility improvements and asked if there was a vision to make the paths specifically involve old Tiburon and the hillside stepped and/or graded for strollers and bicycles. Mr. Anderson deferred to Town staff, and Public Works Director Nguyen said that

while there is not currently a comprehensive plan to do so, the Non-Motorized Transportation Pilot Program has granted \$350,000 for fiscal year 2008-2009 to improve, re-grade and stabilize the pathways on Cayford Drive and on Lower Raccoon Lane, and improve the stairway linking Jefferson Drive and Reed Ranch Road.

Chair O'Donnell also asked if there were thoughts towards expanding the multi use nature of the Town's paths. Director Nguyen said that it is certainly a goal but efforts will mainly be focused on ADA compliance. In many cases the slope of the land as well as easement and right of way width issues will not allow full compliance, but the Town will be improving accessibility to the maximum extent possible.

Chair O'Donnell asked what the Town's policy was in regards to using the white fence outside the ferry terminal for bicycle parking. Director Anderson said this was the main design and purpose of the fence.

Chair O'Donnell agreed with Vice-Chair Kunzweiler that the influx of non-resident cyclists creates major safety concerns for the Town. He said the Town was a destination point for riders on the Tiburon Loop and that despite jurisdictional issues, increased safety along Paradise Drive is something the Town really needs to get behind.

Mr. Anderson said his firm received similar input during the workshops held earlier this year and has addressed it in the coordination of efforts in both the Marin County BPMP and the Town's draft BPMP. Chair O'Donnell asked what Mr. Anderson meant when he termed this a "rural road" and what impact such a label would have on actual bicycle use. Mr. Anderson referenced the Rural Road Improvement Program, which looks at strategic and pinpointed improvements along roads within Marin County's unincorporated areas.

Chair O'Donnell asked if he had any specific information on what to expect at Paradise Drive as a result of the program. Mr. Anderson said the program has been accepted and is now in the hands of the governing agency.

Commissioner Frymier said she enjoyed the content of the plan very much but felt the format was cumbersome and asked what staff thought could be distilled out of it for its public distribution. Community Development Director Anderson said the policies and the programs are what most deserve the focus. Mr. Anderson suggested that his firm work with staff to create an executive summary, and Commissioner Frymier agreed that a document stating the goal of the project, scope of the work, and the findings would have been helpful.

Community Development Director Anderson said staff has received the Commissioners' comments and will address those as best as possible in the revised draft that will now move on to the Town Council.

## **DISCUSSION ITEMS:**

### **2. Draft Capital Improvement Program for Fiscal Year 2008-2009 Budget: Review for Consistency with the General Plan**

Community Development Director Anderson gave the staff report. He stated that this item is the Planning Commission's annual review of the proposed Capital Improvement Program (CIP), which is a component of the Town's annual budget. The CIP is not part of the Town's "operating budget", which focuses on provision of day-to-day services. The draft CIP is prepared by the Director of Public Works in consultation with the Town Manager and other Department Heads. The Town Council Finance Sub-

Committee also reviews the draft CIP prior to its being sent to the full Town Council as part of the larger budget adoption process.

Pursuant to California Government Code Section 65301, the Planning Agency of the Town shall annually review the capital improvement program of the city for its consistency with the General Plan.

The draft CIP (Exhibit 1) is organized into three separate categories: 1) Street Improvements; 2) Drainage Improvements; and 3) Community Development Improvements.

Director Anderson said staff has reviewed the draft CIP and finds that its components are consistent with the goals and policies of the Tiburon General Plan. He deferred to the document's primary author, Director of Public Works/Town Engineer Nguyen, to elaborate upon projects and answer questions from the Commission.

Director Nguyen summarized the projects included in the \$6.5 million CIP for 2008-2209 as: Street Improvement Programs, the Parks Facilities Improvement Program, Cypress Hollow Playground improvements, and addressing the parking issue at the intersection of Lyford Drive and Tiburon Boulevard. He added that nearly half of that total value is allotted for the Del Mar Undergrounding Project which some people believe is an unrealistic goal due to existing litigation on the issue.

Commissioner Fraser expressed his support and interest in the Lyford Drive project and recognized the potential difficulties in finding a solution. Director Nguyen said the necessary work with Caltrans on the project does present some obstacles due to their many rules and regulations, but that the Town is up to the challenge.

Vice-Chair Kunzweiler asked what impact if any the State's budget issues will have on the transfer of funds back to the Town and how that will impact the Capital Improvement Plan. Director Nguyen said the impact is minimal thanks to Federal grant monies from the Safe Routes to Schools and Non-Motorized Transportation Pilot Programs. Funds from the State Gas Tax are fairly protected and consistently returned to the Town and Proposition A of 2006 guarantees certain monies, as well.

Vice-Chair Kunzweiler asked what the impact would be on funds designated for use in the Del Mar Undergrounding Project should it incur continued litigation delay or cancellation of the project, and he confirmed with Director Nguyen it would not free up any discretionary funds.

Vice-Chair Kunzweiler noted that the annual Failed Streets Program projections only carry through the year 2010 and he asked if it means that all "failed streets" have been repaired by that time. Director Nguyen estimates that fiscal year 2009-2010 should bring completion of repairs to all "failed streets."

**ACTION:** It was M/S (Frymier/Fraser) to find the Draft Capital Improvement Program for Fiscal Year 2008-2009 consistent with the General Plan. Vote 4-0.

## **PUBLIC HEARING**

- 3. GREEN BUILDING PROGRAM: Consider Recommendation to the Town Council for Approval of a Green Building Program, Including Amendments to the Municipal Code, Chapter 16 (Zoning) and Adoption of Green Building Compliance Standards, Rating Systems and Incentives [SA]**

Community Development Director Anderson gave the staff report, stating that the Planning Commission reviewed a draft Green Building Program for the Town of Tiburon on January 9, 2008. The Commission expressed several concerns about the program and continued the item for further review and refinement. A joint Town Council/Planning Commission subcommittee met over the next several months. Based on direction from the subcommittee, staff has prepared a revised Green Building Program for consideration by the Commission.

He said green building regulations are a fast-spreading trend worldwide as concerns over global climate change grow ever more serious. Several Marin cities and the County of Marin have adopted green building regulations. Regionally, the East Bay (primarily the Alameda County Waste Management Authority) has been the leader in formulating green building measures. The construction industry is rapidly embracing the concept and is developing new building techniques and using more renewable materials and this knowledge is quickly spreading among contractors and architects. The Marin Builders Association recently endorsed green construction programs.

Director Anderson summarized the key recommendations from the subcommittee as set forth in the staff report and provided additional background on the evolution of the proposed green program. He recommended that the Planning Commission adopt the resolution recommending to the Town Council approval of the Green Building Program, including the attached ordinance and resolution.

Commissioner Fraser reiterated the Commission's concern regarding additional costs associated with compliance and asked if staff had arrived at any estimates on what the impact would be to the individual homeowner. Director Anderson said the Town has not done their own studies but rather relied on the experiences of others who have had a green building program for a number of years.

Commissioner Fraser said that the report implied significantly increased costs to commercial developers and thereby suggests at least somewhat increased costs to the individual. He asked if staff had any idea what percentage of increase homeowners could expect. Director Anderson said most of the cost estimates generated relate to LEED-certified commercial buildings and that residential costs are much lower but staff does not have any dollar figures to share with the Commission other than those contained in the staff report.

Vice-Chair Kunzweiler noted that many of the items covered on the checklist are becoming standard building practices in the industry and that the larger ticket items tend to have long-term cost benefits associated with them.

Commissioner Fraser recommended adding a public education plan for licensed contractors as well as the community. He said being proactive in dealing with questions and objections could increase public acceptance of the program. Director Anderson said typically contractors who perform work in Tiburon also work elsewhere in Marin County, where similar green programs have already been adopted, and are builders and therefore familiar with this type of program.

Chair O'Donnell noted that the point totals proposed are significantly higher than for other towns. He asked how these numbers were decided upon and how they relate or compare to other communities in the County. Director Anderson said there is no scientific basis for the recommended point totals; they are aggressive and are based on what other communities are finding with their new residential construction projects. Larkspur, for instance, has been typically seeing values at or near 100 points for new homes.

Chair O'Donnell commented that the proposed points total is double that of the County standard and nearly 40% higher than other communities. He asked if staff had considered phasing this program in on a trial basis. Director Anderson said he does not recommend phasing, and that if the Planning Commission

is uncomfortable with the high point totals proposed, his recommendation would be to start with a lower number and be prepared to raise those numbers if other communities find the higher point totals are working. He reminded the Commission that the recommendations from the subcommittee and Town Council were to be aggressive with green point totals rather than reinventing the wheel with a new checklist.

Commissioner Frymier asked for clarification on “reinventing the wheel.” Director Anderson said that rather than develop a unique type of program or checklist, the subcommittee recommended taking advantage of the extensive groundwork done by Build-It-Green and aim for higher point totals than other communities have adopted.

Commissioner Frymier asked if it was relatively easy to obtain 60 points.

Vice-Chair Kunzweiler said that after reviewing the checklist, it seemed that any properly conceived new construction project should easily reach 60 points. He said the 100 point total was not entirely arbitrary; establishing a point total too low could potentially render the program meaningless. He acknowledged that the only two data points indicating that a 100 point total is comfortably attainable are Larkspur and the County of Marin. He said he would be open to discussing a tiered phasing approach where the program starts with an 80 point total and follows scheduled increases as more data is available. He feels this would indicate the Town’s willingness to be fair and make the plan viable.

Commissioner Frymier asked if staff had gone to the community with the proposed program and points requirements and if so, what the response was from local architects, contractors, and residents. Director Anderson said they had spoken with several designers and architects but not received much feedback. He noted that there is an architect on the subcommittee who is very familiar with these types of systems and felt very comfortable raising the point total above the 60 green points found in other communities. Commissioner Frymier asked and confirmed that an actual poll of the major contractors in the area had not been done.

Commissioner Frymier asked what the split is between new construction and remodel construction in the Town. Director Anderson did not have exact numbers with him but said the overwhelming majority are small addition projects that would have a 12 point total requirement from the checklist.

Vice-Chair Kunzweiler said he feels the plan as proposed is sound, reflects the direction of the Town Council, uses industry standards, has minimal administrative and bureaucratic costs to the community, and has reasonable associated costs to citizens and builders. He stated he is open to reconsidering the point total but is reluctant to rework the checklist used to award those points and feels it is in the best interest of the Town and the program to start with an established successful model.

Chair O’Donnell said he disagrees, and in fact, feels this is not a good program for the Town. He said he feels that the Energy Enhancement Efficiencies put forth through the Title 24 Program several months ago was a very important step and where he expects to see the greatest impact on the carbon footprint. He said the checklist contains items that are already Code in the Town, are not applicable to the Town, are fluff, are difficult to comply with, and have an enormous amount of hard and soft costs associated with them. His current personal experience with a new construction project gave him the opportunity to test the checklist. He stated that despite extensive consultation with designers, he was only able to attain 92 total green points. He noted that certain policies of the Town contradict items that will get one points. He also noted that in the case of solar panel installation, the State and Federal governments do not issue tax credits for panels installed on new construction projects. A traditional subversive maneuver has been to obtain an occupancy permit once construction is complete and then install the panels, claiming it a retrofit and thus being eligible for the credits. By utilizing the checklist as it is currently drafted, many

homeowners would need the 18 points awarded for solar panel installation just to attain the 100 point total required to receive the occupancy permit.

Chair O'Donnell stated that he feels this checklist may be well suited to other communities comprised of cookie cutter homes, but Tiburon is a custom home market where people already spend a lot of money to build and renovate their homes with the best practices available in the construction industry. He also said that he feels the program goes against what the Town is trying to accomplish and adds an unnecessary level of bureaucracy. He cautioned against what he feels are long range consequences of the policy and expressed his concern that this policy does not actually create the green aspect people are aiming for.

Commissioner Fraser asked Chair O'Donnell if the subcommittee for the program had heard these concerns. Chair O'Donnell said yes and that at one point he had advocated a plan that would be considered more directly meaningful to the Town.

Commissioner Frymier asked Chair O'Donnell what he would like to see change in the program. Chair O'Donnell said he sees two options: no program or a revised checklist to include items more pertinent to the Town of Tiburon.

Commissioner Frymier asked why this didn't happen at the subcommittee level.

Vice-Chair Kunzweiler said the checklist was surrounded by much discussion, the document is not perfect, and the goal of the initial program is to stay in line with industry and regional standard programs, using the investment Build-It-Green and Alameda Waste Management have already made while openly recognizing that there are a number of problems with it. He noted that while there are a lot of imperfections with the checklist, the consensus at the subcommittee meetings was that this is a good starting point to get the Town on the right path. He asked the Commission to consider the checklist separately from the points and ask themselves: 1) if Town staff can use and apply the checklist in a fair and reasonable fashion and 2) if a 100 points total is reasonably attainable.

Commissioner Fraser noted that there are many Towns which have adopted the Build it Green program and use the same points rating system. Recognizing that these numbers have already been vetted in many communities, he said he sees no harm in adopting an arbitrary points total somewhere between 60 and 100. He expressed his concern over establishing too high a point total only to have to reduce it should data prove it unreasonable.

Chair O'Donnell suggested implementing a trial run that would require contractors to complete the checklist and allow the Town the opportunity to gather pertinent data and revisit its stance on checklist items. He stated for the record that he does not think the checklist as drafted will work for Tiburon but that he is willing to compromise with a trial run.

Commissioner Frymier asked if conducting such a test trial would be feasible. Vice-Chair Kunzweiler said he thought asking contractors and homeowners to go through the additional trouble for a test would create a general sense of reluctance and distaste for the program. He again suggested a tiered phasing of the program as a viable compromise.

Chair O'Donnell said one of his main objections is the additional cost he foresees being incurred by an applicant. He asked who would be the arbiter of submitted certificates, as he feels the Building Official made it clear he would not be responsible for verifying every submitted item on the checklist. Vice-Chair Kunzweiler said his impression of that conversation was that these new requirements were in line with updated standards put before the Building Official each year.

Chair O'Donnell referenced the Compliance section of the Ordinance stating that an applicant's checklist will need to be signed-off and certified in order to receive an occupancy permit. Director Anderson said that during the Design Review process, applicants will be required to submit their design drawings with a certificate from a Green-certified rater and then resubmit that same or a modified rating certificate with the building plans before receiving their building permit.

Chair O'Donnell read directly from the drafted Ordinance, Section 16-8.6, stating that:

A Certified Green Building Rater or Town building inspector shall verify that the green building measures indicated in the approved green building documentation have been implemented through inspections during the construction of the project or through review of purchase receipts or photographic documentation. At the completion of project construction, the Certified Green Building Rater or Town building inspector shall verify compliance with the approved green building documentation and the Standards for Compliance.

During the verification process for the project, flexibility may be exercised by substituting other allowable compliance measures. Substitution of measures must be approved by the Building Official by submittal and approval of a revised Green Building Rating Checklist by the Certified Green Building Rater. An occupancy permit or final inspection approval for the construction project shall not be granted until the Building Official has determined that all required green building measures have been implemented.

Chair O'Donnell reiterated his concern regarding the soft costs associated with providing all of the appropriate documentation. Vice-Chair Kunzweiler said that the impression given to him by the Building Official is that this wording is very similar to what one would find in the requirements for an occupancy permit and that many of the records being asked for should already be maintained by the builder.

Commissioner Fraser suggested that the Commission acknowledge the limited data available and proposed to move forward with the policy in a fashion that will utilize a document that has already been adopted by many communities and provide the Town the opportunity to gather information with which to review the program down the road.

Assistant Planner Phillips pointed out that there has not been any discussion as to lowering the point total for non-residential projects.

Commissioner Frymier said her feelings on the program as drafted are equal as pertain to both residential and commercial construction. Vice-Chair Kunzweiler said the Town sees little commercial construction and what it does tends to be of a high caliber or is less than 3,000 square feet and therefore exempt under the ordinance.

Commissioner Frymier asked when the program would take affect, if adopted. Director Anderson said it would go into effect 30 days after the second reading of the ordinance by the Town Council.

Commissioner Frymier expressed displeasure over the lack of community outreach with regards to the proposed program and its requirements and said she considers it a great disservice to the Town to move forward without at least consulting with local builders. She also said she finds the plan to be incredibly complicated and complex for the average person and that she felt she would have to abstain from voting because she considers this government bureaucracy at its worst. She asked why the Town couldn't create its own checklist.

Director Anderson pointed out that the major appeal of this particular checklist is that it was developed over the course of several years with input from contractors and builders active in the industry. This has allowed it to be adopted in many communities without any outcry from industry professionals. He said the Town of Tiburon could never hope to duplicate this range of information and so the subcommittee was pleased to have the opportunity to adopt the Build-It-Green program, including the checklist.

Commissioner Frymier asked what other communities in the area have adopted it. Director Anderson listed Novato, San Rafael, and Larkspur, as well as the County of Marin, which was the first local agency to adopt it about five years ago.

Vice-Chair Kunzweiler said the Town had considered conducting its own studies, creating its own checklist and requirements and testing them to whatever extent possible. Ultimately, the subcommittee and Town Council opted to utilize what other communities have already successfully established.

Commissioner Frymier said she agrees with that decision to an extent. She clarified that she does not object to the points system, but is not pleased with this checklist. She noted that housing and construction trends are quickly becoming sophisticated, potentially leaving many items on the checklist moot or void within a short period of time.

Chair O'Donnell expressed his satisfaction with the work the Design Review Board accomplishes and wondered about the necessity of a program like this. He questioned the choice to adopt and surpass the standards of other communities that may not have the same goals as Tiburon.

Vice-Chair Kunzweiler suggested that the Commission craft a motion to accept the plan as drafted with the current checklist and the following exceptions: the point total is lowered to 75; the Planning Commission will revisit the program and the point total after 6 months with an analysis of submitted plans to be provided by Town staff and based on empirical evidence of plans as they are received; and the Town will seek to offer a forum where the public is free to discuss the issue.

Chair O'Donnell asked staff to craft a motion to that effect.

Commissioner Fraser summarized the issues the Commission has voiced with the plan: cost; ability to comply; contractor and community input; and net impact. He recognizes this is not a perfect document but feels Vice-Chair Kunzweiler's suggestion is sound and is important to push the Town forward in this direction.

Director Anderson asked the Commission to clarify some of the proposed changes to the resolution. He also stated for the record that the Marin Builder's Association has already endorsed these types of programs in San Rafael and Larkspur, although with lower point totals. He confirmed that the Commission wanted to decrease the requirement to 75 total points from 100 on new construction and advised the following additional changes: decrease the points total on additions projects from 12 to 8; and lower the incentives number from 140 to 100 total points.

<p><b>ACTION:</b> M/S (Fraser/ Kunzweiler) to adopt Draft Resolution with the point total modifications made to exhibit B and with the additional recommendations to the Town Council that the entire program be revisited in 6 months and that the Town holds a community outreach day before the new regulations take effect. Vote: 2-2. (O'Donnell and Frymier voted no).</p>
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Commissioner Frymier stated that she objects to the checklist based on the belief that the checklist adversely affects the four major points outlined by Commissioner Fraser and she does not have the

expertise or data available to gauge how this would affect the Town. Vice-Chair Kunzweiler suggested that she visit the Build It Green website where the public can see a list of program participants and that while it doesn't contain a lot of statistics, it may answer many of her questions. He said that no one can know what the true impact on the Town will be until the plan is adopted and has had time to form real data and that he is uncomfortable with dismissing the idea simply because no one knows.

Commissioner Frymier commented again that she fails to see how the checklist either applies or is beneficial to the Town, and would like to adopt the resolution without the checklist.

Chair O'Donnell said he would consider a compromise by agreeing to move forward with the program on a 6 month trial basis, having applicants fill out the checklist and allowing the Town to use that empirical data to analyze what items residents are actually addressing in their construction and whether or not those have a significantly positive impact. Vice-Chair Kunzweiler asked if he would suggest adopting a resolution to that effect and Chair O'Donnell said no, it would be voluntary compliance. Vice-Chair Kunzweiler said he worried that a trial or voluntary compliance without an ordinance to enforce it may not yield accurate data and Director Anderson agreed that data collected in the absence of an ordinance would be of little value in measuring effectiveness or success.

Vice-Chair Kunzweiler asked Director Anderson about structuring the ordinance to provide a 6 month learning period, with relaxed standards for the appeal process. Director Anderson said he has already discussed with the Building Official providing considerable flexibility at the start of the program. He provided some examples where flexibility would be warranted, such as north-facing and/or shady locations where photovoltaic solar systems may not function. He said that the Building Official agrees with him this program is something very new to the Town, and they are prepared to adopt a flexible approach to ironing out some of the compliance issues.

Vice-Chair Kunzweiler asked if it is possible to codify the flexibility for that period, and Director Anderson said he thinks the ordinance already offers the authority for flexibility as written. Commissioner Frymier agreed that this could be a reasonable option and would serve to establish the community outreach she felt was lacking.

Commissioner Fraser said he felt the document is more right than wrong and it would be a disservice to the Town to send the resolution back to staff for a rewrite without first taking an opportunity to see what adjustments are necessary.

Director Anderson stated that the Commission's role tonight is specifically focused on the ordinance amendments, and that the resolution is not essential for the Commission to finalize. He clarified that the resolution is what sets the point totals and thresholds. The Planning Commission can recommend to the Town Council that the ordinance is satisfactory, but express its serious reservations with portions of the resolution. He noted that in his opinion, the ordinance in and of itself does not contain serious problems and that it neither establishes point totals nor sets which checklist will be used. The Planning Commission does not need to take any action on the resolution if it chooses not to.

Commissioner Fraser stated that he would be uncomfortable approving an ordinance without the Town Council being clear on the Planning Commission's feelings on the resolution, and that those feelings should be made clear in their acceptance of the ordinance.

Chair O'Donnell reiterated his wishes to introduce the program on trial basis and said he does not understand the reluctance to do so. Director Anderson and Vice-Chair Kunzweiler pointed out again that they feel that without point total requirements or official review for compliance, there is nothing to ensure the submission of fair and reasonable data. Chair O'Donnell said he felt that applicants would provide

true data and that staff would have the authority to challenge them on their submissions. Director Anderson said none of his staff are Certified Green Building Raters and they could not begin to verify whether or not applicants are in compliance with the checklist.

Vice-Chair Kunzweiler suggested a preliminary period of 3 to 4 months and also said that the Planning Commission would be delighted to conduct a full review at the end of the initial period. Director Anderson said that this would provide solid statistics on small addition projects, but would prove insufficient on new construction projects and that 6 months is a more viable time frame.

Commissioner Frymier pointed out that they can approve the framework of the ordinance and not necessarily the checklist or the resolution, and Director Anderson confirmed this, but Commissioner Fraser said the ordinance without the checklist is ineffective and he could not support that approach.

**ACTION:** It was M/S (Kunzweiler/Fraser) to adopt Draft Resolution Exhibit 002 with the point total modifications made to Exhibit B and with the additional recommendations to the Town Council that: the entire program be revisited in 6 months; the Town hold a community outreach day before the new regulations take effect; a report is generated at the end of the initial 6 month period, with hearings to be held by the Planning Commission who will forward a recommendation to the Town Council. Vote: 3-1 (O'Donnell voted no).

## **MINUTES**

### **4. PLANNING COMMISSION MINUTES – Regular Meeting of May 28, 2008.**

Commissioners requested the following amendments to the Minutes:

- Page 5, 4<sup>th</sup> paragraph, amend second sentence to read: “an overall strategy for Paradise Drive.”
- Page 8, 3rd paragraph, amend the first sentence to read: “comply with the requirements of the use permit and address issues.”

**ACTION:** It was M/S (Fraser/Kunzweiler) to approve the minutes of May 28, 2008, as amended. Vote: 4-0.

## **STUDY SESSION**

Chair O'Donnell asked to hear Item 5 at the next regularly scheduled meeting due to the late hour.

## **ADJOURNMENT**

The Planning Commission adjourned the meeting at 10:16 p.m.

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EMMETT O'DONNELL, CHAIRMAN

ATTEST:

SCOTT ANDERSON, SECRETARY (ACTING)