



TOWN OF TIBURON NOTICE OF APPEAL

Town of Tiburon
1505 Tiburon Boulevard
Tiburon, CA 94920 Phone 415-435-7373
www.townoftiburon.org

APPELLANT(S)

(Attach additional pages if necessary)

Name: _____

Mailing Address: _____

Telephone: _____ (Work) _____ (Home)

FAX and/or e-mail (optional): _____

ACTION BEING APPEALED

Review Authority Whose Decision is Being Appealed: _____

Date of Action or Decision Being Appealed: _____

Name of Applicant: _____

Type of Application or Decision: _____

GROUNDS FOR APPEAL

(Attach additional pages if necessary)

STAFF USE ONLY BELOW THIS LINE

Last Day to File Appeal: _____ Date Appeal Filed: _____

Fee Paid: _____ Receipt No. _____ Date of Appeal Hearing: _____

NOTE: Current Filing Fee is \$500 initial deposit for applicant and \$300 flat fee for non-applicant

S:\Administration\Forms\Notice of Appeal form revised 3-9-2010.doc

Revised March 2010

RESOLUTION NO. 17-2010

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF TIBURON ADOPTING AN AMENDED POLICY FOR THE PROCESSING, SCHEDULING, RECONSIDERATION, AND STORY POLE REPRESENTATION OF APPEALS, AND SUPERSEDING EXISTING POLICIES

WHEREAS, the Town receives and hears appeals from decisions of various commissions, boards and administrative officials from time to time, and

WHEREAS, the Town Council has adopted various policies over the years with respect to appeal procedures, scheduling, and reconsideration, including Resolutions Nos. 2878 and 3218 and Town Council Policy Nos. 95-01 and 2002-01; and

WHEREAS, the Town Council has determined that it is timely and appropriate to update and consolidate these policies regarding appeals; and

WHEREAS, the Town Council has held a public meeting on this matter on March 17, 2010 and has heard and considered any public testimony and correspondence; and

NOW, THEREFORE, BE IT RESOLVED that Town Council Resolution No. 2878, Town Council Resolution No. 3218, Town Council Policy 95-01, and Town Council Policy 2002-01 are hereby superseded by this Resolution.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Town Council of the Town of Tiburon does hereby adopt the following general policy with respect to processing, scheduling, and reconsideration of appeals and for story pole installation for appeals.

APPEAL PROCEDURE

1. The Municipal Code sets forth instances when persons may appeal a decision by a review authority (e.g. Town official, Design Review Board or Planning Commission) to the Town Council. Any person making such an appeal must file a completed Town of Tiburon Notice of Appeal form, available on the Town's web site and at Town Hall, with the Town Clerk not more than ten (10) calendar days following the date of the decision being appealed. Shorter time frames for filing an appeal apply to certain types of permits. If the final day to appeal occurs on a day when Town Hall is closed for public business, the final day to appeal shall be extended to the next day at which Town Hall is open for public business. Appeals may not be revised or amended in writing after the appeal period filing date has passed.
2. The appellant must submit filing fees with the Notice of Appeal form. Filing fees are set forth in the Town's current adopted Fee Schedule.
 - (a) If the applicant is the appellant, the remainder of the filing fee (if any) will be refunded following completion of the appeal process. Additional staff time or costs to process an applicant's appeal is the financial responsibility of the applicant and will be billed per the Town's current hourly rate schedule and/or at actual cost if outside consulting is required.

- (b) If the appellant is not the applicant, then a fixed amount filing fee is required with no refund or additional billing required.
3. In the appeal form, the appellant shall state specifically either of the following:
- (a) The reasons why the decision is inconsistent with the Tiburon Municipal Code or other applicable regulations; or
 - (b) The appellant's other basis for claiming that the decision was an error or abuse of discretion, including, without limitation, the claim that the decision is not supported by evidence in the record or is otherwise improper.

If the appellant is not the applicant, the Town Council need only consider on appeal issues that that the appellant or other interested party raised prior to the time that the review authority whose decision is being appealed made its decision.

4. The appellant must state all grounds on which the appeal is based in the Notice of Appeal form filed with the Town Clerk. Neither Town staff nor the Town Council need address grounds introduced at a later time that were not raised in the Notice of Appeal form.
5. The procedure for presentation of the appeal at the Town Council meeting is as described below. In cases where the applicant is the appellant, paragraphs (c) and (f) below would not apply.
- (a) Town Staff may make a brief (approximately 10 minute) presentation of the matter and then respond to Town Council questions.
 - (b) Appellant and/or appellant's representative(s) may make a presentation of no more than twenty (20) minutes and then respond to Town Council questions. Appellant may divide up the twenty (20) minutes between various speakers or have only one speaker, provided that the time limit is observed. Time devoted to responding to Town Council questions shall not be included as part of the twenty (20) minute time limit.
 - (c) Applicant and/or applicant's representative(s) may make a presentation of no more than twenty (20) minutes and then respond to Town Council questions. Applicant may divide up the twenty (20) minutes between various speakers or have only one speaker, provided that the time limit is observed. Time devoted to responding to Town Council questions shall not be included as part of the twenty (20) minute time limit.
 - (d) Any interested member of the public may speak on the item for no more than three (3) minutes. A speaker representing multiple persons (e.g., homeowner's association, advocacy group or official organization, etc.) may speak on the item for no more than five (5) minutes, at the discretion of the Mayor.
 - (e) Appellant is entitled to an up to three (3) minute rebuttal, if desired, of any comments previously made at the hearing.
 - (f) Applicant is entitled to an up to three (3) minute rebuttal, if desired, of any comments previously made at the hearing.

7. The testimony portion of the appeal hearing is closed and the Town Council will begin deliberations on the appeal. There will be no more applicant, appellant, or public testimony accepted unless requested by the Town Council.

8. If, following deliberation, the Town Council is prepared to make a decision on the appeal, it will direct Town staff to return with a draft resolution setting forth the decision, and the findings upon which it is based, for consideration at a future Town Council meeting. The

decision of the Town Council is not final until the resolution is adopted. Alternatively, if the Town Council is not prepared to make a decision on the appeal, it may:

- (a) Continue the appeal to a future date;
 - (b) Remand the item to the review authority from which it was appealed for further hearing, review and action, with a specific description of the outstanding and unresolved issues and appropriate direction thereon; or
 - (c) Refer the item to another review authority for its review and recommendations prior to further Town Council consideration.
9. Following a final decision by the Town Council, Town staff will promptly mail a Notice of Decision to the applicant and appellant.

RECONSIDERATION

If, after the Town Council has voted to direct staff to prepare a resolution of decision, significant new information comes to light, which information was previously unknown or could not have been presented at the appeal hearing due to circumstances beyond the parties' control and not due to a lack of diligence, the Town Council may entertain a motion to reconsider its direction to prepare a resolution of decision. Any such motion to reconsider must be made prior to adoption of the resolution of decision, and the motion must be made by a Councilmember who voted on the prevailing side in the vote sought to be reconsidered. Any Councilmember may second the motion. The Town Council may consider and vote on the motion to reconsider at that time, and if the motion carries, the matter shall be placed on a future agenda for further notice and hearing.

SCHEDULING OF APPEALS

1. The Town's policy is to schedule and hear appeals in an expeditious manner. Appeals will generally be heard at the first regular Town Council meeting that is at least fifteen (15) days after close of the appeal period. At the sole discretion of the Town Manager, the Town may schedule the appeal for a subsequent Town Council meeting based on the complexity of the matter, availability of key Town staff members and Councilmembers, agenda availability, or unusual circumstances. Town staff will make reasonable efforts to establish the hearing date for the appeal within three (3) working days of the close of the appeal period. The Town Clerk, in coordination with appropriate Town staff, will promptly advise all parties to the appeal of the selected hearing date.
2. The Town Manager will grant requests for continuances from the date established above in the event that all parties to the appeal agree in writing to a date specific for the continuance and that date is deemed acceptable by the Town Manager.
3. Attendance of parties to an appeal at the hearing is desired, but not required. The Town Council will consider written comments or representation by others in lieu of personal appearance.

STORY POLES

For appeals where story poles were erected for review of the original decision being appealed, a story pole representation shall be required for the Town Council's appeal review process, as follows:

1. A story pole plan showing the poles to be connected, including location and elevations of poles and connections, shall be submitted, reviewed, and accepted as adequate by Planning Division Staff prior to installation of the poles and connections.
2. Critical story poles, as determined by Staff, must be connected by means of ribbons, caution tape, rope or other similar and highly visible materials clearly discernable from a distance of at least three-hundred (300) feet in clear weather, to illustrate the dimensions and configurations of the proposed construction.
3. Story poles and connecting materials must be installed at least ten (10) days prior to the date of the appeal hearing before the Town Council.
4. Failure to install the poles and materials in a timely manner may result in continuance of the public hearing date.
5. Story poles must be removed no later than fourteen (14) days after the date of final decision by the Town Council.

APPLICABILITY

This policy, while primarily written for use by the Town Council, is intended to apply to the extent practicable to Town decision-making bodies, other than the Town Council, which may hear appeals from time to time. Be advised that certain types of appeals, such as appeals of staff-level design review application decisions to the Design Review Board, may have different deadlines for filing of the appeal than the ten (10) calendar days specified above.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Tiburon on March 17, 2010, by the following vote:

AYES: COUNCILMEMBERS: Collins, Fraser, Fredericks & O'Donnell

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: Slavitz

RICHARD COLLINS, MAYOR
TOWN OF TIBURON

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK