

**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, June 17, 2009, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

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

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

Prior to the regular meeting, the Council met in closed session, beginning at 7:00 p.m., to discuss the following:

CLOSED SESSION

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

Bonander v. Town of Tiburon

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

Mayor Fredericks said that there was nothing to report.

ORAL COMMUNICATIONS

George Landau, representing Rotary International, invited everyone to the Classic Car Show on Saturday. He also asked the Council to consider purchasing an electronic sign that could be used for special events to note detours and parking.

Mayor Fredericks thanked Mr. Landau and suggested that he discuss his request with staff.

PRESENTATION

- Update by Marin Energy Authority

Mayor Fredericks noted that the presentation had been continued.

CONSENT CALENDAR

1. **Town Council Minutes** – Adopt minutes of June 3, 2009 meeting (Town Clerk Crane Iacopi)
2. **Commendation for 30 Years of Service** – Approve resolution commending Heidi Bigall for 30 Years of Service to the Town of Tiburon (Town Manager Curran)
3. **Grand Jury Report on Homelessness** – Approve Town response to Grand Jury Report on Homelessness (Town Attorney Danforth)
4. **Pine Terrace Pedestrian Path Improvement Project** – Accept project as complete (Director of Public Works/Town Engineer Nguyen)
5. **Paradise Drive Slope Stabilization Project** – Approve plans and specifications for project to stabilize slope in the vicinity of 2000 Paradise Drive and authorize solicitation of bids (Director of Public Works/Town Engineer Nguyen)
6. **2009 Municipal Election** – Adopt resolutions related to November 3, 2009 Municipal Election (Town Clerk Crane Iacopi)
 - a) Resolution Calling an Election in the Town of Tiburon on November 3, 2009 for the Purpose of Electing Three Councilmembers;
 - b) Resolution Requesting Consolidation of Election Services with County of Marin;
 - c) Resolution establishing Candidate’s Statement Fee

MOTION: To adopt Consent Calendar Item Nos. 1 through 6, as written.

Moved: Berger, seconded by Slavitz

Vote: AYES: Unanimous
ABSENT: Gram
ABSTAIN: Collins, item No. 1 (June 3, 2009 minutes)

PUBLIC HEARINGS

1. **Paradise Drive Rezoning and General Plan Amendment Project** – Consider approval of the rezoning of approximately 85 assessor parcels totaling approximately 230 acres of land located at the southeast end of the Tiburon Peninsula and amendments to the Tiburon General Plan Land Use Map affecting 22 of those assessor parcels; Making error corrections to the General Plan text and maps; Consider adoption of Mitigated Negative

Declaration and Mitigation Monitoring program for the project (Director of Community Development Anderson)

Director Anderson said that in April 2008, the Town received applications from owners of several properties scattered over the southeastern end of the Tiburon Peninsula for rezoning of their properties. He noted that after a public hearing on May 28, 2008, the Planning Commission voted to initiate the rezoning process and established an expanded boundary for the rezoning study area that encompassed approximately 230 acres and 85 parcels.

On May 27, 2009, following the preparation of an environmental review document for the project, Anderson said the Planning Commission held another public hearing and voted unanimously to recommend approval of the rezoning and related general plan amendments to the Town Council.

Anderson said the rezoning study area was a mixture of developed and undeveloped residential lands, and also included tidal parcels and some government-owned parcels.

Director Anderson noted that municipalities could “prezone” at any time and that it was the Town’s practice to prezone developed parcels in ways that would avoid the unnecessary creation of non-conforming uses and respect current County of Marin zoning to the extent possible.

Anderson said that the Town retained Impact Sciences, Inc. to prepare the initial study to assess potential impacts of the project, and the extent to which those impacts were covered by the Tiburon General Plan EIR which was certified in 2005. He said that the comment period ended on May 20. He said the Town received six letters prior to that date and four since the Planning Commission hearing.

Anderson stated that staff had determined that the rezoning would be consistent with the Tiburon General Plan, as amended, by the project.

The Director said there was no direct or immediate fiscal impact to the Town as a result of the rezoning. He noted that the Town and the County continued to work toward creation of a joint agreement for the maintenance of Paradise Drive, but that such an agreement was not assumed as part of the rezoning analysis. He said the primary fiscal impact would be the maintenance of one mile of Paradise Drive. Anderson suggested that the long-term maintenance of this portion of the roadway could be offset by property taxes, impact fees and other sources of revenue, and he stated that the maintenance cost would be well within the financial ability of the Town to assume.

Anderson recommended that the Council adopt the mitigated negative declaration and approve the general plan amendments and rezoning.

Mayor Fredericks opened the public hearing.

Joanna Kemper, Tiburon resident representing the Last Chance Committee, said their group had

reviewed the environmental documents and found them to be in order. She thanked town staff for its work on the project.

Russ Keil, Paradise Drive, shared his thoughts on annexation into the Town. He said his decision was driven by two issues—police and planning. He described what having a personal relationship with local police meant to him and how important it was to be part of the community in this way. He said that County personnel were not as familiar with the area where he lived. He said this fact and the proximity of being able to go to hearings and file applications in town, versus going to San Rafael, were deciding factors for him.

Scott Hochstrasser, representing the Martha Company property owners, said that his clients objected to being “swept into” the rezoning areas. He said they were joined by other property owners, Bluff Pt., Richard Reed and Martha Reed, in this objection.

Hochstrasser said that the application process was initiated by nine property owners representing 45 acres, while his clients represented 130 acres in the rezoning area. He wondered how a democratic process could continue if the area had been expanded 500% over the area included in the initial applications. He asked the Council to reject the initial study and “flawed” CEQA documents. He said the baseline studies were inaccurate and inconsistent with the General Plan.

Genny Chapman, describing herself as one of the nine property owners mentioned by Mr. Hochstrasser, said she had always been a “wannabe” Town of Tiburon person. Ms. Chapman detailed the long history of civic involvement by she and her late husband and urged the Council to approve the rezoning so that she could have an opportunity to finally be “part of the Town.”

Mayor Fredericks closed the public hearing.

Town staff asked for an opportunity to make further comment in response to issues raised in the letters and hearings.

Director of Public Works/Town Engineer Nguyen stated for the record that he had reviewed the cost estimates contained in the initial study for Paradise Drive maintenance and improvements and said that the numbers were accurate and economically feasible for the Town, in his opinion.

Director Nguyen said that the Town currently maintained 32 miles of public streets and that the addition of one more mile was insignificant. He said that the Town could maintain this portion of Paradise Drive as well as it is maintained by the County, if not better.

Town Manager Curran noted the solid financial position of the Town, with \$10 million in unrestricted reserves. She said that while the decision to accept the rezoning was a policy decision to be made by the Council, the Town had the funds necessary to back up the decision, in addition to other fees and revenues that would be generated by any future development. Mayor Fredericks asked whether any of the comments received during the comment period about the Town’s ability to maintain Paradise Drive were meant to describe the entire roadway, as

opposed to the one mile portion.

Director of Community Development Anderson said that he thought some of the comments were based on a remark by Councilmember Gram in a 2002 Town Council meeting where he stated that the Town would “go bankrupt” if it had to maintain the full stretch (all six miles) of Paradise Drive. He said this concern did not apply to the rezoning project, which involved only one mile of roadway.

Director Anderson also disagreed with the assertion made in a letter regarding the environmental document being inadequate for use by LAFCO. He said that LAFCO staff had reviewed the initial study and if they had concerns, they would have made them known. Anderson said that LAFCO staff had indicated the opposite in a conversation with him.

Anderson said that the Town continuously coordinated with the County and with LAFCO and that assertions to the contrary had no merit. He noted that the County did not comment on the project referrals sent by the Town, but suggested that this could be due to the terms of the stipulated judgment it had reached with the Martha Company.

Town Attorney Danforth said that she had reviewed correspondence received from the Martha Company owners and said they were confused as to the action before the Council. She said that there was no specific project resulting from the rezoning, which required more of a program-level review. She said that the Town was looking at the rezoning through the lens of its current General Plan; the rezoning would carry forward the General Plan’s applicable goals, policies and programs, which the Town would implement in connection with specific development projects.

Danforth also disagreed with the allegations of inconsistencies with the General Plan. She said the Town Council was charged with, and was the best party to interpret, its own General Plan. She noted that virtually every member of the Town Council had worked on the General Plan, and that Councilmember Collins was a Planning Commissioner at the time of its adoption.

The Mayor asked whether the Council had any questions.

Councilmember Slavitz asked for comment from staff on the allegation that the EIR didn’t follow the proper baseline analysis.

Elizabeth Purl, Impact Sciences, Inc., primary preparers of the Initial Study, said that the Town had completed its General Plan process fairly recently so that her job was to compare and review the impacts of development with those analyzed in the General Plan EIR. She said that she made the review “impact area by impact area” and found no significant difference and virtually no difference with the General Plan EIR-evaluated impacts.

Vice Mayor Berger said that the project did not “down zone” any of the property owners and, in

fact, allowed perhaps one more unit than the original General Plan.

Director Anderson agreed and said that the Town took “great pains” to make sure that all of the developed parcels were rezoned consistent with the County’s zoning.

Councilmember Collins asked whether an EIR had ever been required for any other annexations into the Town. Director Anderson said that he did not believe so, even for annexations as large as the West Tiburon annexation, which involved hundreds of units and undeveloped property, including Bel Aire Estates and the Highlands property. He added that other large rezoning/annexations, such as Old Landing Road and Cypress Hollow, also did not require an EIR.

Councilmember Slavitz said that while he appreciated the comments of Mr. Keil and Ms. Chapman, he said that annexation was not under consideration tonight, but rather the environmental review and the rezoning. He said that he found the Initial Study to be consistent with the General Plan and that he was prepared to approve the documents.

Vice Mayor Berger concurred with the recommendation. He added that the public comments put a very human face on the subject of annexation by citizens who had been a very important part of the history of the Town.

Councilmember Collins said that in his analysis he looked at that fact that the land was contiguous to the Town, near downtown, and that the police, planning and proximity noted by Mr. Keil worked in favor of the rezoning. He said he had read the Initial Study and found that it adequately supports the mitigated negative declaration and the amendments to the General Plan.

Mayor Fredericks said that she agreed with her fellow Council members and that she was relying on the findings of consistency with the General Plan in voting to approve the recommended actions.

MOTION: To adopt the resolution making CEQA findings for the project.

Moved: Slavitz, seconded by Berger

Vote: AYES: Unanimous

ABSENT: Gram

MOTION: To adopt the resolution adopting the Mitigated Negative Declaration, Mitigation Monitoring Program, and related actions.

Moved: Collins, seconded by Berger

Vote: AYES: Unanimous

ABSENT: Gram

MOTION: To adopt the resolution amending the General Plan.

Moved: Berger, seconded by Collins
Vote: AYES: Unanimous
ABSENT: Gram

MOTION: To ready by title only and waive any further reading of the ordinance rezoning unincorporated territory in the Tiburon Planning Area at the southeastern end of the Tiburon peninsula, and pass first reading by roll call vote.

Moved: Berger, seconded by Slavitz
Vote: AYES: Berger, Collins, Fredericks, Slavitz
ABSENT: Gram

2. **Municipal Budget** – Consider adoption of resolutions pertaining to the FY 2009-10 Municipal Budget (Town Manager Curran & Director of Administrative Services Bigall)
- a) Resolution Adopting a Municipal Budget Plan for the Town of Tiburon and the Tiburon Redevelopment Agency for the Fiscal year ending June 30, 2010;
 - b) Resolution Establishing an Appropriation Limit for Fiscal Year 2009-10 pursuant to Article XIII B. Of the Constitution of the State of California;
 - c) Resolution Repealing Resolution No. 32-2008 and Adopting an Amended Management Recognition and Incentive Compensation Program;
 - d) Resolution Repealing Resolution No. 33-2008 and Adopting an Amended Mid-Management Recognition and Incentive Compensation Program

Director Bigall gave the report, noting that there had been a \$3,000 increase to the Parks Department budget since the first hearing. This would result in a balanced budget with a surplus of \$15,880, according to Bigall.

Bigall said that there would be no increases to salaries or benefits for non-represented staff members in budget for the upcoming fiscal year. She noted that in adopting its management and mid-management compensation resolutions, the Town Council would be agreeing to create a two-tier system for employees hired after July 1, 2009, who would no longer be eligible for health benefits upon retirement.

Bigall said that while the Town was the fiduciary agent for six bond issues, it did not have any indebtedness.

Director Bigall recommended that Council adopt the resolutions pertaining to adoption of the fiscal year 2009-10 municipal budget.

Mayor Fredericks asked how the rumored State take-aways from the Highway & Users Tax would affect the Town.

Director of Public Works/Town Engineer Nguyen said that the \$200,000 received annually by the Town from the gas tax would be offset by the completion of the failed streets program in the coming fiscal year.

Mayor Fredericks asked how the highway taxes were allocated by the Town.

Town Manager Curran said that the revenue went into the Town's capital budget, and that although the Town would be sorry to lose these funds, it was not part of the Town's operating budget.

Curran said that staff was well aware of actions being contemplated in Sacramento in order to balance the State budget and that staff would recommend any necessary follow up actions to the Council.

Mayor Fredericks opened the public hearing. There was no public comment.

Mayor Fredericks closed the public hearing.

Councilmember Collins said that he would like to add his voice to the commendation of Ms. Bigall for her excellent work and for her 30 years of service to the Town of Tiburon.

The Council moved to adopt the following resolutions in one action:

MOTION: To adopt FY 2009-10 Municipal and Redevelopment Agency budget.

Moved: Slavitz, seconded by Berger

Vote: AYES: Unanimous

ABSENT: Gram

MOTION: To adopt FY 2009-10 Municipal Budget.

Moved: Slavitz, seconded by Berger

Vote: AYES: Unanimous

ABSENT: Gram

MOTION: To adopt FY 2009-10 Municipal Budget.

Moved: Slavitz, seconded by Berger

Vote: AYES: Unanimous

ABSENT: Gram

MOTION: To adopt FY 2009-10 Municipal Budget.

Moved: Slavitz, seconded by Berger

Vote: AYES: Unanimous

ABSENT: Gram

- 3. Steps, Lanes & Paths (NTPP) and Safe Routes to School (Del Mar School) Projects –**
Recommendation to approve plans, adopt Mitigated Negative Declaration, and
authorize solicitation for bids pending Caltrans' final approval (Director of Public
Works/Town Engineer Nguyen;
Director of Community Development Anderson)

Assistant Planner Phillips gave a brief report describing the two projects, and said that the grant funding received by the Town in the amount of \$700,000 exceeded the cost of the projects, estimated at \$400,000. Director of Public Works/Town Engineer Nguyen added that the additional funding would go toward environmental review and engineering costs, so the difference was actually closer to \$100,000.

Council asked whether more projects could be added or whether the funding would go back to the Federal Government or the County of Marin.

Director Nguyen said that the project was already scoped so that additional projects could not be added. He said that the Town would “front” the money and would be refunded based on amounts billed.

Councilmember Berger asked whether any consideration could be given to the design elements of the project, for instance, the pipe hand rail in the lanes and paths project. He said that something with a little more “charm” might be more appropriate in this context.

Director Nguyen said that a change order might be written, with input from the Vice Mayor, because bids had not been sought at this juncture.

Mayor Fredericks thanked the Town Engineer for addressing the issues of safety on Raccoon Lane and Jefferson Drive (steps). Vice Mayor Berger agreed that these projects would surely make a difference to the community.

Mayor Fredericks opened the public hearing.

Mr. Linn, Cayford Drive, thanked Mr. Phillips for being so communicative when he sought information about the project. He said that he and his wife were in favor of the proposed project.

Mayor Fredericks closed the public hearing.

Council voted to adopt the following resolutions in one action:

MOTION: To adopt the resolution adopting the Mitigated Negative Declaration and Mitigation Monitoring Program.

Moved: Berger, seconded by Slavitz

Vote: AYES: Unanimous

ABSENT: Gram

MOTION: To adopt the resolution approving the Safe Routes to School Project.

Moved: Berger, seconded by Slavitz

Vote: AYES: Unanimous

ABSENT: Gram

MOTION: To adopt the resolution approving the Non-Motorized Transportation Pilot Program project.

Moved: Berger, seconded by Slavitz

Vote: AYES: Unanimous

ABSENT: Gram

TOWN COUNCIL REPORTS

None.

TOWN MANAGER'S REPORT

None.

WEEKLY DIGESTS

- Town Council Weekly Digest – June 5, 2009
- Town Council Weekly Digest – June 12, 2009

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Fredericks adjourned the meeting at 8:53 p.m.

ALICE FREDERICKS, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK