



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

Action and Approved Minutes - Regular Meeting
Tiburon Planning Commission
February 9, 2011– 7:30 PM

ACTION MINUTES TIBURON PLANNING COMMISSION

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

Present: Chairman Frymier, Vice Chair Corcoran, Commissioner Doyle, Commissioner Kunzweiler, Commissioner Tollini

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 HEARINGS

1. 700 TIBURON BOULEVARD: ANNUAL REVIEW OF A CONDITIONAL USE PERMIT TO EXPAND A PRIVATE RECREATIONAL FACILITY (BELVEDERE TENNIS CLUB); FILE #10503; Assessor's Parcel No. 055-201-36 [DW] *Review Conducted; No future Preview Required*
2. 20 VISTA TIBURON DRIVE: APPEAL OF DETERMINATION OF INCOMPLETENESS FOR A TREE PERMIT TO REMOVE EIGHTEEN (18) EUCALPYTUS TREES FROM COMMON OPEN SPACE PROPERTY; Vista Tiburon Precise Development Plan (Planned Development #12); Vista Tiburon Homeowners Association, Owners and Appellants; Assessor Parcel No. 038-450-24 [DW] *Appeal Denied 5-0*

ADJOURNMENT *8:25 PM*

PLANNING COMMISSION
APPROVED MINUTES NO. 1006
February 9, 2011
Regular Meeting
Town of Tiburon Council Chambers
1505 Tiburon Boulevard, Tiburon, California

CALL TO ORDER AND ROLL CALL:

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

Present: Chair Frymier, Commissioners Corcoran, Doyle, Kunzweiler, and Tollini

Absent: None

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

ORAL COMMUNICATIONS: None

COMMISSION AND STAFF BRIEFING:

The Planning Manager noted Commissioner Kunzweiler would be absent from the next meeting and confirmed the Commission would have quorum for that meeting. He stated that representatives of the Alta Robles project have indicated they are unlikely to be prepared for the March 9, 2011 meeting, and it is likely the hearing will be rescheduled for the April 13, 2011 meeting.

PUBLIC HEARING

1. 700 TIBURON BOULEVARD: ANNUAL REVIEW OF A CONDITIONAL USE PERMIT TO EXPAND A PRIVATE RECREATIONAL FACILITY (BELVEDERE TENNIS CLUB), FILE #10503; Assessor's Parcel No. 055-201-36

Mr. Watrous presented the staff report, stating that in 2006 the Planning Commission approved the Conditional Use Permit (CUP) for the expansion of the Belvedere Tennis Club (BTC). One of the conditions required a review after 6 months, which was conducted in January of 2009. An annual review was conducted February of 2010, at which time the Commission directed that an additional review be held again in one-year time. The BTC was found in substantial compliance with the conditions of the use permit at both reviews however, there was discussion regarding a memo from the Town Engineer recommending several traffic signage improvements. Caltrans has declined to install those improvements that are under its jurisdiction but the club has installed the stop sign and stop bar on the pavement at the parking lot exit. The Police Department has indicated there were no accidents at the driveway intersection in the past three years. He also noted that BTC has requested an amendment to their ABC license to increase the number of times they can serve alcoholic beverages for consumption on the premises. The original ABC license predates the incorporation of the Town and an amendment to the CUP is not required for

the requested change. Staff recommends that the Commission receive public comment and determine whether an additional annual review is appropriate for 2012 or whether future reviews should be warranted only on a complaint basis.

Vice-Chair Corcoran requested clarification on complaint-driven reviews. Mr. Watrous stated that staff attempts to deal with complaints on an administrative basis and encourage the club to reach a resolution with neighbors. If a repeated pattern begins to present, staff would return to the Planning Commission for additional review.

Jay Potter, general manager, said that the club has acted in good faith with regards to neighbors' concerns. He hoped that the Commission would support extending the review period to at least two years.

John Tantum, President, said it had been three years since the completion of construction. He stated that many of the items in the CUP related to construction and the club felt that it was reasonable to forego annual reviews for a complaint driven basis going forward.

Chair Frymier opened the public hearing.

John Hermansky asked that two years be the maximum period between reviews given that the club has requested a full liquor license and that the traffic situation remains unresolved. He said that there is general concern relating to the speed of traffic and continued attempts to make left-hand turns out of the club onto the highway. He suggested that limiting the speed to 35 mph could improve the situation.

Chair Frymier closed the public hearing.

Mr. Tantum confirmed that the club had applied for modification of its liquor license. He said that the original license is 50 years old and very restrictive in terms of the number events allowed each year. He said that the club was simply trying to expand on that to accommodate, not increase, current usage of the club. He said that the ABC request was not part of the CUP and should remain a separate issue.

Commissioner Doyle said that he had heard only positive comments since the club was redone. His experience was that traffic typically slows in this area and he appreciated staff's comment regarding the lack of traffic accidents at the club intersection. He said that he would favor either a two-year review or a complaint-driven review.

Vice-Chair Corcoran said that staff's description of the complaint-driven process seemed more than adequate given the lack of complaints received regarding BTC operations. He said that he was confident that Mr. Hermansky's concerns would be heard through the administrative process.

Commissioner Kunzweiler said that the club's record speaks for itself. He agreed that a complaint-based review should be appropriate; it would minimize the bureaucratic impact on the BTC and he believed the club to be in substantial compliance with the use permit.

Commissioner Tollini concurred. She stated that BTC had been responsive to the concerns of neighbors, as demonstrated by the lack of complaints.

Chair Frymier also concurred. She stated that the club had responded to all comments and suggestions provided by the Commission at its previous reviews and recommended review on a complaint-driven basis only.

ACTION: It was M/S (Kunzweiler/Corcoran) to find the BTC in substantial compliance with the CUP and to eliminate annual review of the CUP in favor of reviews on a complaint-driven basis. Motion carried: 5-0.

2. 20 VISTA TIBURON DIRVE: APPEAL OF DETERMINATION OF INCOMPLETENESS FOR A TREE PERMIT TO REMOVE EIGHTEEN (18) EUCALYPTUS TREES FROM COMMON OPEN SPACE PROPERTY; Vista Tiburon Precise Development Plan (Planned Development #12); Vista Tiburon Homeowners Association, Owners and Appellants; Assessor Parcel No. 038-450-24

Mr. Watrous presented the staff report, stating the Town Council approved the Vista Tiburon Precise Development Plan (PDP) in 1991 for the development of 22 single-family homes on individual lots. The PDP created three lots (Parcels A, B, & C, further indicated as Groves A, B & C) as commonly-owned open space. These parcels were intended to preserve an existing grove of Eucalyptus trees. The preservation of the grove was a key element of the project approval and had been a major issue of contention at the time. The Environmental Impact Report (EIR) prepared for the project specifically recognized the benefits of the grove as wildlife habitat, erosion protection, and a visual separation between neighborhoods. The CC&Rs for the subdivision included an annual maintenance plan for the grove that requires an arborist to conduct annual inspections but does not specify removal of trees as part of this plan.

In 2002, the Homeowners Association filed an application for a tree permit to remove or substantially alter 34 Eucalyptus trees in three groves. Town staff approved removal of only the three trees in Grove C, and denied the alteration or removal of trees in Groves A and B, finding that it would be inconsistent with the intent of the Vista Tiburon Precise Development Plan and might require additional environmental review. The applicants appealed that decision to the Design Review Board and the Board ultimately granted the appeal, approving the tree permit. The decision of the Board was final.

The current application proposes removal of 18 Eucalyptus trees from Grove B only. The application includes an arborist report, which contains recommendations regarding 33 Eucalyptus trees and a reforestation plan. Town staff reviewed the application and determined it was incomplete, explaining to the applicants that to complete the application would require an amendment to the PDP to reflect substantial elimination of Grove B, payment for an independent arborist evaluation of the tree removals and replacement planting plan, and an enhanced replacement planting plan at a 3:1 replacement ratio.

The applicants filed an appeal an appeal to the Commission regarding the determination of incompleteness. Mr. Watrous summarized the grounds for the appeal and staff's rationale for determining that the tree permit application would be inconsistent with the PDP. He recommended that the appeal be denied.

Commissioner Kunzweiler requested clarification on the issue before the Commission. Mr. Watrous said that the real question before the Commission is whether this request should be reviewed as part of a tree permit or is a larger land use issue that should be reviewed as a Precise Development Plan amendment.

Kip Jones, Vista Tiburon Homeowners Association, stated that the trees in question have changed considerably since the original subdivision application was filed nearly 30 years ago and he hoped to discuss the issue in the context of what they are now. He said that while the maintenance plan does not specifically allow removal of trees, it does not preclude it. His interpretation of the plan was that they are to take the appropriate action based on the condition of the trees and arborist's recommendation. He stressed that in 2002, the Design Review Board found the request both consistent with the PDP and exempt from CEQA.

Mr. Jones cited issues with trees falling in Grove B, at which time the Homeowners Association filed its 2002 request. He said that nearly 10 years later they are faced with similar issues and recommendations from the arborist, but staff is now suggesting that a PDP amendment is required. He said that the arborist has found these trees to pose a danger to both people and property and recommended removal of any trees that are found to be both unhealthy and in proximity to targets of value. He noted that Vista Tiburon is comprised of only 22 homeowners and the \$100,000 spent 10 years ago on removal, reforestation, and erosion control was a significant cost. He asked that the Commission address the issue directly, rather than requiring a PDP amendment that would cost even more time and money. He cautioned that the Town would not like to find itself in the position of having not allowed the Homeowners Association to resolve a dangerous situation.

Chair Frymier opened the public hearing.

Dennis Sakai said that he had been fearful since reading the arborist's report. He said that when he purchased his home in 2004 he was told that the Town's primary concern was with the safety of the people and that removal of dangerous trees would not be an issue. He characterized the discussion on what "maintenance" means as a matter of semantics, and stated that in 2002, the Design Review Board defined maintenance as caring for healthy trees and removing dangerous trees as recommended by a qualified arborist. He said that Eucalyptus trees grow and change rapidly, and it was fortunate that the trees have only damaged property to date. He said that the trees present additional threat in the event of an earthquake or 100 year storm, and it was the

Town's responsibility to facilitate mitigation of these potentially dangerous situations.

Eric Young supported and echoed the comments already made. He found that it reasonable to read that "maintenance" means to maintain the safety of the grove and its surrounding residents. He said that the trees need to be addressed regardless of the process and it seemed to be appropriate to do so now.

Chair Frymier closed the public hearing.

Commissioner Doyle said that Eucalyptus trees are notorious for creating conditions that do not support the growth of other plants and trees, and he found the proposed reforestation with oak,

cherry, and plum trees to be odd. He acknowledged the likelihood that certain mature Eucalyptus trees present a safety issue and said that he would support the removal of those that are indeed dangerous, but questioned what happens the trees are removed.

Commissioner Tollini said that she visited the site and, while the grove is beautiful, it is situated close to some homes. While she understood the concerns of residents, she said that this was not the issue before the Commission at this time. She stated that the inclusion of the grove was a material component of the PDP for all the reasons identified and she did not believe removing another 1/3 of the original grove was consistent with maintenance of the grove. She said that the matter would be more appropriately addressed through a PDP amendment that outlines a successful reforestation plan for ongoing maintenance, though she hoped the process would be expedient.

Chair Frymier inquired about the PDP amendment process. Mr. Watrous said that if the project is exempt from CEQA, a PDP amendment could be finalized in a matter of months. He noted that as the original EIR clearly identified the grove and discussed preservation of tree stands, an exemption would be unlikely. He said that the amendment would likely require an initial study, followed by either a negative declaration, EIR amendment, or a subsequent EIR. He noted that the Town also typically requires the applicant to pay for an independent arborist.

Community Development Director Anderson said that it would likely be a significant process. He recounted the history of Vista Tiburon, noting that at the time the Town Council approved the PDP, it identified the grove as the only natural resource of any magnitude on the site and was adamant regarding its preservation. He stated that to reverse that decision, although it may be appropriate after all this time, deserves review by the Town Council rather than the Design Review Board.

Commissioner Tollini asked if removal of the dangerous trees could be expedited in any way, particularly if the independent arborist's report concludes the same as that presented by the applicant. Mr. Watrous said that it would be dependent upon the number of trees proposed for removal. He thought the Town might be amenable to eliminating a few of the more problematic trees, but that anything on the order of half of the existing grove would need to go through the PDP amendment process.

Mr. Anderson explained that CEQA does not exempt the removal of mature scenic trees. He said that a determination would have to be made as to whether removal would present a significant environmental impact, which might in turn require an EIR. He concurred that removal of such a substantial portion of the grove would likely trigger a more complicated process.

Vice-Chair Corcoran said that regardless of any discussion regarding the value and safety of these trees, the PDP is an agreement negotiated by both parties many years ago and cannot be thrown out without the proper procedure. He said that the issue is clearly limited to whether staff's determination of incompleteness is appropriate. He said that it was clear to him that the PDP was, in part, focused on protecting this grove and it cannot be said that preserving only 1/3 of what originally existed there would not be a substantial change. He could support staff's determination but thought that the discussion and aim of removing these trees would change significantly if the applicant were to return for a PDP amendment.

Commissioner Kunzweiler concurred. He said that this level of protection for Eucalyptus trees would never happen today for all the reasons articulated. He stated that nonetheless, the PDP highlighted these groves as a natural resource with value related to views, drainage, shelter, and habitat. He said that times do change and there is a process to facilitate this change, but the correct way to do this is not through the tree permit process. He said that the applicants' request was logical but the alternative proposed was insufficient. He supported a PDP amendment and updated environmental analysis, but also encouraged the Town to address any areas of true danger as soon as possible.

Chair Frymier concurred. She said that the approval granted in 2002 was likely much less of an issue because it did not represent obliteration of the grove in the way that this would.

ACTION: It was M/S (Corcoran/Kunzweiler) to direct staff to return with a resolution denying the appeal for adoption at the next meeting. Motion carried: 5-0.

ADJOURNMENT:

The Planning Commission adjourned the meeting at 8:25 p.m.

CATHY FRYMIER, CHAIR
TIBURON PLANNING COMMISSION

ATTEST:

DANIEL WATROUS, SECRETARY

GENERAL PUBLIC INFORMATION

ASSISTANCE FOR PEOPLE WITH DISABILITIES

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Division Secretary at (415) 435-7390. Notification 48 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting.

AVAILABILITY OF INFORMATION

Copies of all Planning Commission Agendas, Staff Reports, and supporting data are available for viewing and inspection at Town Hall and at the Belvedere-Tiburon Library located adjacent to Town Hall. Agendas and Staff Reports are also available on the Tiburon website (www.ci.tiburon.ca.us) after 5:00 PM on the Friday prior to the regularly scheduled meeting.

Any documents produced by the Town and distributed to a majority of the Planning Commission regarding any item on this agenda, including agenda-related documents produced by the Town after distribution of the agenda packet 72 hours in advance of the Commission meeting, will be available for public inspection at Town Hall, 1505 Tiburon Boulevard, Tiburon, CA 94920.

Upon request, the Town will provide written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings. Please deliver or cause to be delivered a written request (including your name, mailing address, phone number and brief description of the requested materials and preferred alternative format or auxiliary aid or service) at least 5 days before the meeting to the Planning Division Secretary at the above address.

PUBLIC HEARINGS AND DISCUSSION ITEMS

Public Hearings and Discussion Items provide the general public and interested parties an opportunity to give testimony on items typically involving an action or decision of the Commission. If you challenge any decision in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing, or in written correspondence delivered to the Planning Commission at, or prior to, the Public Hearing.

GUIDELINES FOR TIME LIMITS ON PRESENTATIONS AND PUBLIC TESTIMONY

The Planning Commission's general meeting procedure and time limit guidelines are as follows:

- ❖ Planning Division Staff Report – 5 to 10 minutes
- ❖ Planning Commission questions to staff
- ❖ Applicant's presentation – 10 to 20 minutes
- ❖ Public Testimony (depending on the number of speakers) – 3 to 5 minutes for each speaker. Members of the audience may not allocate their testimony time to other speakers.
- ❖ Time limits and procedures may be modified in the reasonable discretion of the Chairman.

Interested members of the public may speak on any item on the agenda

TIMING OF ITEMS ON AGENDA

While the Planning Commission attempts to hear all items in order as stated on the agenda, it reserves the right to take items out of order. No set times are assigned to items appearing on the Planning Commission agenda.

NOTE: ALL PLANNING COMMISSION MEETINGS ARE AUDIO RECORDED

TOWN OF TIBURON LATE MAIL POLICY
(Adopted and Effective 11/7/2007)

The following policy shall be used by the Town Council and its standing boards and commissions, and by staff of the Town of Tiburon, in the identification, distribution and consideration of late mail.

DEFINITION

“Late Mail” is defined as correspondence or other materials that are received by the Town after completion of the written staff report on an agenda item, in such a manner as to preclude such correspondence or other materials from being addressed in or attached to the staff report as an exhibit.

IDENTIFICATION OF LATE MAIL

All late mail received by Town Staff in advance of a meeting shall be marked “Late Mail” and shall be date-stamped or marked with the date of receipt by the Town. Late mail received at a meeting shall be marked as “Received at Meeting” with a date-stamp or handwritten note.

POLICY

For regular meetings of the Town Council and its standing boards and commissions:

- (1) All late mail that is received on an agenda item prior to distribution of the agenda packet to the reviewing authority shall be stamped or marked as “Late Mail” and shall be distributed to the reviewing authority with the agenda packet.
- (2) All late mail received on an agenda item before 5:00 PM on the Monday prior to the meeting shall be date-stamped and marked as “Late Mail” and distributed to the reviewing authority as soon as practicable. Such mail shall be read and considered by the reviewing authority whenever possible. If the Monday, or Monday and Tuesday, prior to the meeting are a Town-recognized holiday, the deadline shall be extended to the following day at Noon.
- (3) Any late mail received on an agenda item after the deadline established in paragraph (2) above shall be date-stamped, marked as “Late Mail” and distributed to the reviewing authority as soon as reasonably possible, but may not be read or considered by the reviewing authority. There should be no expectation of, nor shall the reviewing authority have any obligation to, read or consider any such late mail, and therefore such late mail may not become part of the administrative record for the item before the reviewing authority.

These provisions shall also apply to special and adjourned meetings when sufficient lead time exists to implement these provisions. If sufficient lead time does not exist, the Town Manager shall exercise discretion in establishing a reasonable cut-off time for late mail. For controversial items or at any meeting where a high volume of correspondence is anticipated, Town staff shall have the option to require an earlier late mail deadline, provided that the written public notice for any such item clearly communicates the specifics of the early late mail deadline, and the deadline corresponds appropriately to any earlier availability of the agenda packet.

Pursuant to state law, copies of all late mail shall be available in a timely fashion for public inspection at Tiburon Town Hall, 1505 Tiburon Boulevard, Tiburon.