



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

Action and Approved Minutes - Regular Meeting
Tiburon Planning Commission
October 14, 2009 – 7:30 PM

ACTION MINUTES

TIBURON PLANNING COMMISSION

CALL TO ORDER AND ROLL CALL 7:34 PM

Chairman Kunzweiler, Vice Chairman Fraser, Commissioner Corcoran, Commissioner Frymier, Commissioner O'Donnell *All Commissioners Present*

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 – *Alta Robles unlikely for October 28, perhaps November 11*

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 NOVEMBER 11, 2009**
Continued 5-0
2. 193 GILMARTIN DRIVE: AMENDMENT TO THE AGINS PRECISE PLAN (PD #26) TO AMEND A BUILDING ENVELOPE AND ESTABLISH A SECONDARY BUILDING ENVELOPE; FILE #30902; Jeff and Lori Runnfeldt, Owners; John Swain, Applicant; Assessor's Parcel 039-161-29 *Recommended Approval to Town Council 5-0*

3. REVIEW OF COMPREHENSIVE REFORMATTING AND TEXT AMENDMENTS TO THE TIBURON ZONING ORDINANCE; FILE #MCA 2008-09 [DW] (Continued from September 23, 2009) Reviewed and Continued to October 28 Meeting 5-0

MINUTES

4. PLANNING COMMISSION MINUTES – Regular Meeting of September 23, 2009 Approved as Amended 4-0-1 (O'Donnell Abstained)

ADJOURNMENT At 9:25PM

PLANNING COMMISSION
APPROVED MINUTES NO. 989
October 14, 2009
Regular Meeting
Town of Tiburon Council Chambers
1505 Tiburon Boulevard, Tiburon, California

CALL TO ORDER AND ROLL CALL:

Chair Kunzweiler called the meeting to order at 7:30 p.m.

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

Absent: None

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

ORAL COMMUNICATIONS: None

COMMISSION AND STAFF BRIEFING:

Director of Community Development Anderson stated that the Alta Robles DEIR adequacy hearing may be continued from October 28, 2009 to November 11, 2009, and that he would keep the Commission posted as to the status of that item.

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 TO NOVEMBER 11, 2009**

ACTION: Moved and seconded (Corcoran/Fraser) to continue the item to November 11, 2009.
Vote: 5-0.

2. 193 GILMARTIN DRIVE: AMENDMENT TO THE AGINS PRECISE PLAN (PD #26) TO AMEND A BUILDING ENVELOPE AND ESTABLISH A SECONDARY BUILDING ENVELOPE; FILE #30902; Jeff and Lori Runnfeldt, Owners; John Swain, Applicant; Assessor's Parcel 039-161-29

Mr. Anderson provided the staff report, stating that the applicant has requested an amendment to a Precise Plan for property located at 193 Gilmartin Drive. The applicant proposes to install a swimming pool and spa in an area outside of the building envelope established for this parcel by the Agins Precise Plan. The property is currently developed with a single-family dwelling and is bordered by a public open space parcel to the east, a vacant parcel to the north, and a portion of the Tiburon Ridge Trail to the south.

The applicants propose to establish a 2,270 square foot secondary building envelope, which would allow no "structures", on the eastern side of the property for the proposed improvements. This proposed new envelope area, adjacent to the Town open space parcel, is currently a lawn and landscape area. In requesting the secondary building envelope, the applicant proposes to reduce the size of the main building envelope on the north side of the property by 2,270 square feet, for no net gain of building envelope area on the lot.

Mr. Anderson stated that staff has visited the project site and concluded that the proposed secondary building envelope would allow the residents to continue to utilize the existing landscape areas with the addition of a swimming pool and spa, without resulting in material noise or visual impacts to surrounding neighbors. The secondary building envelope would also prohibit the construction of structures closer to the property line than the existing residence and, therefore, closer to the adjacent open space. Staff further concluded that hikers in the open space area adjacent to the subject property would not likely see the proposed improvements and the project would be consistent with the overall intent of the Agins Precise Plan. Staff reviewed the proposal for consistency with the Tiburon General Plan and Tiburon Zoning Ordinance and concluded it was consistent with both.

Mr. Anderson noted that improvements in addition to the swimming pool and spa are shown on the drawings; however, these improvements would be reviewed at a later date through the Design Review process should the envelope adjustment be approved. He advised that the issue before the Commission is the envelope adjustment, not the physical improvements themselves, but stated that the Commission could pass along any specific recommendations on site design to the Design Review Board through the conditions on the resolution. He also noted that any affirmative action by the Planning Commission on this project would be in the form of a recommendation to the Town Council; should the Commission vote to deny the project, that decision would be final unless appealed to the Town Council.

Commissioner Frymier asked how frequently precise plan amendments are requested and what the Town's view on the matter is.

Mr. Anderson stated that each planned development, or "PD", is unique, some having been amended numerous times and some never. He said requests are primarily for building envelope amendments as often times, what was foreseen in the original development when the property

was raw land no longer makes sense once some or all of the homes are built. He encouraged the Commission to consider each precise plan amendment request as a unique situation tailored to that property and planned development.

Chair Kunzweiler opened the public hearing.

John Swain, applicant, referred to aerial views of the project site and surrounding area. He stated that all options within the current building envelope were explored, and the other options were found to create greater impacts on surrounding homes and the site itself. A letter and information packet was mailed to all neighbors on Gilmartin Drive and Mount Tiburon Road and the single response received was positive. He stressed that the application requests no net gain in terms of the building envelope and requested the Commission's support of the proposal.

Scott Lewis, landscape architect, explained that the portion of the building envelope proposed for exchange is fairly steep and would require significant grading to accommodate a pool and spa area. He reviewed existing landscaping, detailed the proposed pool site relative to neighboring homes and their views and concluded that, with additional screening, the proposed envelope area would not be visible from Gilmartin Drive, neighboring properties, or the Tiburon Ridge Trail. If located within the current envelope, the project would affect neighbors in three directions.

Public Comments:

Jim O'Dorisio, Mount Tiburon Road, said that the applicant's property is visible from his backyard. He said that the informational packet was unclear and he requested specific information on the secondary envelope's proximity to the property line. He noted that one or more trees have been lost since the aerial photos on display were taken, and voiced concern for his privacy with such an active use in close proximity to his home. He requested that the applicant incorporate as much additional screening as possible

Mr. Lewis responded there is considerable room [he estimated at least 200 feet] between the proposed envelope and Mr. O'Dorisio's property. The current proposal calls for planting native shrubs along the existing six foot fence at the property line, and he suggested that Mr. O'Dorisio contact the owners to address any specific points of concern. He said he anticipated addressing these kinds of specifics through the Design Review process, but assured the Commission that the applicant is prepared to be flexible.

Chair Kunzweiler closed the public hearing.

Commissioner Corcoran said he visited the site and generally dislikes the idea of building near open space and particularly along the Ridge Trail. However, this particular situation and application appear to be a reasonable fit. He appreciated that the amended envelope allows good space between neighbors and would eliminate the need for a great deal of additional grading. He said he would prefer, in fairness to future applicants, that the envelope not extend right up to the property line.

Commissioner O'Donnell concurred. He said he visited the site this afternoon and believes the proposed location to be the logical site for a pool. He also said that the eastern portion of the existing envelope, which the applicant would offer in exchange, seems best suited to remain

undeveloped. He said he believed any privacy issues with Mr. Odorisio could be easily resolved and supported the request.

Vice-Chair Fraser said he visited the site and understands the challenges presented by the existing building envelope. He said he is very familiar with the trails in that area and is challenged by the request to build up to the property line. He inquired about typical side yard setbacks for the area.

Mr. Anderson explained that the area is primarily planned developments with no standardized side yard setbacks. The setbacks vary with the building envelope for the particular lot.

Vice-Chair Fraser encouraged the Commission to recommend that the Design Review Board implement a minimal setback. He also advised that any necessary screening should be established on the applicant's property as opposed to open space and that open space should be allowed to maintain its natural topography. While he would request this setback, he has no issue with the proposal or the exchange of building envelope areas.

Mr. Anderson stated that proposed envelope does, in part, extend to the property line and that the site improvement plan indicates a pool that extends to within nine feet of the property line. He noted that the remaining nine foot setback area is planned hardscape, which does not require a building envelope.

Commissioner Frymier commended the applicant on a beautiful project which she fully supported. She concurred with her fellow Commissioners regarding encroachment on open space, said the secondary building envelope does not allow for any structures but noted that the applicant's proposal includes a pool equipment room situated right at the property line. She requested clarification on that, stated that any kind of structure in that location makes her very uncomfortable, and recommended more definitive language in the resolution.

Chair Kunzweiler said that the pool within the original envelope would be much less desirable for development in terms of view impacts. He echoed the Commission's comments regarding a setback sizable enough to allow for suitable screening. The Tiburon Ridge Trail is one of the area's primary trails and it is crucial that steps are taken to ensure proper screening. He requested specifications on the pool equipment structure and also asked if it would be more appropriate to specify a setback as part of the resolution, or to shift the building envelope back.

Mr. Anderson could not confirm building specifications for the pool equipment, but advised that by way of the resolution, the applicant would be limited to improvements three feet or less in height, except for fences or walls. He advised that, as currently proposed, the project would install hardscape right up to the property line, with very little room to plant anything more significant than vines. He suggested that it would make better sense to move the entire building envelope back from the property line and direct the Design Review Board to ensure that adequate screening is provided.

Mr. Lewis explained that the current proposal places the secondary envelope 18 inches away from the property line to allow enough room for an 8 gallon plant. He suggested that a total setback width of 3 feet should allow enough depth for adequate screening. He explained that the intent is to bury the pool equipment structure below the deck, where it would not be visible from off-site.

Chair Kunzweiler recommended an amendment to the draft resolution that places the secondary envelope back an additional 18” from the property line [for a total setback of three feet] and extends the northern portion of the envelope a comparable area.

Mr. Anderson proposed the following language to be added to the end of Condition 1 of the draft Resolution: “as modified to establish a 3 foot setback from the eastern property line.”

ACTION: Moved and seconded (O’Donnell/Fraser) to adopt the Resolution, as amended. Vote: 5-0.

3. REVIEW OF COMPREHENSIVE REFORMATTING AND TEXT AMENDMENTS TO THE TIBURON ZONING ORDINANCE; FILE #MCA 2008-09 [DW] (Continued from September 23, 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 Commission reviewed the remainder of Article V and a portion of Article VI at the September 9, 2009 meeting. The public hearing was continued, with staff directed to prepare summaries of the remainder of Article VI and Articles VII, VIII & IX for the September 23 Planning Commission meeting. At that meeting, the hearing was continued without discussion to the October 14, 2009 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 VI

Section 16-64.030 - Notice of Hearing

Commissioner O’Donnell asked if the Government Code specifies a distance in which notification must be given. Mr. Anderson stated the Code specifies a 300 foot noticing radius around the subject property.

Commissioner O’Donnell questioned the use of, “This may affect your property values” on the front of the Town’s mailed hearing notices. He suggested that if the information were posed in a more factual, rather than alarming way, the matter may remain more collegial.

Mr. Anderson said that the specific language on the notices can vary. He explained that the practice originated when the Town began using single tri-fold pieces of paper, rather than formal sealed envelopes, as a cost-saving measure. He said residents complained that the tri-fold notice was often mistaken for junk mail and discarded, so staff developed this wording to attract attention to its content.

Chair Kunzweiler agreed that the wording can be interpreted as alarming, but noted that he does open these items because the wording grabs his attention.

Section 16-64.060 - Notice of Decision

Referring to Subsection A, Commissioner O'Donnell suggested adding language that would also allow email notification to be used in addition to or in place of first class mail.

Chair Kunzweiler argued that some people are adamantly opposed to email.

Mr. Anderson explained that certain official decisions are required to be sent in a specific manner. He offered to look into the legal requirements of notification of decisions.

Chair Kunzweiler said that communication must go to the place of residence and an email address is not an expression of that. Vice-Chair Fraser said he could support a parallel path of first class mail and email notification.

Commissioner Corcoran concurred with Commissioner O'Donnell that it would not hurt to create some flexibility in the Town's notification process.

Chair Kunzweiler said that government communication traditionally comes by mail but that he could support additional email notification.

Commissioner Corcoran noted that court decisions are delivered via the court's website. He questioned whether mail notification is even required, as long as a method of obtaining the information is clearly provided.

Mr. Anderson said he has no objection to an "and/or" clause for Design Review notifications, but that the Town will continue its practice of using first class mail. He noted that most applications now contain a space for email addresses, but many applicants choose not to supply it as the information then becomes a matter of public record.

Section 16-64.070 - Permanent Records of Hearings

Commissioner O'Donnell asked and Mr. Anderson confirmed that stenographic records of hearings are occasionally used. Mr. Anderson noted that they are typically reserved for highly controversial applications.

Referring to Subsection 2, Chair Kunzweiler asked what would be considered the official meeting record if more than one record existed. Mr. Anderson explained that, in some cases, the acting body and Clerk have accepted the stenographic copy as the permanent record.

Section 16-64.080 - Indemnification

Commissioner Frymier noted discrepancies between the language of the ordinance and the staff report. She asked if the Commission (or other acting body) could not be liable for some of the same things in the event that an application is denied.

Commissioner Corcoran explained that while this particular section refers only to instances of approval, there is an additional indemnification section which addresses applicants.

Mr. Anderson confirmed and explained that when an applicant signs their application, they are also signing an indemnification of the Town. He said that the draft section [16-64.080] of the ordinance simply allows the review authority to apply a further indemnification of the Town as a condition of approval.

Chair Kunzweiler asked with respect to the indemnification statement on the application form if there is a similar need for applications that are denied by the Town. Mr. Anderson said “no”, as the applicant has not been authorized to perform any work because the application was denied.

Commissioner Corcoran recommended that the section include language authorizing the Town to require the applicant to indemnify the Town’s Planning Commissioners and Design review Board members as well.

Commissioner O’Donnell referred to Section 16-50.030, Subsection 3. The Commission voiced support for amending the language in that section to state that the Town shall be indemnified against any challenge arising from the *application*, rather than the application’s approval.

Mr. Anderson explained that when filing an application, the ordinance requires an applicant to defend the Town against third parties attempting to sue the Town over its approval. An applicant cannot be required to hold the Town harmless on the denial of his permit application, as the applicant is entitled to challenge that denial in court.

Commissioner Corcoran said that the term “application” should be broad enough to cover all circumstances. He said that the Town could not contract around anyone’s rights and that anyone entitled to bring a lawsuit would still be able to do so.

Chair Kunzweiler requested that Mr. Anderson confer with the Town Attorney for clarification.

Commissioner Frymier asked, and Mr. Anderson confirmed, that as agents of the Town, Design Review Board and Planning Commission members would be defended by the Town against any suit arising from performance of their duties as assigned, likely excepting criminal behavior.

Section 16.68.030 - Prezoning and Annexation

Referring to Subsection B, Commissioner Corcoran asked why Planned Development zoning was established as the default prezoning.

Mr. Anderson explained that this section is a safety valve measure, designed to automatically prezone any annexed property which the Town has not prezoned into the zone that offers the Town the most control. He said that annexation of territory without prior prezoning has not occurred in decades, and that the process is controlled such that it is almost unimaginable that such an annexation could occur. Nevertheless, this subsection provides the Town with the best zoning protection in the event that it ever does occur.

ARTICLE VII

Mr. Anderson noted that much of Article VII will likely be rewritten when the new Housing Element is adopted. He explained that this chapter enacts the Housing Element’s policies regarding inclusionary housing, and those are likely to change with the new element.

Vice-Chair Fraser asked about the primary determinants of the Town's inclusionary housing guidelines and standards. Mr. Anderson explained that the primary driver is the regional housing needs determination numbers assigned to the Town by ABAG. In response to a question, Anderson noted that these numbers are updated approximately every seven years.

Section 16-70.030 - General Inclusionary Requirements

Vice-Chair Fraser asked who determines that in-lieu fees are an acceptable alternative to affordable housing. He said that, if the Town is ever going to create any more affordable housing, a stronger position on the matter will be necessary.

Mr. Anderson said that it is ultimately a policy decision for the Town Council and Planning Commission to make.

Vice-Chair Fraser said that the Town doesn't have a track record of affordable housing.

Commissioner O'Donnell disagreed, stating he thought there was quite a lot of affordable housing in town.

Commissioner Corcoran said that affordable housing in particular is a much needed and clear benefit to the community, but people rarely demand that it be done. He suggested that the Commission determine which parcels in Town are best suited for on-site affordable housing and remove the potential for in lieu fees for those parcels.

Mr. Anderson supported the topic for a policy discussion by the Planning Commission. However, for purposes of reviewing this zoning ordinance section, he said the decision to accept affordable housing in-lieu fees has already been made in the General Plan and this section merely implements the Housing Element policies and standards.

Vice-Chair Fraser asked if the Commission could agendize a discussion on the matter. Mr. Anderson confirmed, but recommended that Commissioners carefully read the Housing Element before doing so. Chair Kunzweiler concurred, noting that the General Plan carefully addresses the issue.

ARTICLE VIII

Section 16-80.030 - Time for Filing Application

Referring to Subsection C, Commissioner Corcoran requested clarification.

Mr. Anderson explained that once a decision is rendered, an applicant has 30 days to submit supporting information for an economic exception request.

Chair Kunzweiler and Commissioner O'Donnell said they understood the section to state that the applicant has 30 days following an appeal.

Mr. Anderson clarified, stating that this section pertains only to decisions of lower bodies and requires applicants to file a request for economic exception in conjunction with the request for an appeal.

Commissioner Corcoran thought the existing language could lead to misunderstanding on when the 30 day period begins. He provided several suggestions, and the Commission agreed that the words “being appealed” could be deleted.

Section 16-80.040 - Required Information

Referring to Subsection 9, Commissioner Corcoran recommended that a time limit be imposed on how far back an offer to purchase was made. The Commission agreed to a limit of five years.

ARTICLE IX

Section 16-90.060 – Verification

Commissioner O’Donnell asked if the Town has determined any policy regarding the use of green raters versus building inspectors.

Mr. Anderson explained that the Town’s building inspectors are not certified green raters, and third party green raters are relied upon.

Commissioner O’Donnell requested clarification on the use of substitute materials, stating that it seemed a bit nebulous.

Mr. Anderson explained that this section addresses after-the-fact substitutions which, if within reason, would be allowed by the Building Official.

Section 16-90.070 - Cost of Verification

Vice-Chair Fraser requested information on the range of costs for obtaining a green rater inspection.

Mr. Anderson said that it varies based on project complexity. He could not confirm, but said he has heard, that costs range between \$1,000 and \$2,000. He explained that the Town has not had enough applications since this program was initiated to offer any real data on Town projects. He said the sole home being built subject to the green ordinance was using LEED standards, which are much tougher than green points.

Commissioner O’Donnell argued that the cost lies more between \$4,000 and \$5,000, partly due to numerous iterations of the green checklist and field verification costs.

Commissioner Corcoran advised against looking at these costs in a vacuum and noted that green projects conserve valuable resources and create many other cost saving advantages for applicants.

Commissioner O’Donnell noted that there is discussion within the county on a system that implements green building requirements through building codes rather than zoning regulations.

Chair Kunzweiler confirmed that approach, although he noted that a checklist would still most likely be used. He said the building industry has taken great leaps forward since these green practices were approved and that builders, who see this as good business and sound building practice, are out ahead of everyone on green construction issues.

ACTION: Moved and seconded (O'Donnell/Frymier) to continue the hearing on the Zoning Ordinance amendments and reformatting to October 28, 2009. Vote: 5-0.

MINUTES:

4. PLANNING COMMISSION MINUTES – Regular Meeting of September 23, 2009

Vice-Chair Fraser requested the following amendments to the minutes:

- Page 6, 1st paragraph: "...that the assumption of the high end **use** of County zoning density for Alternative 2 is ~~unfair~~ **unrealistic**..... The project should **also** be designed to protect open space."
- Page 6, 1st full paragraph: "Vice Chair Fraser requested more depth and research on possible mitigations. He noted that ~~certain~~ **miscellaneous site** issues with respect to slope, grading, and ~~land improvements~~ **slides** are left up to the individual...He disagreed with the DEIR findings which determined ~~open space~~ **land use** issues, as they relate to the General Plan, ~~to be~~ **were** mitigated to less than significant levels. He said the DEIR is flawed and fails to identify appropriate means **and mitigation measures** for developing a property...He disagreed with the **DEIR** findings regarding consistency with the General Plan **in both land use and open space issues**."

Chair Kunzweiler requested that the minutes be reviewed to ensure appropriate usage of EIR and DEIR and provided the following amendment:

- Page 6, last paragraph: "He acknowledged that the Town has strict landslide management guidelines but said that they are relevant to the impact in and around ~~those landslides~~ **proposed houses** and only require remediation to the extent that is dictated by structure placement."

ACTION: Motion and second (Corcoran/Frymier) to approve the minutes of September 23, 2009, as amended. Vote: 4-0-1 (O'Donnell abstained).

ADJOURNMENT:

The Planning Commission adjourned the meeting at 9:25 p.m.

JOHN KUNZWEILER, CHAIRMAN

ATTEST:

SCOTT ANDERSON, SECRETARY