



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

Action and Approved Minutes - Regular Meeting  
Tiburon Planning Commission  
August 24, 2011 – 7:30 PM

## ACTION MINUTES

### TIBURON PLANNING COMMISSION

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

Present: Chairman Corcoran, Commissioner Doyle, Commissioner Tollini, Commissioner Weller

Absent: Commissioner 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.

#### ELECTION OF VICE CHAIR

#### COMMISSION AND STAFF BRIEFING

Commission and Committee Reports  
Director's Report

#### PUBLIC HEARING

1. CONSIDER RECOMMENDATION TO THE TOWN COUNCIL REGARDING A ZONING ORDINANCE TEXT AMENDMENT THAT WOULD CREATE AN ADDITIONAL EXEMPTION FROM THE CONDITIONAL USE PERMIT REQUIREMENT FOR WIRELESS COMMUNICATION FACILITIES (WCF's):  
Town-Initiated Application, File No. MCA 2011-06 [DW] **Recommended Approval to Town Council (4-0)**
2. 35 HACIENDA DRIVE: CONDITIONAL USE PERMIT TO LEGALIZE AND ESTABLISH AN AGRICULTURAL USE TO KEEP CHICKENS WITHIN A SINGLE-FAMILY RESIDENTIAL-OPEN (RO-1) ZONED PARCEL File No. 11105; Stuart and Gina Peterson, Owners; Thompson Brooks, Inc., Applicant; Assessor's Parcel Number 039-012-04 [LT] **Approved (4-0)**

MINUTES

2. PLANNING COMMISSION MINUTES – Regular Meeting of May 25, 2011  
Approved 3-0-1 (Weller Abstained)

ADJOURNMENT At 8:45 PM

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PLANNING COMMISSION  
APPROVED MINUTES NO. 1011  
August 24, 2011  
Regular Meeting  
Town of Tiburon Council Chambers  
1505 Tiburon Boulevard, Tiburon, California

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**CALL TO ORDER AND ROLL CALL:**

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

**Present:** Chair Corcoran, Commissioners Doyle, Tollini and Weller

**Absent:** Commissioner Kunzweiler

**Staff Present:** Planning Manager Watrous, Town Attorney Danforth, Associate Planner Tyler  
and Minutes Clerk Levison

**ORAL COMMUNICATIONS:** None

**ELECTION OF VICE CHAIR:**

ACTION: It was M/S (Doyle/Webber) to elect Commissioner Tollini as Vice-Chair. Motion carried: 4-0
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**COMMISSION AND STAFF BRIEFING:**

Planning Manager Watrous welcomed Commissioner Weller, who previously served on the Design Review Board. He reported that the Final Environmental Impact Report (FEIR) for the Library Expansion project would come before the Commission on September 14, 2011.

Vice-Chair Tollini asked if story poles would be erected as part of the FEIR review. Mr. Watrous said that the determination was made that story poles would only be erected as part of the Site Plan and Architectural Review process before the Town Council. He explained that although the Town has not yet adopted a permit streamlining ordinance for this application, it did adopt one in 2007 that may or may not still be valid. Following further discussion with staff, the Commission requested that story poles be installed prior to the September 14 meeting, as the poles would be

helpful for the purposes of reviewing the overall footprint and visual impacts. Mr. Watrous agreed to pass on the request.

## **PUBLIC HEARINGS:**

### **1. CONSIDER RECOMMENDATION TO THE TOWN COUNCIL REGARDING A ZONING ORDINANCE TEXT AMENDMENT THAT WOULD CREATE AN ADDITIONAL EXEMPTION FROM THE CONDITIONAL USE PERMIT REQUIREMENT FOR WIRELESS COMMUNICATION FACILITIES (WCF's): Town-Initiated Application, File No. MCA 2011-06**

Town Attorney Danforth presented the staff report. She stated that at present, most WCF's do require a conditional use permit (CUP) although the Town's Zoning Ordinance does call out five exceptions. She said that earlier this year, the Tiburon Fire Protection District proposed to install a low-wattage antenna on an existing structure on the MMWD Sugarloaf Drive site. She stated that Town staff believes it appropriate to craft a new narrowly tailored exemption that would apply to a low-wattage antenna owned and operated by a public agency and used exclusively for public safety purposes, provided that a lengthy list of criteria are met.

Ms. Danforth referred to the staff report for the current text of the Zoning Ordinance as well as the proposed new Exemption 6 that would allow a facility to qualify for the exemption if it meets the following criteria:

- The antenna must be located in the Public/Quasi-Public zone.
- The facility would be owned and operated by a public agency and used exclusively for public safety purposes.
- The wattage does not exceed 200 watts at full power.
- The antenna must be located on a pre-existing structure.
- The antenna must be a whip-style antenna, not to exceed 25 feet in height.
- The WCF must have a valid FCC license on file with the Town.
- An electrical permit for the installation must be secured from the Town's Building Division.
- The Town's Building Division must approve the antenna's anchoring method.
- The antenna must comply with OET Bulletin 65, or any successor document thereof.

Ms. Danforth noted that residents surrounding the site have raised concerns about the exemption giving rise to antenna farms by somehow allowing future WCF providers to locate their facilities there. Ms. Danforth stressed that the exemption was crafted specifically for the purpose being heard tonight and that current law would not change the status of the site. She stated that any new applicants wishing to locate their facilities on the site and structure would have to make application to the Town for a CUP and would need to obtain permission from the Fire District. She said that this type of CUP exemption was deliberately crafted to limit impacts and provide only a very narrow window for very limited facilities.

Chief Pearce of the Tiburon Fire Protection District directed the Commission's attention to a model of the site and proposed facility.

Chair Corcoran opened the public hearing.

Lynn Fox stated that she lives near the MMWD site and represented the Marinero Homeowners' Association. She provided the Commission with photographs of the MMWD site taken through the existing fence. She asked whether the antenna, once mounted, would extend above the height of the currently installed utility pole.

Chief Pearce stated that the height of the antenna would be 25 feet, positioned slightly below the peak of the 32-foot pole.

Ms. Fox stated her full support for and understanding of the District's intent with the application, but said that the neighborhood has strong concerns that the proposed exemption (or a CUP) would enhance the opportunity for other WCF providers to co-locate facilities at this site. She said the neighborhood was concerned about the health implications related to electromagnetic field (EMF) exposure and was staunchly opposed to any action that could potentially open the door to an antenna farm.

Bob Doherty reiterated Ms. Fox's concerns and reminded the Commission of the MERA litigation from several years prior. He stated his full support for the District's application as well as any safe and proper use of radio signals. However, he cautioned that less scrupulous WCF providers have demonstrated a pattern of multiplying existing antenna sites for commercial use. He asked when the wood pole was installed on the MMWD site, how this relates to the "pre-existing" consideration, and why the decision to do so preceded approval of the antenna.

Chair Corcoran asked and the Town Attorney confirmed that while the District's application is the backdrop for this hearing, the Commission was being asked to address only the proposed exemption to the ordinance.

Chair Corcoran closed the public hearing.

Chief Pearce stated that the District has operated a radio site on the MMWD site since the early 1960s. He said that when MMWD restructured its older wooden tanks, the District was asked to remove the attached antennas. He stated that following completion of the tank work, a new wooden utility pole was installed for relocation of the existing antenna. He said that the proposed antenna would be the final and critical component in the Town's disaster preparedness system and is not a part of the MERA system. He said that the District is very sensitive to EMF and health concerns, and as such, has proposed an extremely low wattage antenna for the site. He also stressed that in addition to a CUP, any future application by another wireless provider would require approval from the District, which he has no intent of providing.

Commissioner Weller asked when MMWD replaced the older wooden tanks. Chief Pearce said that the site had been under construction the last 2 ½ years. He stated that the new utility pole was installed in January 2011, based on the District's existing FCC license and lease with MMWD. He said that the District made every attempt to install the post in an inconspicuous location without compromising the necessary antenna coverage.

Chair Corcoran requested clarification on the installed height of the antenna. Chief Pearce explained that the antenna did not necessarily have to extend 25 feet above the top of the pole.

He said that once installed, the antenna height would be adjusted to achieve the required coverage. He also clarified that the antenna would operate at 10 watts, well below the limit of 200 watts limited by the proposed exemption.

Commissioner Weller requested the Town Attorney's interpretation of "pre-existing structure" in the context of this application. He noted that the support structure was only installed in January and in anticipation of this application, whereas the draft language seemed to imply something with more historical significance. Ms. Danforth said that she meant only to imply that the structure exists now. She noted that the support tower was not erected specifically for this antenna, but rather for the one that had been in place on the water tower for many years. She said that if the support pole had been erected just before submittal of the application, it would not fit within the spirit of the proposed exemption.

Vice-Chair Tollini summarized the public's concern that this exemption would somehow give rise to a freer commercial use of this site than would otherwise exist and requested an opinion from the Town Attorney. Ms. Danforth said that any commercial wireless communication provider or anything approaching the magnitude of MERA would be subject to the CUP requirement, which the Town may choose to approve or not, as well as permission of the property owner. She stressed that nothing in existing law or the proposed exception would relax the criteria used to assess such an application and that while certain provisions in the Town's WCF guidelines encourage co-location, they do not do so in residential neighborhoods.

Chair Corcoran asked if staff considered any more restrictive criteria. Ms. Danforth said that she had full confidence that the Community Development Director, who developed the criteria, was as restrictive as he felt was possible.

Chair Corcoran asked if staff considered imposing any width restriction on the antenna. Mr. Watrous noted that the criteria call for a whip-style antenna, which by nature is very slender. It was his interpretation that this was its own width restriction.

Vice-Chair Tollini said she very much heard and understood the concerns expressed but felt comfortable supporting the proposed exemption given the provisions already in place.

Commissioner Weller concurred, though bifurcated the matter into two distinct issues. With regards to the proposed modification of the Zoning Ordinance, he felt that limiting the exemption to structures owned and operated by public agencies provided the appropriate protection against antenna farms or other commercial uses. Regarding the District's application, he was satisfied with the Town Attorney's position that it would not establish a precedent allowing for uncontrolled expansion of the site for any purposes other than currently proposed. For those reasons, he supported the exemption.

Commissioner Doyle also concurred. He said that the Town Attorney had safeguarded future development of the site while still allowing for a great enhancement of the Town's emergency and disaster preparedness program.

Chair Corcoran said that the Town has done an excellent job with emergency preparedness, a big component of which is quality communication infrastructure for emergency responders. While

he generally favored greater public scrutiny for this sort of application, he felt that staff had expertly tailored the exemption so that it would apply in only the most limited of circumstances.

**ACTION:** It was M/S (Tollini/Weller) to adopt the resolution recommending approval of the amendment to the Town Council. Motion carried: 4-0

**2. 35 HACIENDA DRIVE; FILE NO. 11105; CONDITIONAL USE PERMIT TO LEGALIZE AND ESTABLISH AN AGRICULTURAL USE TO KEEP CHICKENS WITHIN A SINGLE-FAMILY RESIDENTIAL-OPEN (RO-1) ZONED PARCEL; Stuart and Gina Peterson, Owners; Thompson Brooks Inc., Applicant; Assessor's Parcel No. 039-012-04**

Associate Planner Tyler presented the staff report. The applicant is requesting to legalize and establish an agricultural use for the keeping of chickens with a residential zoned property located at 35 Hacienda Drive. Currently the property is improved with a single-family dwelling and an approximately 150 square foot chicken coop. The existing coop is approximately 15 feet wide, 10 feet in depth, and 9 feet in height at its highest point. It is located within the rear yard of the property, adjacent to the property line, and contains 4 chickens. There are currently no roosters inside the coop. A moderate sized chicken run is also located adjacent to the coop. The applicants have indicated that the primary purpose of this agricultural use is to educate and advocate for sustainable living practices.

Ms. Tyler noted that this was the first request that the Town has received to establish an agricultural use for the keeping of chickens in a residential zoning district. She stated that the Commission may grant a CUP for an agricultural use within any residential zone if the purpose of the proposed agricultural use is determined to be properly related to and compatible with the development of the neighborhood or vicinity as a whole. She said that staff had reviewed the proposed agricultural use and found it to be consistent with both the Tiburon General Plan and Zoning Ordinance in that the location of the existing coop and chicken run, combined with the large parcel size and proximity of nearby dwellings, result in a compatible location for this type of agricultural use. She added that there did not appear to be any noise impacts associated with the use on the surrounding residential neighborhood, specifically if roosters are prohibited.

Commissioner Weller asked what approach immediately neighboring communities have taken with this type of application. Ms. Tyler stated that most require a CUP to evaluate whether the proposed location is appropriate to neighboring dwellings, and that most other communities do prohibit roosters.

Chair Corcoran requested clarification on the fees association with this type of application. Ms. Tyler explained that a \$1,540 deposit is due with submittal of a CUP application. Staff charges time and materials against the deposit, with a refund payable for any portion remaining. She estimated actual cost to run several hundred dollars, assuming the item was not contentious. She said that Design Review would likely be conducted at the staff level, requiring a flat \$255 fee. Mr. Watrous clarified that in this instance, Design Review of as-built construction incurs a 100% penalty.

Chair Corcoran opened the public hearing.

Christopher Wand asked that if the Town insists on such large fees for the keeping of chickens, it should do the same for the nuisance associated with noisy dogs. He asked that the Commission not approve the subject application, but instead work toward eliminating the requirement for a CUP for agricultural uses.

Nicole Perullo, Corte Madera, stated her support for the application. She described her experiences raising bees and hens on her property. She said that she is an advocate for urban farming as well as the keeping of bees and hens. She found the \$1,500 deposit required by the Town to be absurd and completely discordant with the concept of sustainability. She urged the Commission to review the Town's current policy and consider eliminating fees and Design Review requirements altogether. She offered to provide staff with some sample guidelines from other jurisdictions for consideration.

Michael Parker provided the Commission with a synopsis of model chicken ordinances from other jurisdictions, most with fees that vary from \$20 to \$40 and allow for keeping a reasonable number of chickens.

Carolina Talbot said that she very much loved the idea of the chicken coop but had concerns about whether or not the presence of chickens would encourage the presence of wild turkey or coyotes.

Brian Hanson said that he had no issue with the proposed use but felt that the coop is positioned rather close to his property line. He displayed a photograph that he said demonstrated that the surrounding fence is 9 feet in height, rather than the reported 6 feet.

Judith Thompson, representing the applicant, shared a photograph of the existing coop structure. She said that she could not truthfully answer Ms. Talbot's concerns but did not believe that either turkeys or coyotes could access the interior of the coop.

Commissioner Doyle asked how long the applicant, who is currently constructing another residence, intends to remain at this location. Ms. Thompson estimated another 1 ½ years.

Chair Corcoran closed the public hearing.

Commissioner Doyle asked how long the CUP requirement has been in place and what prompted the requirement for this in-depth review process. Mr. Watrous said that the CUP requirement dates back at least 20 years and was reinforced in the Zoning Ordinance update several years ago. In terms of fees, he stated that most minor applications such as this do receive a substantial refund of their original deposit.

Commissioner Doyle described his previous experience with owning chickens, which proved to be a wonderful learning experience for his children. His only concern relating to this application was with the coop's proximity to the property line. He also felt the cost to be a bit prohibitive and thought the Town could do more to encourage this sort of educational and sustainable practice in a sensible way.

Mr. Watrous explained that the property line adjacent to the coop is designated as the rear

property line for this lot and that the Zoning Ordinance allows accessory structures less than 12 feet in height to extend up to the rear property line.

Vice-Chair Tollini asked about the process to streamline this procedure. Mr. Watrous said it would require a Zoning Ordinance amendment, typically at the request of the Commission or Town Council. As such, it would require review by the Commission and then approval by the Town Council.

Commissioner Weller said it should be, and was not, clearly stated in either the CUP or the Zoning Ordinance that such a use precludes any commercial activity including the ability to sell chickens, eggs, or manure. Mr. Watrous noted that any commercial use would require a home occupation permit, which would therefore not comply with the conditions of the CUP.

Vice-Chair Tollini said that she visited the site and found the coop to be fairly isolated from neighboring properties. She felt that any issues related to fence height and setbacks would be appropriately addressed through Design Review. She found no issue with the CUP and said she could support the proposed resolution. She also stated support for a more streamlined and less expensive process for single families to keep chickens for sustainable practices.

Chair Corcoran asked that the Town revisit the CUP requirement, although he acknowledged that it would be very difficult to define a set of regulations that would appropriately apply to all properties. He asked that staff examine what other jurisdictions have done in this regard. He also felt the combination of fees and Design Review requirements created an overly burdensome bureaucratic process for something that the Town should instead encourage. Regarding the current proposal, he found the application to be modest and he did not anticipate any significant impacts on the surrounding neighborhood.

After further discussion, it was the consensus of the Commission to include a condition of approval prohibiting any commercial use on this application and to direct Staff to begin a process of amending the Zoning Ordinance to streamline the process of approving agricultural uses in residential zones.

<b>ACTION:</b> It was M/S (Weller/Tollini) to adopt the draft resolution conditionally approving the project, with an additional condition prohibiting commercial use. Motion carried: 4-0
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**MINUTES:**

<b>ACTION:</b> It was M/S (Corcoran/Tollini) to approve the minutes of May 25, 2011, as submitted. Motion carried: 3-0-1 (Weller abstained).
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**ADJOURNMENT:**

The Planning Commission adjourned the meeting at 8:45 p.m.

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JOHN CORCORAN, CHAIRMAN  
Tiburon Planning Commission

ATTEST:

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DANIEL M. WATROUS, SECRETARY