

**TOWN COUNCIL  
MINUTES**

**CALL TO ORDER**

Mayor Fredericks called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, October 7, 2009, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

**ROLL CALL**

PRESENT: COUNCILMEMBERS: Berger, Collins, Fredericks, Gram, Slavitz

PRESENT: EX OFFICIO: Town Manager Curran, Town Attorney Danforth, Director of Administrative Services Bigall, Director of Community Development Anderson, Director of Public Works/Town Engineer Nguyen, Chief of Police Cronin, Town Clerk Crane Iacopi

Prior to the regular meeting, the Council met in closed session, beginning at 6:30 p.m., to discuss the following:

**CLOSED SESSION**

**CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**  
(Section 54956.9(a))

*Martha Company v. Town of Tiburon*

**CONFERENCE WITH LEGAL COUNSEL – THREATENED LITIGATION**  
(Section 54956.9(b))

One Case

**INTERVIEW – 7:15 p.m.**  
**(Vacancy on Hilarita-Tiburon Ecumenical Association Board of Directors)**

- Carolyn Grey, 2 Mt. Tiburon Road

**ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY**

Mayor Fredericks said there was nothing to report.

## ORAL COMMUNICATIONS

George Landau said that based on comments at a recent town meeting, it appeared that some residents are unaware of the Town's ban on gas-powered leaf blowers. He also said that information about the Town's tree ordinance should be put into wider circulation. He said these were two main areas of interest to townsfolk.

Fran Wilson agreed with his comments about leaf blowers and recommended said that this information be put into the Town's electronic newsletter.

Helen Lindqvist spoke in opposition to AB 32, the Global Warming Solutions Act. She said that the globe was cooling, not warming, and that carbon dioxide was not a poison pollutant but rather the "gas of life." She said that legislation to limit carbon dioxide omissions was based on faulty science.

Ms. Lindqvist also stated that the Marin Clean Energy initiative was an unnecessary "extra layer of bureaucracy" and contained hidden costs to the Town. She encouraged people to attend the public hearings on whether or not the Town should join the initiative.

## CONSENT CALENDAR

1. **Town Council Minutes** – Approve minutes of September 2, 2009 meeting (Town Clerk Crane Iacopi)
2. **Town Council Minutes** – Approve minutes of September 16, 2009 meeting (Town Clerk Crane Iacopi)
3. **Town Investment Summary** – Accept August 2009 report (Director of Administrative Services Bigall)

MOTION: To adopt Consent Calendar Item Nos. 1-3, as written

Moved: Berger, seconded by Slavitz

Vote: AYES: Unanimous

ABSTAIN: Gram, Item No. 1 (Absent from September 2, 2009 meeting)

## ACTION ITEMS

1. **Proposed Settlement Agreement for *The Martha Company v. Town of Tiburon* Litigation** – Reduced density EIR alternative for Martha Company development application currently pending before the County of Marin (Director of Community Development Anderson, Town Attorney Danforth, Town Manager Curran)

Director of Community Development Anderson presented the staff report and gave a brief overview of the proposed 32-lot site plan and project alternative that was developed with input from the Council and the public at the September 16 meeting. He deferred to Councilmember Gram as to specific changes made to the alternative since that meeting.

Anderson said that the next step in the process was to direct staff to prepare a memorandum of understand (MOU) that would be the basis for a development agreement to be approved by the Board of Supervisors, and which would govern the project into the future, even after annexation.

Councilmember Slavitz asked when the Martha EIR would be available and whether the information from these discussions might cause any delays in its issuance. Director Anderson said that there was no exact timeframe for its release; he said that the current negotiations and the new alternative would probably result in some sort of delay.

Councilmember Gram gave a brief summary of the history of the project for the new people in the audience. Gram said that about 4-6 weeks ago, the owners of the Martha Property had approached the Town to discuss the application being processed by the County, pursuant to a federal judgment. He said that he and Mayor Fredericks, as an ad hoc subcommittee, met with the owners on behalf of the Town. Gram said that after several meetings, including meetings that had taken place since the September 16 Council meeting, a substantial amount of agreement had been reached but there were still some issues to be resolved.

Gram said that one of the things that had changed since the last meeting was an agreement to condense Lots No. 6 & 7 and to move Lot 8 up next to them (he pointed these out on the map). He said that the owners had also agreed to move the house on Lot No. 9 farther down the hill, and had agreed to keep it one story and to locate accessory structures in order to not obstruct the water view. (Gram said that the other homes could go up as high as 30 feet, according to Town guidelines). He said that the owners had also agreed to limit this house size to 5500 square feet.

Councilmember Gram said that these changes would open up the corridor between the two clusters, which had been a concern of the subcommittee and the public.

To address the issue of neighborhood character raised at the September 16 meeting, Gram said that the owners had agreed to limit the house sizes on Lot Nos. 1 through 4 to 4800 square feet, including garage. This would mean, in fact, a house size of 4200 square feet with a 600 square foot garage. He said that this would be entirely in character with the existing Hillhaven neighborhood.

Councilmember Gram said that Lot Nos. 19 & 21 off Paradise Drive had been "pulled down" away from the existing trail. He acknowledged that there were still issues pertaining to trails, especially the ones that lead to Paradise Drive, and that the discussions continued.

Councilmember Gram said that stakes had been placed on the property to depict certain lots and the western line of the corridor between Lot Nos. 17 and 9. He said that it would be helpful if the stakes were marked with lot numbers to make viewing more comprehensible.

Councilmember Gram described the building envelopes and the landscape envelopes of the 32 lots. He said that past the point of the landscape envelope, the lots would contain "private open space" which would be indistinguishable from the public open space.

Finally, Gram said that the owners knew of the Town and the public's desire to purchase some of the lots in sensitive areas of the parcel, and that once a map was finalized, there might be further discussion of this issue. Gram said that it was not possible now due to the difficulty of determining the value of the lots.

In Exhibit C of the staff report, Councilmember Gram said that Paragraph 24, pertaining to the formation of an assessment district to raise money for repairs to Paradise Drive, had been removed. He said that there was no agreement on this issue at this time.

With regard to traffic and construction, Councilmember Gram said that the owners had agreed not to access the site from Ridge Road or Mountain View for such purposes. He said that the Town wanted to have the ability to "sunset" the construction road but that this issue, and the issues of traffic on roads and streets, would have to be addressed more fully in the EIR before any final agreements were reached.

Councilmember Gram said that the Council would continue to hear input from the public at this meeting and hopefully take final action on a development agreement by the next meeting.

Mayor Fredericks opened the public hearing.

- **John Pilsier**, Ridge Road, continued to raise the question of public safety in the event of an emergency and the inability of exiting the Hillhaven area on the existing streets currently. He said this condition would be worsened during construction, and after new homes are built. He asked what would happen if Diviso Street was closed due to construction or power poles falling down. He asked whether the Town was "on the hook" for widening the roads or undergrounding the utilities for the new construction; he said that reducing the number of new homes by 25% would not really reduce traffic in the same proportion. Mr. Pilsier also asked whether the County could incorporate the current issues into the existing EIR process. (Gram said that they could; he noted that the Court had limited the mitigations to health and safety only.)
- **George Landau**, Sugarloaf Drive, asked whether the trail "around the rocks" would be preserved; (Gram said that it would); he asked whether story poles could be erected to have a better visual image of the project, or a photo montage which would show the heights of the homes, the location of the trails, etc. (Councilmember Slavitz encouraged

Landau to go view the “little flags” on the property to help address his desire for visual imagery.) (Mayor Fredericks asked whether story poles were ever erected on the property; Director Anderson said that there were some erected in 2001 to show the actual outline of a few of the proposed houses.)

- **Victor Wong**, Lagoon View Drive, thanked the Council and the Last Chance Committee for their efforts; he asked for phased construction and an orderly process; he asked how construction traffic would be “policed.” He also said that we would like to see an option for purchase explored in order to eliminate the 10 homes in the middle of the property and preserve the open space.
- **John Dracott**, Vistazo West, previous resident of Mount View Drive since 1970, said that there were problems now with construction traffic; he gave an example of a truck blocking his driveway for several hours today; he also said that with truck parking on both sides of the street, drivers were forced to cross the middle line; he questioned the ability of the police to issue tickets now much less than for a large project in the future.
- **Karen Nygren**, expressed concern about: 1) the “tremendous destruction” caused by a “temporary” construction road through the open space and the effect on endangered species and serpentine bunch grass; and whether the road might cause slides or require slide repairs; 2) the destruction of the dense oak forest by the construction of Lot Nos. 22 through 31 and whether there was any mitigation contemplated to replace this forest.
- **Fran Wilson**, Lyford Cove/Old Tiburon, said she hoped the construction road would “come out” and be reduced to a fire road after construction; that the performance bond was a good idea; that traffic impact fees should be charged in an amount that would allow all of the affected roads to be rebuilt after the project.
- **Joanna Kemper**, Last Chance Committee, thanked the Council and the Reed family for their efforts. She said that while it was sad to see the end of the undeveloped land, each progressive change had been a good one. She said she hoped the EIR would thoroughly address traffic impacts and that the traffic should be spread among the affected neighborhoods.
- **Genny Chapman**, 45-year resident in the middle of the Reed property, also expressed worry about the construction road and asked who was responsible if the trucks carrying heavy loads caused slides. (Mayor Fredericks said that generally speaking, if a property owner causes a problem, the property owner has to mitigate it.)
- **David Barker**, Lagoon View, said that the Council had done a “terrific job of threading the needle,” but asked if Lot 8 was visible from Tiburon Boulevard, and if so, please position it so that it would not be; and that the “unofficial” trail to Founder’s Rock be preserved.

- **Jerry Riessen**, said the on-line document (staff report) was very useful; he that the entire length construction road be rehabilitated after construction; said it was hard to tell the acreage when contemplating the public and private open space; asked that alternative access points lots continue to be explored; agreed that story poles and photo simulations would be helpful in the EIR; he asked whether Mt. Tam would still be visible after Lot No. 5 is built and whether the Golden Gate Bridge would be visible once Lot No. 4 is built; he said that story poles could help illustrate the answers to these questions; asked that six-foot tall shrubbery not be planted behind the “clear wire fences” to demark the landscape envelopes (Councilmember Gram said that this point was not negotiable); he said that the maps provided by the Town were not as useful as maps that were drawn to scale and said he would like maps to figure out distances; he said he hoped that the assessment district was somehow agreed to in order to maintain Paradise Drive; that he understood that the County was doing a full EIR (not just limited to health and safety); that he and others attended the Town’s General Plan hearings in order to influence the future development of the Martha property and he asked that the EIR at least reference Tiburon’s General Plan (“Tiburon 2020”).
- **John Dracott**, Vistazo West, asked how the neighborhood roads would be categorized after the project is built (would they be public, would they be for vehicle traffic only, or would they include areas for bicycles, children, dogs, etc; (Mayor Fredericks said that there had to be adequate right-of-way to have a bicycle lane).
- **John Laird**, Harbor Oak Drive, two-month resident, said that he thought Lots 3, 4 & 5 were the most critical to purchase for open space purposes (as opposed to Lots 9-17).
- **George Landau** had more questions about the construction road after the fact. (Vice Mayor Berger said that he thought it would be needed as a fire road; Mayor Fredericks said that it would be in a condition that a person could walk on).
- **Joanna Kemper** asked how much longer the Council would accept comments. (Mayor Fredericks said the hope was to approve a final agreement at the next Council meeting.)
- **Jeannie Tymstra**, asked if in the current agreement all construction traffic would come off Paradise Drive. (Councilmember Gram responded that it was proposed that way under both plans but reiterated that it was important to get the traffic studies and to keep all options open.) Mrs. Tymstra said that as she and her husband neared retirement, they were looking forward to enjoying their home (without a lot of construction traffic).

Mayor Fredericks closed the public hearing and asked for Council comment.

Vice Mayor Berger commented that the 100-foot wide expansion (by consolidating and repositioning some of the lots) to the open space corridor was a real improvement (to avoid a constricted feeling when accessing the open space).

Berger said that he was concerned about the landscaping on certain lots directly above Paradise Drive, specifically Lots 18, 21 and 27, and asked if there was a way to require property line setbacks of about 20 feet for the landscape envelopes and limit the setback areas to “naturalistic” vegetation, which would be more compatible with the existing look of the area.

Berger said that it would be a mistake to dictate a particular architectural style in this area (i.e. “Craftsman-inspired style”) and said there were many other options and innovations such as planted green roofs that were energy efficient and could add camouflage. He thought the Design Guidelines should not limit the project to pitched roofs only.

Councilmember Slavitz agreed with these comments and applauded the tremendous work of the subcommittee and staff, as well as the comments from the public. He said that he, too, wished there were fewer lots on the property but said that it seemed at this point to be a “win-win” situation. He said that he did not like the idea of a construction road but said that it was important to wait for the traffic studies to determine the final outcome. He said that while “serial” construction seemed like a good idea, 10 years of construction was too long. He also encouraged everyone to walk the property with a map to look at the fence line markers. He said that he was pleasantly surprised at how much open space was actually being preserved as a result of the “clustering” and other negotiated points.

Slavitz said that an existing trail from Lot 1 to the St. Hilary Open Space Preserve should be preserved in some form ; he said that the road assessment district was a good idea, as well.

Slavitz encouraged everyone to continue to stay involved with the project.

Councilmember Collins thanked the subcommittee for a much improved plan that included smaller houses, smaller lots near Hillhaven, and no lots on the primary ridge.

Collins said that “we all care about the same things” like roads and construction traffic. He said it might be helpful to issue notices of “substantial completion” rather than waiting for Certificates of Occupancy in order to mitigate traffic. But he said that CEQA (the EIR) would address the traffic issues in more detail, along with the safety concerns relating to whether fire trucks could gain access to the area, and other things. Collins said that he liked the idea of providing acreage calculations and story poles.

Mayor Fredericks said that when the idea of a construction road came up, it seemed like a good idea that would avoid the Diviso/Solano bottlenecks and provide an “escape hatch” for Hillhaven. But she, too, said it was important to get the facts and that the EIR would provide them in its traffic studies of this area and Paradise Drive.

Mayor Fredericks thanked the Council and the community for their input.

MOTION: To direct staff to prepare a Memorandum of Understanding incorporating the Council's comments for adoption at the next meeting.  
Moved: Berger, seconded by Slavitz  
Vote: AYES: Unanimous

**2. Purchase of Tax and Revenue Anticipation Note for Investment Purposes – Recommendation to Purchase 2009 Tax and Revenue Anticipation Note from the Town of Fairfax, California (Director of Administrative Services Bigall)**

Director of Administrative Services Bigall gave the report which recommended that the Town Council approve the purchase of a \$500,000 Town of Fairfax 2009 Tax and Revenue Anticipation note (TRAN).

Bigall said that the Town of Tiburon currently invests \$20 million in idle funds with the State of California Local Agency Investment Fund (LAIF) and in Certificates of Deposit. Both investments are currently paying less than 1% per annum, according to Bigall, while the proposed note would pay 4% per annum. Bigall said that the Town's Investment Policy focused on safety, liquidity and yield and that the proposed purchase of the note met these criteria.

The Director said that Fairfax normally pools with other California agencies through the California Community TRANs program to sell its notes. However, investor demand for the 2009 TRANs was extremely limited this year, and the pool was not successful in finding investors for the transaction. The Town of Fairfax then approached the Town of Tiburon to determine whether Tiburon would be interested in private placement for the purchase of their note. She said that the Town's Finance subcommittee had met to discuss these issues and recommended the purchase.

Bigall said that the Town of Fairfax had a AA Standard & Poor rating which was higher than the Town of Tiburon's investment policy requirements. She also stated that Fairfax property values (on which the note is based) continued to rise. She said that the \$500,000 note would be repaid directly from the County of Marin (Tax Assessor's office) on or before December 22 through an escrow account with the Bank of America. She said that Fairfax had agreed to reimburse the Town for its staff time up to \$750 (current figure).

Bigall said that there was no financial cost to the Town (other than staff time above) to effect the transaction, and that the Town would gain \$2,700 in interest for the two months. She said that a second similar transaction in January 2010 would be brought back to Council if this was successful.

Mayor Fredericks asked whether the loan was from taxes would be repaid from local property taxes rather than from the State of California. Ms. Bigall affirmed this statement.

The Mayor asked why the transaction would be repeated. Ms. Bigall said that instead of a \$1million note purchase, the Finance subcommittee had recommended splitting the purchase into two notes of \$500,000, to further minimize the risk to the Town of Tiburon.

Councilmember Slavitz, member of the Finance subcommittee, said the transaction posed little risk, earned the Town a better interest rate, and was a way to help out another community in Marin County.

Mark Pressman, bond advisor for the Town of Fairfax, answered questions from the Council. He said the pooled TRANs represented hundreds of millions of dollars but that the short-term rates were well below 1%. He said that due to the current economy and state budget crisis, many investors did not trust the State and were not willing to purchase these notes. He said this left many communities "high and dry."

Pressman said that TRANs were used by many communities to even out their cash flow. He said that arbitrage was restricted to one year by federal regulations. He commended the two towns for coming up with a creative solution to this problem; he also commended the Town of Tiburon for having accumulated substantial reserves which resulted in a solid credit rating..

Councilmember Collins asked about the risks.

Pressman said that in this case, they were significantly reduced by the fact that the anticipated receipts were significantly greater than the amount of the note; that the County will forward the entire amount of the receipts; and that the Town is in first position to be paid and would receive principal and interest.

Collins asked what would happen in the worst case scenario of the Town of Fairfax filing for bankruptcy. Mr. Pressman said that Fairfax was not in bad financial shape, like the City of Vallejo.

Collins asked whether Vallejo's bankruptcy had "wiped out" its debt obligations. Pressman said no, that this had not yet been negotiated through the courts.

Councilmember Collins asked whether the Town of Fairfax could get a bank loan instead of selling TRANs. Pressman said that he did not know, but he said that the sale of the TRANs was a good solution for Tiburon to improve its interest rate, and that bifurcating the loan was a good way to mitigate exposure.

Councilmember Gram noted that the Town did not hold a secured interest in this transaction. Pressman said that was so but that the Town of Fairfax would receive double in the amount owed to the Town of Tiburon in tax revenues.

Mayor Fredericks asked for public comment. There was none.

MOTION: To adopt the resolution authorizing the purchase of the TRANS from Fairfax as set forth in the staff report and authorize the Town Manager to sign the note.  
Moved: Slavitz, seconded by Berger  
Vote: AYES: Unanimous

**3. Hilarita-Tiburon Ecumenical Association Board of Directors – Consider appointment to fill Town representative vacancy on Hilarita Board (Town Clerk Crane Iacopi)**

Council said that the applicant, Carolyn Grey, seemed well qualified for the job.

MOTION: To appoint Carolyn Grey as the Town's representative to the H-TEA Board of Directors  
Moved: Slavitz, seconded by Gram  
Vote: AYES: Unanimous

**PUBLIC HEARINGS**

**1. Mill Valley Refuse Service Rate Increase – Consider request for 3.1% rate increase effective July 1, 2009 (Director of Administrative Services Bigall)**

Director of Administrative Services Bigall gave the report. She said that the company had not requested an increase in 2008 and that the most recent rate review, conducted in late August, found support for a rate increase for Tiburon of 13.1%. She said that the 3.1% rate increase requested by Mill Valley Refuse Service (MVRS) was consistent with its contract and the two-year increase in the Consumer Price Index. She said that this amount represented a \$6,000 increase to the franchise fees received by the Town of Tiburon.

Because it was late in the year, Bigall said that the increase would be spread over a nine-month period, for an effective rate of 4.1%, which would be adjusted downward later.

Vice Mayor Berger asked whether this could be "smoothed out" so that people did not see such a spike in fees on their garbage bills. Town Manager Curran said that MVRS would most likely come back to the Council to seek another rate increase for the upcoming fiscal year, based on the rate report. She said that this might make the suggestion moot.

Councilmember Slavitz asked whether the rates had been accelerated like this before. MVRS President Dave Biggio said that this was the first time the rate study had come out so late in the year; usually, he said, they came out before the July 1 contract date.

Mayor Fredericks asked where the Town stood on the question of the "evergreen clause" in the MVRS contract.

Director Bigall said that the Town had “pulled the trigger” on the clause and that the current contract was set to expire at the end of 2012. She said that staff was preparing a new contract for Council’s review.

Vice Mayor Berger complimented Mr. Biggio on the friendliness of the men on the trucks and their interaction with members of the community.

MOTION: To approve the 21<sup>st</sup> Amendment to the MVRs Franchise Agreement and authorize the Town Manager to execute the agreement.

Moved: Berger, seconded by Slavitz

Vote: AYES: Unanimous

### **TOWN COUNCIL REPORTS**

None.

### **TOWN MANAGER’S REPORT**


Town Manager Curran noted that the Reed Ranch and Ridge Road overlays would commence on October 19 and were estimated to wrap up on November 6. She said that a notice of the work had been mailed to the community. She noted that this project was funded with federal stimulus dollars.

### **WEEKLY DIGESTS**

- Town Council Weekly Digest – September 18, 2009
- Town Council Weekly Digest – September 25, 2009
- Town Council Weekly Digest – October 2, 2009

### **ADJOURNMENT**

There being no further business before the Town Council of the Town of Tiburon, Mayor Fredericks adjourned the meeting in memory of former mayor, George Ellman, who had passed away earlier in the week. The Mayor said that Mr. Ellman was an advocate for SMART, an environmental advocate, and was also a former colleague of hers at UCSF. She adjourned the meeting at 9:35 p.m.

  
ALICE FREDERICKS, MAYOR

ATTEST:

  
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DIANE CRANE IACOPI, TOWN CLERK