



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

Action and Approved Minutes - Regular Meeting
Tiburon Planning Commission
August 26, 2009 – 7:30 PM

ACTION MINUTES

TIBURON PLANNING COMMISSION

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

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

Absent: Chairman Kunzweiler

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

Commission and Committee Reports
Director's Report

PUBLIC HEARING

1. END OF PARENTE ROAD AND END OF ANTONETTE DRIVE: PRECISE DEVELOPMENT PLAN TO CREATE TWO BUILDING SITES ON A 10.2 ACRE PARCEL; FILE #30703; Lionel Achuck, Owner; Tom Newton, Applicant; Assessor's Parcel No. 038-111-16 [DW] **Continued to October 14, 2009**
2. REVIEW OF COMPREHENSIVE REFORMATTING AND TEXT AMENDMENTS TO THE TIBURON ZONING ORDINANCE: FILE #MCA 2008-09 [DW] **Articles IV and V Reviewed**

MINUTES

3. PLANNING COMMISSION MINUTES – Regular Meeting of July 22, 2009
Adopted as Amended 4-0

ADJOURNMENT *At 9:25*

PLANNING COMMISSION
APPROVED MINUTES NO. 986
August 26, 2009
Regular Meeting
Town of Tiburon Council Chambers
1505 Tiburon Boulevard, Tiburon, California

CALL TO ORDER AND ROLL CALL:

Vice-Chair Fraser called the meeting to order at 7:30 p.m.

Present: Vice-Chair Fraser, Commissioners Corcoran, Frymier, & O'Donnell

Absent: Chair Kunzweiler

Staff Present: Director of Community Development Anderson and Minutes Clerk Levison

ORAL COMMUNICATIONS:

There were none.

COMMISSION AND STAFF BRIEFING:

Director of Community Development Anderson provided the following briefing:

- Commissioners should have received the Alta Robles Draft EIR, which the Commission will take public comment on at the September 23, 2009 meeting;
- The Neighborhood Association Summit will take place this Saturday, August 29 from 10 a.m. to 12 p.m. in the Council Chambers.

Commissioner Frymier asked if the Commission will provide comments on the Alta Robles Draft EIR. Mr. Anderson stated that the Commission's primary role is to accepting public comment on the DEIR, but that the Commissioners may provide comments of their own at the meeting, or submit them in writing.

Commissioner O'Donnell said the Alta Robles property is spectacular and asked if a field trip of the project site is scheduled. Mr. Anderson said that he would look into it and get back to the Commission.

PUBLIC HEARING:

- 1. END OF PARENTE ROAD AND END OF ANTONETTE DRIVE: PRECISE DEVELOPMENT PLAN TO CREATE TWO BUILDING SITES ON A 10.2 ACRE PARCEL; FILE #30703; Lionel Achuck, Owner; Tom Newton Applicant; Assessor's Parcel No. 038-111-16 (Continued from July 22, 2009)**

This item was continued without discussion to the meeting of October 14, 2009.

- 2. INTRODUCTION AND OVERVIEW OF COMPREHENSIVE REFORMATTING AND TEXT AMENDMENTS TO THE TIBURON ZONING ORDINANCE; FILE #MCA 2008-09; CONTINUED FROM JULY 22, 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 Commission reviewed the remainder of Article II at the July 8, 2009 meeting. The Commission reviewed Article III at the July 22, 2009 meeting. The public hearing was continued, with staff directed to prepare summaries of Articles IV, V, & VI for the August 26 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 IV

Section 16-40.020 – Exception for Detached Two-Family Dwelling

Referring to Subsection G, Commissioner O'Donnell asked if these exceptions are the equivalent of a Temporary Occupancy Permit. Mr. Anderson described the circumstances that had caused this section to be created in recent years. The Town was experiencing situations where homeowners were constructing detached units on R-2 lots, and later applying for a condominium conversion. He said the objective of this section is to ensure up front that detached two-family dwellings, when found appropriate in lieu of attached two-family dwellings for reasons such as topography and lot characteristics, were not later converted to condominiums.

Section 16-40.030 – Secondary Dwelling Unit

Commissioner Corcoran referred to Subsection H and asked how the revocation of a Secondary Dwelling Unit Permit would be enforced. Anderson responded that while the Town has never had occasion to revoke a secondary dwelling unit permit, this section created the process for doing so. Anderson also noted that in physical terms, just as with any illegal dwelling unit, the property owner would be required to remove what constitutes the kitchen in a way that satisfies the building inspector.

Vice-Chair Fraser asked how many secondary dwelling units the Town has. Mr. Anderson estimated there to be about 35 approved secondary dwelling units. Vice-Chair Fraser asked if they are clustered in any one particular area of Town. Mr. Anderson responded that they are fairly well scattered throughout the community and are not clustered.

Commissioner O'Donnell inquired as to the fees for establishing a secondary dwelling unit. Mr. Anderson explained that the Town's fees are intentionally low, roughly \$500, but that associated water district and sewer district fees can be high, and that the fire district usually requires fire sprinklers, which can be quite costly.

Section 16-40.040 – Home Occupations

Referring to Subsection B, Commissioner Corcoran requested a definition of “electronic commerce.” Mr. Anderson said staff would develop one.

Section 16-40.050 – Bed and Breakfast Inns (B&B's)

Commissioner O'Donnell asked if there are many B&B's established in Town. Mr. Anderson said there are none to his knowledge. He noted that currently, B&B's are allowed with a use permit in all residential zones except R-2 and R-3, with no standards set. He said that staff recommended that the number of zones in which these uses could be located should be reduced to the R-1, R-1-B and RO zones, and that specific standards be adopted for such uses in addition to the typical conditional use permit findings and conditions. This section contained those standards.

Commissioner Corcoran stated that Subsections C (Appearance) and F (Signs) seem to be in conflict, requiring that B&B's remain outwardly indistinguishable from neighboring residences yet carry signage. Mr. Anderson explained that the sign ordinance already allows, although greatly limits, the placement of signs on residential uses. He did not envision any inconsistency resulting from the proposed text.

Vice-Chair Fraser stated that many areas of Town, particularly the Lyford Cove/Old Tiburon neighborhood, lack adequate parking. He cautioned that B&B's in residential areas could create a parking situation that the area cannot support and neighbors would not appreciate. He asked for Commission support to revisit the concept of B&B's within certain areas of the Town.

Mr. Anderson said that, in addition to the standards set forth in this section, any request must comply with the regular findings set forth by a Conditional Use Permit (CUP). He explained that any issue making the request incompatible with its surroundings would be basis for denial.

Commissioner Frymier acknowledged Vice-Chair Fraser's concern, but said the ordinance seems very clear to her and that a CUP process should be sufficient.

Commissioner Corcoran noted that R-1 and R-2 zones in Old Tiburon are closely intertwined; it seemed like a natural area for B&B's and he thought the distinction between the two seemed arbitrary.

Mr. Anderson stated that R-2 lots are typically smaller than R-1 lots, typically contain 2 units, and are generally less capable of accommodating the additional parking that would be required of a B&B use.

The Commission concluded this section is suitable as drafted.

Section 16-40.060 – Seasonal Rental Units

Commissioner O'Donnell commented on the increasing presence of house swaps in the market place and asked if that would be considered a seasonal rental. Mr. Anderson read from the definition, noting that house swaps typically do not involve any payment and therefore, would not be considered a seasonal rental.

Commissioner O'Donnell referred to Subsection A (2) and asked what type of periodic inspections a seasonal rental might be subject to.

Commissioner Corcoran asked why the previous section (B&B's) does not contain a similar requirement for inspections.

Mr. Anderson clarified that any use involving a use permit is subject to periodic inspections. He explained that the requirement is intended to provide staff with some measure of oversight, should such a use become problematic or its compliance with conditions be questioned.

Commissioner Corcoran suggested establishing an inspection ceiling, such as no more frequently than every six months.

Vice-Chair Fraser noted that this [Seasonal Rentals] is a new ordinance provision and asked if staff intends to inform the public or simply begin policing activity of these uses. Mr. Anderson said the ordinance is not retroactive and that staff would do its best to disseminate the information regarding uses newly regulated. He said local realtors are one of the better communicators of this type of information.

Commissioner O'Donnell said the inspection requirement seems vague and asked if it could be omitted.

Commissioner Corcoran inquired and Mr. Anderson confirmed that by nature, use permits require the ability to perform inspections to ensure compliance with conditions of approval.

Commissioner Corcoran supported the request, stating that by technical definition, anyone even advertising their home for short-term rental would be subject to these inspections.

Vice-Chair Fraser concurred.

Commissioner O'Donnell said the need for a CUP does not seem enforceable and suggested the Commission revisit that requirement.

Vice-Chair Fraser said the entire section seems more broad than is necessary and that he would prefer to forego a CUP in favor of staff review. Mr. Anderson explained that staff has learned, from other communities with similar attributes to Tiburon, that seasonal rentals can present serious issues. He said that in light of that information, staff has recommended the CUP process to address any problems that may arise with seasonal rentals.

Commissioner Frymier asked why the term only applies to rentals lasting fewer than 31 days. She asked and Mr. Anderson confirmed that she would technically require a CUP to rent out her

home for a long weekend. To her first question, Mr. Anderson explained that the 31-day time frame is intended to exclude regular month-to-month leases, which are commonplace. He said the primary intent of this section is to regulate single-family homes that are essentially being used as a commercial business.

Commissioner Corcoran stated that many of these goals are already accomplished elsewhere in the code. He noted that the renting of single rooms is prohibited and said that seems inappropriate given the current economic situation. Mr. Anderson clarified that the renting of a room in a residence is currently allowed in virtually all residential zones, so long as it is not creating another dwelling unit by definition.

Commissioner O'Donnell agreed that some oversight is necessary for the protection of the neighborhood, but said it seems excessive to require a homeowner to obtain a CUP in order to rent their home out for a week or two.

Vice-Chair Fraser concurred.

Commissioner O'Donnell suggested a stipulation that refers to ongoing or continual seasonal rentals.

Commissioner Frymier suggested quantifying the term as one that occurs seven or more days at a time, three or more times per year.

Commissioner Corcoran requested that the language pertaining to advertisement be omitted and provided the following language, "...for a term of 7-31 days on three or more occasions annually."

Vice-Chair Fraser suggested that staff borrow language from the other communities mentioned by Mr. Anderson. Mr. Anderson stated that the provisions of those communities were used in developing the draft regulations.

The Commission concurred on the need for this oversight, but said the language could be improved to eliminate certain unintended consequences. Staff was directed to return with a revised section addressing the Commission's concerns.

Section 16-40.070 – Child Day-Care Facilities

Commissioner O'Donnell cited two applications with which the Commission asked that fencing or walls contain some sort of sound baffling, noted that they were very contentious hearings, and suggested that requirement be added to Subsection D (2) (a). Mr. Anderson explained that State law essentially preempts local governments from applying extra-ordinary noise attenuation standards in the area of child care uses. He said that in both instances mentioned, the applicant agreed to those conditions regarding enhanced noise buffering. The legal standard is that communities may impose only noise limits set forth in their General Plan for residential areas.

Section 16-42.070 – Removal of Discontinued Facilities Required

Vice-Chair Fraser stated that 180 days seems lengthy to allow the removal of equipment from an abandoned facility and asked how the guideline was established. Mr. Anderson stated that 180 days is widely considered to be a reasonable amount of time to establish true abandonment of a facility.

Section 16-50.070 – Story Poles

Commissioner Frymier cited several circumstances where inaccurate story poles proved to be the source of hearing continuances and general inefficiency in the design review process. She suggested that the ordinance take a stronger stance and establish clear consequences for applicants who fail to ensure timely and accurate story pole placement.

Commissioner O'Donnell said that story pole plans must be surveyed for accuracy.

Commissioner Frymier acknowledged that but reiterated her comments. She added that in some instances, an applicant has made changes to a design but failed to reflect them in the story poles.

Mr. Anderson said it is fairly standard to continue an item because the applicant fails to erect the required story poles in a timely fashion. He confirmed that certification by a surveyor is required for the original story pole arrangement, but not always for project revisions.

Vice-Chair Fraser suggested the addition of language that would require notification or certification when the original story pole plan is altered. Mr. Anderson stated that staff has historically used its discretion to determine the need for any recertification of story pole changes.

Commissioner O'Donnell asked why connecting material between story poles is only required for appeals heard by the Town Council. Mr. Anderson stated that the Council is not typically familiar with these projects and has specifically asked for this level of visual assistance.

Commissioner O'Donnell acknowledged that tape or string is often quickly torn down by winds, but said that each architect has a different concept of story pole plans and such demarcation would be helpful to both the Board and a project's neighbors.

The Commission directed staff to, on a case-by-case basis as deemed appropriate, direct applicants to connect a project's story poles prior to design review.

Section 16-52.020 – Site Plan and Architectural Review

Commissioner O'Donnell said the Town's design review process does not always consider the characteristics of hillside design, particularly in terms of floor area ratio. He asked if, in the instance that a home is remodeled within an existing variance, the Town requires an additional variance fee during the project's design review process. Mr. Anderson said a variance fee would only be required if the applicant expanded upon the existing nonconformity.

Commissioner O'Donnell asked if the same would be true on a 50% remodel that expands upon the existing footprint. Mr. Anderson said only if the project crossed the threshold into what is considered "new construction".

Commissioner O'Donnell said that the majority of homes undergoing full remodel are typically of an age that current zoning standards did not exist at the time of construction. He noted that many of these homes are already within front or side yard setbacks because of the way that zoning was applied after construction. He asked if the Town treats these homes with greater leniency in terms of variances. Mr. Anderson said that all demolitions are expected to comply with the standards of the zone and must apply for any necessary variances. He said they are often granted, particularly if the new construction mirrors what was previously in place, but the applicant is charged the fee for the variance.

Section 16-52.040 – Conditional Use Permit

Commissioner Frymier cited a concern about CUP's falling out of compliance with their conditions of approval over time. She said that it seems contradictory to keep an up-to-date CUP, like that for St. Hilary's Church, on an annual review schedule when poorly drafted and archaic CUP's, like that for the Belvedere-Hawthorne Nursery School, are never reviewed. She suggested that CUPs should be subject to expirations or that the language provide some means of reviewing those that are not currently subject to periodic review.

Mr. Anderson acknowledged the concern, stated that the Town now takes a different approach to complicated CUP's than was used decades ago, and assured her that the issues surrounding the particular use in question continue to be watched by staff and have been largely resolved.

Vice-Chair Fraser said that if any of the uses in question applied for some sort of amendment, the Commission would have the opportunity to institute some sort of periodic review as a new condition.

Section 16-52.060 – Precise Development Plan

Referring to Subsection F, Vice-Chair Fraser noted that the economic climate may well result in funding issues that do not allow projects with an approved Precise Development Plan to move forward. He said that in those instances, the developer may need to sell the property, that it may take considerable time, and cautioned that attaching an expiration date to the plan may be wasteful and prohibitive. Mr. Anderson explained that he could not recall a Precise Development Plan actually expiring during his tenure as such projects almost always are followed by tentative subdivision map approval that adds years to the life of a project. He added that time extensions for Precise Development Plan approvals are also available, and that many have been granted without any controversy over the years.

<p>ACTION: It was M/S (O'Donnell/Corcoran) to continue the public hearing to September 9, 2009. Motion carried 4-0.</p>
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MINUTES:

5. PLANNING COMMISSION MINUTES – Regular Meeting of July 22, 2009

Commissioner O'Donnell provided the following amendment to the minutes:

- Page 6, 4th paragraph – “Commissioner O'Donnell questioned and confirmed that motorcycles are currently allowed to park at the ferry ~~building~~ **plaza.**”

ACTION: It was M/S (O'Donnell/Corcoran) to approve the minutes of July 8, 2009, as amended. Motion carried 4-0.

ADJOURNMENT:

The Planning Commission adjourned the meeting at 9:19 p.m.

JIM FRASER, VICE-CHAIRMAN

ATTEST:

SCOTT ANDERSON, SECRETARY