



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

Action and Approved Minutes - Regular Meeting  
Tiburon Planning Commission  
July 8, 2009 – 7:30 PM

## ACTION MINUTES

### TIBURON PLANNING COMMISSION

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

Present: Chairman O'Donnell, Vice Chairman Kunzweiler, Commissioner Corcoran,  
Commissioner Fraser  
Absent: Commissioner Frymier

#### ORAL COMMUNICATIONS **There were none**

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.

#### COMMISSION AND STAFF BRIEFING **None**

Commission and Committee Reports  
Director's Report

#### ELECTION OF CHAIR AND VICE CHAIR

**Commissioner Kunzweiler Elected Chair; Commissioner Fraser Elected Vice Chair**

#### PUBLIC HEARING

1. 9 CECILIA COURT: ADOPTION OF A RESOLUTION DENYING A REQUEST TO AMEND THE TIBURON HIGHLANDS PRECISE PLAN (PD #15) TO CREATE A LANDSCAPE ENVELOPE; FILE #30901; Ronald and Alice Lando, Owners; Troy Martinez, 5 Elements Design, Applicant; Assessor's Parcel Number 034-360-18; [DW} **Adopted 3-1 (O'Donnell No)**
2. 46 MAIN STREET: CONDITIONAL USE PERMIT; REVIEW OF A CONDITIONAL USE PERMIT GRANTED TO ALLOW THE SERVING OF ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES AT AN EXISTING ART GALLERY (THE ART BAR MOLINAR); FILE #10801; Main

Street Properties, Owner; Deborah Molinar, Applicant; Assessor's Parcel Number 059-102-19 [LT] **Found in Compliance with Use Permit (4-0)**

3. INTRODUCTION AND OVERVIEW OF COMPREHENSIVE REFORMATTING AND TEXT AMENDMENTS TO THE TIBURON ZONING ORDINANCE; FILE #MCA 2008-09; CONTINUED FROM JUNE 10, 2009 [DW] **Continued to July 22, 2009 (4-0)**

#### MINUTES

4. PLANNING COMMISSION MINUTES – Regular Meeting of June 24, 2009 **Approved as Amended (4-0)**

ADJOURNMENT **At 9:00 PM**

PLANNING COMMISSION  
APPROVED MINUTES NO. 984  
July 8, 2009  
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 7:30 p.m.

**Present:** Chair O'Donnell, Commissioners Corcoran, Fraser, and Kunzweiler

**Absent:** Commissioner Frymier

**Staff Present:** Planning Manager Watrous, Director of Community Development Anderson, and Minutes Clerk Levison

**ORAL COMMUNICATIONS:** None

**COMMISSION AND STAFF BRIEFING:** None

#### **ELECTION OF CHAIR AND VICE CHAIR**

<b>ACTION:</b> It was M/S (Fraser/O'Donnell) to elect Commissioner Kunzweiler as Chair. Vote: 4-0.
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Chair Kunzweiler stated his appreciation for former Chair O'Donnell's dedication and work in leading the Planning Commission the past year.

**ACTION:** It was M/S (Kunzweiler/O'Donnell) to elect Commissioner Fraser as Vice-Chair.  
Vote: 4-0.

**PUBLIC HEARING:**

- 1. 9 CECILIA COURT: ADOPTION OF A RESOLUTION DENYING A REQUEST TO AMEND THE TIBURON HIGHLANDS PRECISE PLAN (PD #15) TO CREATE A LANDSCAPE ENVELOPE; FILE #30901; Ronald and Alice Lando, Owners; Troy Martinez, 5 Elements Design, Applicant; Assessor's Parcel Number 034-360-18**

**ACTION:** It was M/S (Fraser/Corcoran) to adopt the resolution denying the request. Vote: 3-1 (O'Donnell voted no).

Director of Community Development Anderson noted that the Commission's action would be final unless appealed to the Town Council within 10 days of this ruling.

- 2. 46 MAIN STREET: CONDITIONAL USE PERMIT; REVIEW OF A CONDITIONAL USE PERMIT GRANTED TO ALLOW THE SERVING OF ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES AT AN EXISTING ART GALLERY (THE ART BAR MOLINAR); FILE #10801; Main Street Properties, Owner; Deborah Molinar, Applicant; Assessor's Parcel Number 059-102-19**

Associate Planner Tyler presented the staff report, stating that on February 27, 2008, the Planning Commission adopted a resolution approving a conditional use permit to allow the serving of alcoholic beverages for consumption on the premises at The Art Bar Molinar, located at 46 Main Street. Condition of Approval No. 9 of the resolution requires that the Planning Commission review the permit after one year to determine if parking issues, noise, or other problems have arisen due to special events associated with the use. She said that Staff is not aware of any complaints from other businesses or residents located in the vicinity of the subject site regarding parking issues or noise associated with this use.

Chair Kunzweiler opened the public hearing.

Bryan Chong said that he lives 5 doors down from The Art Bar Molinar. He voiced support for the use permit, stating that it is a nice business that effectively combines retail and social space, and he knew of no noise or parking issues.

Chair Kunzweiler closed the public hearing.

Commissioner O'Donnell voiced support for the use.

Commissioner Corcoran concurred and stated that the business has made a nice contribution to the Main Street atmosphere.

Vice-Chair Fraser echoed the other Commissioners' comments and said that this has been a good business for the downtown area.

ACTION: It was M/S (Corcoran/Fraser) to find The Art Bar Molinar in substantial compliance with its use permit. Vote: 4-0.

**3. INTRODUCTION AND OVERVIEW OF COMPREHENSIVE REFORMATTING AND TEXT AMENDMENTS TO THE TIBURON ZONING ORDINANCE; FILE #MCA 2008-09; CONTINUED FROM JUNE 10, 2009**

At the June 24, 2009 Planning Commission meeting, the Commission began its review of the Town's update to the Tiburon Zoning Ordinance. At that time, the Commission reviewed all of Article I and part of Article II. The public hearing was continued, with Staff directed to prepare summaries of Articles III & IV for the July 8 Planning Commission meeting.

Commissioners provided various corrections and minor wording changes. They discussed the following sections in greater detail for the purpose of clarification and/or further amendment:

ARTICLE II

Section 16-21.030 - Residential Zones Allowable Land Uses and Permit Requirements

Mr. Watrous stated that since the last meeting, staff has received several comments from the public concerning the potential regulation of bed and breakfast inns (B&Bs), particularly in the R-O zones. He explained that Table 2-1 in this section would allow B&Bs with a CUP in the R-1, R-1-B, and R-O zones.

Chair Kunzweiler asked how the draft ordinance would differ from the old ordinance. Mr. Anderson stated that there is no reference to or regulation of B&Bs in the previous ordinance.

Vice-Chair Fraser requested discussion on the permitting process for B&Bs, as well as seasonal rentals, later in the meeting.

Referring to Subsection D, Commissioner O'Donnell reiterated his concern that a CUP requirement for the conversion of multi-family homes in Old Tiburon would hinder rehabilitation of certain properties.

Chair Kunzweiler said he understood that the requirement was intended to support maintenance of existing housing in Old Tiburon without necessarily prohibiting the conversion of certain homes and allows property owners to make a case for their request.

Commissioner O'Donnell wondered if a CUP would prove to be too onerous for a property owners and he asked what conditions would apply to a request to rehabilitate a multi-unit residence to a single-family home in Old Tiburon. Mr. Watrous explained that there are findings to be made through the CUP process, some of which would apply. He said the primary finding would be consideration of consistency with the General Plan and noted that the relevant General Plan policy dictates the need to limit, not prohibit, conversion of these homes. Mr. Anderson noted that any just cause could be considered sufficient to make the findings for approval.

Commissioner Corcoran questioned and confirmed that the updated ordinance has changed the requirement from simply obtaining a building permit to also requiring a CUP. Mr. Watrous stated that staff's intent was to avoid creating an entirely new process and it seemed best to stay with a vetted process that would be subjects to the discretion of the Commission.

Vice-Chair Fraser noted that the origins of Old Tiburon go back to a fishing village, and the neighborhood is uniquely laid out with inherently higher density. He said that there is merit to be found in the ability to have input as to how the neighborhood evolves. He did not believe the ordinance to be onerous but rather it provides an opportunity for collective input that will ultimately benefit the whole community.

Commissioner Corcoran stated that while the decision to convert one home may seem insignificant, the collective impact of a number of these units transitioning to single-family homes would have a dramatic effect on the community. He supported the CUP requirement and stated that it ensures the Commission would have input on those impacts and would give the community a voice into how these neighborhoods are shaped.

Commissioner O'Donnell referred to Table 2-1, listed the allowed locations for mobile homes, and asked how that relates to parking of recreational vehicles (RVs). Mr. Watrous noted that staff has eliminated mobile homes from the section that addresses parking and explained that a mobile home is to be treated more as a permanent residence than a licensed vehicle.

Mr. Anderson explained that State law is very clear and requires mobile homes to be treated the same as a stick-built home. He directed the Commission to the definition of mobile homes on page X-21.

#### Section 16-21.040 - Residential Zones Development Standards

Vice-Chair Fraser referred to Subsection B (1) which states that the minimum open space requirement in an R2 zone has a minimum dimension of 12 feet. He asked if that applies to the width, length, or diagonal dimensions. Mr. Watrous said the language is unclear but that interpretation has always been that each leg of measurement must be a minimum of 12 feet.

Chair Kunzweiler asked what the difference is between open space and usable open space. Mr. Watrous explained that "usable" is a qualifier used to distinguish it further from open space in terms of the OS zone definition.

Chair Kunzweiler noted that past applications have included the concept of private open space and he asked if that needs to be addressed here. Mr. Anderson said that the subject is discussed later in the ordinance. He noted that the Town has not had much opportunity to deal with the construction of apartment complexes in the R3 zones and the open space requirements outlined here have not been used for some time. He said that staff considers the required amount of usable outdoor open space to be archaic and atypical of what one would find practiced today and suggested the Commission consider reducing those numbers on the order of 50%.

Vice-Chair Fraser asked if that would be consistent with other communities in the area. Mr. Anderson could not confirm what the standards are in other Marin cities.

Commissioner Corcoran noted that usable open space is defined as ground level space and asked if the ordinance would require said amount of space located at ground level for each apartment. Mr. Watrous said that could be difficult, particularly in the case of any multi-story building. Commissioner Corcoran suggested “at ground level” be stricken from the definition.

Mr. Anderson clarified that this requirement calls for a total amount of open space, as defined by the per unit requirement, for joint use by all units, not area to be usable used only by an individual unit.

Chair Kunzweiler expressed hesitance for an arbitrary reduction of 50% and asked staff to research the matter for points of reference.

#### Section 16-22.020 - Purposes of the Commercial Zones

Chair Kunzweiler acknowledged the intent behind discouraging ground-floor office space in the downtown area but suggested that the language may be too harsh.

Commissioner O’Donnell doubted there are enough retail opportunities to sustain such a policy and noted that the numerous real estate and architecture offices in Town would constitute ground-floor office uses.

Chair Kunzweiler noted that real estate offices tend to encourage pedestrian traffic and asked if such uses would be considered to be ground-floor offices.

Commissioner Fraser found the policy to be consistent with the General Plan. He said that a proliferation of office uses, whatever they may be, decrease consumer’s daily dependence on the Town and would shrink the retail environment into something even smaller than it currently is. He said that the policy is visionary and sets the structure for what we would like the Town to be, and that it simply states the intent to encourage ground floor retail businesses.

Commissioner Corcoran referred to Subsection D, and although he agreed that no one would support a drive-through restaurant in town, he suggested that the prohibition of take-out establishments may be too broad. He said there is an opportunity for quality establishments that offer primarily take-out service while still coinciding with the goals of the Town.

Commissioner O’Donnell suggested that the prohibition on take-out establishments be eliminated or change the language from “primarily” take-out service to “solely.”

Mr. Anderson stated that this section directly mirrors the general plan. He noted that staff has not had any difficulty in distinguishing between fast food type uses and something like a yogurt shop.

Commissioner O’Donnell noted that nearly every food service establishment today has some extent of take-out service. Chair Kunzweiler agreed but said it is also clear that the current wording sufficiently allows a process to deal with any exceptions.

Commissioner Corcoran said that a business offering 100% take-out service could still be the right kind of business for Town. He inquired as to the ramifications of the Zoning Ordinance not directly mirroring the General Plan on this policy.

Mr. Anderson explained that a zoning ordinance can be more restrictive than the general plan, but not less restrictive. He read from the General Plan, noting that it directly prohibits drive-through establishments while only discouraging others such as take-out businesses. Mr. Watrous said he would the term change “prohibited” to “discouraged.”

#### Section 16-22.040 - Commercial Zones General Development Standards

Commissioner O’Donnell requested clarification on the term “review authority” used throughout the document. Mr. Anderson said that this term replaces “acting body,” and refers to whoever has authority over the type of permit in question.

Commissioner Corcoran requested that additional language such as “is required” be added to Subsection D. The same suggestion was later made for Section 16-22.040 (D).

#### Section 16-23.020 - Purposes of the Overlay Zones

Chair Kunzweiler asked if there are any retroactive impacts to properties situated in newly designated flood zones. Mr. Anderson explained that those properties would now require flood insurance and if any application came forward for improvements to the property, the base level of any structures may need to be raised.

Chair Kunzweiler referred to Subsection B and requested a clearer definition for the concept of a Town density bonus. Commissioner Corcoran suggested deleting “a town density bonus and” before “development incentives.” Staff agreed to make that change.

Commissioner O’Donnell referred to Subsection D and asked if the Town maintains an inventory of historic buildings. Mr. Anderson confirmed that it does. He explained that there are several categories, with the largest focusing on the downtown area and is referred to in this section as the historic preservation overlay zone.

#### Section 16-23.030 - Affordable Housing Overlay Zones Allowable Land Uses and Permit Requirements

Commissioner O’Donnell asked if there is a senior component to the affordable housing overlay. Mr. Anderson said that there is not a separate requirement for senior housing.

Commissioner Corcoran suggested adding the phrase “shall comply with all of the following” to Subsection D.

#### Section 16-23.050 - Affordable Housing Overlay Zones Development Incentives

Chair Kunzweiler asked if Subsection A (3) conflicts with the Town’s parking policies and noted that it loosens a requirement others would face with respect to off-street parking. Mr. Anderson explained that there is a concerted effort to relax certain requirements for projects involving a high number of affordable units. He also stated that parking tends to be one of the more costly aspects of a project and that certain projects would not be suitable for a reduction based upon their specific size and location.

Commissioner O'Donnell suggested that staff has assumed that the typical occupants of affordable units tend to own fewer cars than those residing in market rate units, which would make loosening those requirements not so detrimental.

Commissioner Corcoran referred to Subsection A (4) and asked if it is suitable for the Town to involve itself with the regulation of interior amenities. Mr. Anderson explained that many developers tend to spare little expense in the market rate units with the hopes of balancing out the cost of the affordable units. He said state law requires that developers of affordable units be granted a number of concessions and this allows the Town to use that as one of the concessions.

#### Section 16-23.060 - Historic Protection Overlay Zone Allowable and Uses and General Development Standards

Chair Kunzweiler referred to Subsection C and asked why the Director is would make this decision instead of the Design Review Board. Mr. Anderson said that the process would be structured so that all issues start with staff review and only those of any significance or controversy are forwarded to the Design Review Board.

#### Section 16-26 - Public/Quasi-Public Zone

Chair Kunzweiler suggested that a definition of public/quasi-public uses be included.

**ACTION:** It was M/S (Fraser/Corcoran) to continue the hearing to the July 22, 2009 meeting.  
**Vote:** 4-0.

### **MINUTES:**

#### **5. PLANNING COMMISSION MINUTES – Regular Meeting of June 24, 2009**

Commissioner O'Donnell requested the following amendments to the minutes:

- Page 5, 4<sup>th</sup> paragraph – "...would benefit from being better apprised of the fee structures associated with the projects..."
- Page 7, 8<sup>th</sup> paragraph – "...discourages much needed rehabilitation of ~~those~~ **certain** properties."
- Page 7, 9<sup>th</sup> paragraph – "Chair O'Donnell asked if the requirement of a CUP for seasonal rentals is **an** enforceable prospect..."

Commissioner Corcoran requested the following amendment to the minutes:

- Page 5, 3<sup>rd</sup> paragraph – "He noted the Commission has voiced the need for additional ~~schooling~~ **daycare** opportunities on numerous occasions."

**ACTION:** It was M/S (Fraser/Corcoran) to approve the minutes of the June 24, 2009 meeting, as amended. **Vote:** 4-0.

### **ADJOURNMENT:**

The Planning Commission adjourned the meeting at 9:00 p.m.