



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

Action and Approved Minutes - Regular Meeting
Tiburon Planning Commission
September 9, 2009 – 7:30 PM

ACTION MINUTES

TIBURON PLANNING COMMISSION

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

Chairman Kunzweiler, Vice Chairman Fraser, Commissioner Corcoran, Commissioner Frymier, Commissioner O'Donnell

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 STONY HILL ROAD: TENTATIVE SUBDIVISION MAP APPLICATION FOR THE CREATION OF THREE LOTS ON A 5.6 ACRE PARCEL; LING RESIDENTIAL PROJECT (PD#24) FILE #60901; Joe Ling, et al, Owners and Applicants; Assessor's Parcel No. 055-261-10 [DW] ***Approved 5-0***
2. REVIEW OF COMPREHENSIVE REFORMATTING AND TEXT AMENDMENTS TO THE TIBURON ZONING ORDINANCE; FILE #MCA 2008-09 (Continued from August 26, 2009) [DW] ***Continued to 9/23/09***

MINUTES

3. PLANNING COMMISSION MINUTES – Regular Meeting of August 26, 2009 ***Approved as Amended 5-0***

accessed by an extension of Stony Hill Road within an existing 50 foot wide roadway and utility easement connecting to Gilmartin Drive. Mr. Watrous stated that staff has reviewed the application in detail for consistency with the Ling Precise Development Plan and the Subdivision Ordinance of the General Plan and found it to be consistent with all previously adopted regulations of the precise plan.

Mr. Watrous noted that Conditions No. 19 and 20 of the draft resolution are remnants of a prior resolution that do not apply to this application. He also stated that Condition No. 25 makes incorrect reference to a mitigation measure. He said that staff conferred with the applicant's representative and recommends the deletion of Conditions No. 19 and 20, as well as the aforementioned reference in Condition No. 25.

Scott Hochstrasser, representing the applicant, concurred with the staff recommendation and requested that the Commission approve the resolution with the recommended changes. He asked that Condition No. 1 be amended to read, "All of the following requirements of the Town Engineer shall be met..." and asked for similar amendments in Conditions No. 2 through 14.

Commissioner Corcoran and Chair Kunzweiler provided the following suggestion: "All of the following requirements of the Town Engineer herein shall be met..."

Mr. Hochstrasser stated that the project would provide considerable donations to parks and open space. He requested that Condition No. 42, which references Chapter 14 of the Municipal Code and requires payment of park and recreation in-lieu fees, include a recommendation that the Council accept the land use donations as off-sets to the applicable fees.

Commissioner O'Donnell inquired as to the fee amount. Mr. Anderson explained that the fee is based on a formula used at the time the parcel map is submitted, and would be impossible to estimate at this time. He proposed the following amendment to Condition No. 42: "The public access and trails easements ~~may~~ shall be considered by the Town Council as off-sets to the final determination of the applicable fees."

Commissioner Corcoran read from Chapter 14 of the Municipal Code and stated that by definition, it would seem that the project's open space provisions could negate any fee requirement. Chair Kunzweiler disagreed, stating that projects carry many related fees which fund the Town. He advised against setting a precedent that would allow open space to be traded for those fees. He said that the first application for this project offered very little open space and the amount currently provided was established after much effort and by the precise development plan approval. He voiced surprise that the applicant would attempt to trade a requirement for a fee and said he would favor leaving the language as is.

Mr. Hochstrasser stated that Conditions No. 6, 8, and 9 contain very specific requirements on open space. He said that while those requirements were extracted through a process, the applicant has agreed to provide that space.

Chair Kunzweiler said he would not ask any more of this applicant than what is requested of any other. He said he would be happy to defer to the Town Council, but declined to soften the existing language.

Vice-Chair Fraser requested the addition of supportive language to the minutes and strongly encouraged a request that the Council review and assess the off-sets to determine any in-lieu value.

Chair Kunzweiler directed staff to amend Condition No. 14, as provided by Mr. Anderson.

There was no public comment.

Vice-Chair Fraser questioned and confirmed with Mr. Anderson that the public access easement would contain markers of some kind to direct the public to the trail.

Commissioner Corcoran requested additional information on the possible dedication of the Stony Hill Road extension. Mr. Anderson explained that the project is required to offer the extension to the Town for public street purposes. He stated that the Commission recommended the Council accept the offer but noted that the Council may ultimately choose not to do so.

Referring to Condition No. 12, Chair Kunzweiler voiced surprise that lighting standards had not yet been determined and asked when they would. Mr. Anderson stated that no street lighting was proposed as a part of the precise development plan. He said that the Town Engineer examined the project at the time the plan was approved and felt it was appropriate. He noted that at the time the subdivision improvement drawings are submitted, it may be determined that some sort of low bollard lighting is necessary.

<p>ACTION: It was M/S (O'Donnell/Fraser) to adopt the draft resolution approving the Ling Tentative Subdivision Map, as amended, deleting Conditions No. 19 and 20 and amending the language in Conditions No. 1, 25, and 42. Motion carried: 5-0.</p>

2. INTRODUCTION AND OVERVIEW OF COMPREHENSIVE REFORMATTING AND TEXT AMENDMENTS TO THE TIBURON ZONING ORDINANCE; FILE #MCA 2008-09; CONTINUED FROM AUGUST 26, 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 Commission reviewed Article IV and a portion of Article V at the August 26, 2009 meeting. The public hearing was continued, with Staff directed to prepare summaries of the remainder of Article V and Articles VI, VII, VIII, and IX for the September 9 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 V

Section 16-54.020 - Effective Date of Permits

Chair Kunzweiler questioned the rationale of the varying effective dates. Mr. Watrous stated that the majority of projects have a built-in, 10-day period. He noted that minor alteration projects are intended to be streamlined and are therefore shorter, and those permits with longer periods have remained so for the sake of continuity.

16-54.030 - Applications Deemed Approved

Commissioner Corcoran suggested adding the word “financial” before the term “security.”

Section 16-54.050 - Performance Guarantees

Vice-Chair Fraser asked if the Town has requested performance guarantees in the past. Mr. Watrous confirmed that it has, on occasion. He stated that this section is intended to address applications which require ongoing monitoring and are dependent upon the conditions of approval.

Commissioner O'Donnell asked if the Town has any ability to strengthen the performance guarantee for projects that are extended out over a long period of time. Mr. Anderson said that the Town Council has had considerable difficulty with this over the years. He stated that currently, applicants are provided 18 months to complete a project with the possibility of one 6 month extension at no fee. Following that extension, any project not completed begins to incur penalties which are generally a percentage of the original permit fees.

Commissioner O'Donnell noted that on large scale projects, many people would not consider a \$10,000 fine to be compelling. He suggested that a performance bond, equal to the value of the work still awaiting completion, may incentivize the project. Mr. Anderson said that such bonds are not typically required of single structure projects and that calling in those bonds can be a considerable process. He stated that the Town Attorney had considered but did not recommend the idea.

Section 16-54.060 - Permit Time Limits, Extensions, and Expiration

Vice-Chair Fraser suggested changing the language in Subsection B to read “two separate extensions of up to one year per extension from the date of expiration of the original approval...”

Commissioner O'Donnell described the concept of “permit creep” and suggested the addition of language stating that minor permit changes do not extend the permit limits beyond those stated in the zoning ordinance. Mr. Watrous said that while an issue, such situations are atypical. Mr. Anderson said staff has attempted to address the issue through the building permit process. He explained that anyone seeking to make design review changes on an active permit must submit a building permit revision and he noted that it does not extend the life of the permit. Mr. Watrous added that, in the event an applicant submits numerous changes, staff reserves the judgment to forward the revision to the Design Review Board.

Commissioner O'Donnell said it is an issue of interest and concern to many residents. He requested that the current language be strengthened to better control the issue. Mr. Watrous said that it would be more appropriate to address that issue in the building code.

Commissioner O'Donnell said that much of the zoning ordinance seems to conflict with current design trends. He acknowledged that skylights present a potential problem in certain areas of Town, but noted that the green building movement expressly encourages the use of skylights.

Mr. Watrous stated that the overwhelming majority of requests for skylights are approved with the standard conditions to tint the skylights and prohibit any lights in the wells. He said that the Town's intent is to continue to encourage green building principles, but not at the expense of very real light pollution issues.

Section 16-54.070 - Changes to an Approved Project

Referring to Subsection A, Chair Kunzweiler said that it seems that a request for changes to a project prior to construction carries a different set of ramifications than the same request made after construction has begun. Mr. Watrous said that staff sees a considerable number of changes which occur mid-construction simply because an applicant has the money to do so, and that issues such as that contribute to the permit creep mentioned earlier.

Commissioner Frymier noted that Belvedere takes a very strict stance on the issue and asked if the Town has plans to move in a similar direction. Mr. Anderson said that the Council is familiar with Belvedere's approach and has elected not to pursue that route.

16-56.030 - Violations and Penalties

Commissioner Corcoran suggested adding the inserting the word "with" after the word "authorized" in Subsection B.

16-56.040 - Legal Remedies

Chair Kunzweiler suggested that the severability section was too long and confusing. Mr. Anderson stated that this was drafted by the Town Attorney, but he would have her review it to see if it could be made more clear.

ARTICLE VI

Section 16-60.010 – Purpose

Commissioner O'Donnell cited instances in which the Commission lacked a quorum, either due to a conflict of interest or known absence. He noted that in the past, the Commission had requested a member of the Design Review Board temporarily serve as a third member and suggested the language provide for that. Mr. Anderson noted that those hearings, in which more than one commission member was determined to be conflicted under the Fair Political Practices Commission (FPPC), are very unusual. He explained that there alternate methods for determining a quorum that favor random chance. Commissioner O'Donnell stated that those occasions have almost always been complicated issues on which the commissioner may not feel comfortable making a determination.

Commissioner Frymier concurred, stating that she felt conflicted during the Tiburon Peninsula Club hearing. Mr. Anderson said that the FPPC acknowledges such feelings but expects that council, commission, and board members are able to rise above that feeling and make a fair determination.

Chair Kunzweiler asked if it would be more fair to the public to assign someone who may or may not be comfortable with the determination process, as he would prefer to err on the side of expertise with complicated issues.

Commissioner O'Donnell recommended a policy that names alternates, perhaps from other boards or commissions, who would be able to serve or be deputized for quorum purposes.

Chair Kunzweiler said that the Commission's decisions are based on findings, not arbitrary emotions. He acknowledged that certain situations may be uncomfortable, but trusted that the standard of findings would be a sufficient basis for those decisions.

Mr. Anderson said that this subject is a policy question for the Council and he agreed to forward the matter to them.

16-62.020 - Definitions

In Subsection A, Commissioner Corcoran suggested deleting the phrase "the Town contains relatively few nonconforming uses" and replacing the word "which" in the second sentence with "a legal nonconforming use."

Section 16-62.030 - Restrictions on Nonconforming Structures and Uses

Referring to Subsection (A [2]), Commissioner O'Donnell noted that certain homes are intentionally sited on lots in nonconforming ways. He asked if there is a variance procedure to allow those structures to move further out of conformity so long as it is in the better interest of neighboring properties. Mr. Anderson stated that a variance application could be submitted. Mr. Watrous added that this section only deals with nonconforming uses, not nonconforming structures, and noted that a variance would not be required to rebuild a nonconforming structure to its previous footprint.

Commissioner Corcoran requested clarification on the destruction element. Mr. Watrous said there is a greater emphasis on phasing out nonconforming uses than on nonconforming structures. Commissioner Corcoran suggested adding the term "involuntarily" before the term "damaged" in Subsections 4 (a & b).

<p>ACTION: It was M/S (Kunzweiler/Fraser) to continue the public hearing to the September 23, 2009 meeting. Motion carried 5-0.</p>
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MINUTES:

3. PLANNING COMMISSION MINUTES – Regular Meeting of August 26, 2009

Commissioner Corcoran provided the following amendment:

- Page 2, 4th paragraph, last sentence: “**Anderson continued to say that**, in physical terms...”

Commissioner Fraser provided the following amendment:

- Page 3, 3rd paragraph: “He cautioned that B&Bs in residential areas could create a parking situation **that** the area cannot support and the neighbors ~~do~~ **would** not appreciate.”

Commissioner Frymier provided the following amendment:

- Page 3, 5th paragraph: “Commissioner Frymier acknowledged Vice-Chair Fraser’s concern, but said the ordinance seems very clear to hear and **that** a CUP process should be sufficient.”

ACTION: It was M/S (Fraser/Corcoran) to approve the minutes of August 26, 2009, as amended. Motion carried: 5-0.

ADJOURNMENT:

The Planning Commission adjourned the meeting at 9:05 p.m.

JOHN KUNZWEILER, CHAIRMAN

ATTEST:

SCOTT ANDERSON, SECRETARY