

**TOWN COUNCIL
MINUTES**

CALL TO ORDER

Mayor Collins called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, July 21, 2010, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

PRESENT: COUNCILMEMBERS: Collins, Fredericks, Fraser, O'Donnell, Slavitz

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

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 – PENDING LITIGATION

Significant exposure to litigation pursuant to Section 45956.9(b): 1 case.

CLOSED SESSION ANNOUNCEMENT, IF ANY

Mayor Collins said that no action was taken in closed session.

ORAL COMMUNICATIONS

None.

CONSENT CALENDAR

Mayor Collins removed Item No. 5 from the Consent Calendar for discussion at the end of the public hearing.

Councilmember O'Donnell said that he had submitted his changes to the July 7 minutes to the Town Clerk via e-mail.

1. **Town Council Minutes** – Adopt Minutes of July 7, 2010 meeting (Town Clerk Crane Iacopi)

2. **Town Investment Summary** – Accept report dated June 30, 2010 (Director of Administrative Services Bigall)
3. **Ned’s Way Joint Recreation Project Streamlining Ordinance** – Adoption of ordinance establishing a streamlined development review procedure for the Belvedere-Tiburon Joint Recreation Committee’s Ned’s Way project and exempting the project from certain Town regulations (Director of Community Development Anderson)
Address: 600 Ned’s Way
AP No. 058-151-27
4. **Support for Proposition 22** – Adopt resolution in support of League of California Cities Ballot Proposition 22, “Local Taxpayers, Public Safety and Public Works Initiative” (Town Clerk Crane Iacopi)
5. **Voting Delegate at League of California Cities Annual Conference** – Appoint voting delegate to represent Town of Tiburon at League of California Cities annual conference (Town Clerk Crane Iacopi)
6. **1490 Vistazo West Appeal** – Adopt resolution granting appeal of Design Review Board decision to approve a request for site plan and architectural review to construct a new single-family dwelling, with variances for reduced side yard setback and excess building height (Planning Manager Watrous)
AP No. 058-223-14
Applicants: Shaddock
Appellants: Bernheim/Straub

MOTION: To approve Consent Calendar Item Nos. 1, 2, 3, 4 and 6, as amended.
 Moved: Slavitz, seconded by Fredericks
 Vote: AYES: Unanimous

PUBLIC HEARINGS

1. **Del Mar Valley 2010 Supplemental Utility Undergrounding Assessment District:** Public Hearing, Talley of Ballots and Decision whether to Form the District (Town Attorney Danforth; Town Engineer Nguyen)
 - a) Project Summary. There will be a brief summary of the project and proposed financing by representatives of the proposed District and Staff.
 - b) Public Hearing. Speakers will have three (3) minutes and will be asked to state their name, address and identify the property they own or represent within the proposed Assessment District.

- c) Submittal of Ballots. The Mayor will ask for the final submittal of ballots to the Town Clerk.
- d) Tabulation of Ballots. The Public Hearing will be closed and the Council will take a short recess to allow the Town Clerk time to open and tabulate the ballots.
- e) Results. Based upon the results of the balloting, the Town Council will then discuss the matter and determine how to proceed. If the Council decides to proceed with the formation of the Assessment District, it will adopt the following resolution:
 - (i) A Resolution of the Town Council of the Town of Tiburon Overruling Protests, Approving Final Engineer's Report, Levying Supplemental Assessments without Modification, Approving and Ordering the Work and Improvements for the Utility Undergrounding Project, and Authorizing and Directing Related Actions with Respect to the Del Mar Valley 2010 Supplemental Utility Undergrounding Assessment District

Town Attorney Danforth gave an overview of the actions taken to date by the Council in her staff report. She recommended that the Council determine the result of the ballot tabulation of the assessed and non-assessed parcels within the district and decide whether or not to proceed with the project. She then turned the presentation over to District Engineer Dennis Klingelhofer of NBS to discuss the Engineer's Report.

Mr. Klingelhofer said that there were a couple of changes to the report, namely, to correct the number of parcels that would receive special benefits on page 5, section 4, from 167 to 164, as well as an update to the property owner information on another parcel.

Klingelhofer said that the special benefits had been spread to all the parcels within the district, and that the project would improve the property aesthetics, safety and service reliability to each parcel in the district.

Mr. Klingelhofer offered answer any questions from the Council. There were none.

Mayor Collins opened the public hearing and asked for public comment. There was none.

The Mayor stated that any homeowners who had not yet submitted a ballot, or those who wished to change their vote on the ballot already submitted, could do so at any time up to the close of the public hearing.

No one asked for or submitted a ballot to the Town Clerk.

Mayor Collins closed the public hearing.

The Mayor said the Council would take a brief recess and then continue with the other public hearing items while the Town Clerk tabulated the ballots.

Mayor Collins said that the ballot tabulation process was open to the public. The Town Clerk adjourned to the Conference Room to open and tabulate the ballots.

Mayor Collins moved to the next item on the agenda.

2. **General Plan Amendments** – Consider adoption of amendments to the Tiburon General Plan regarding the Tiburon Ridge Trail alignment (Director of Community Development Anderson)

Town Attorney Danforth gave the report. She said that as a result of two separate lawsuits (*Sylvia* and *Wayne* lawsuits) that were recently concluded, two easements which had been historically used by the public were no longer available for public use. She said that this required modifications to the Town's General Plan diagrams and text references to the "Ridge Trail".

In response to a question from Vice Mayor Slavitz, Danforth said that the Town planned to create a new connection to the Ridge Trail in the same area near the former Upper Hacienda connection sometime in the near future. She said that this would require further amendments to the diagrams, once accomplished.

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

Mayor Collins closed the public hearing.

MOTION: To adopt resolution amending the Tiburon General Plan, as written.

Moved: Fraser, seconded by Fredericks

Vote: AYES: Unanimous

3. **Parente Vista Precise Plan Development** – Consider application to approve the Parente Vista Precise Plan to create two (2) single-family residential lots on a 10.2 acre site off Parente Drive and Antonette Drive (Planning Manager Watrous)

Applicant: Lionel Achuck

AP No. 038-111-16

Planning Manager Watrous gave the report. He said that the precise development plan proposed to divide the 10.2 acre parcel into two lots and would establish building envelopes and parameters for the two lots. He said that the lower lot (Lot 1) was a 2.1 acre site with a building envelope of 9,241 square feet on which an up-to 6,000 square foot single family home could be developed, with a 700 square foot garage. Watrous said there was an additional secondary building envelope that could allow development of swimming pool, terraces, and retaining walls and fences, with the remaining 1.8 acre portion of the lot undeveloped.

Mr. Watrous said that the second lot (Lot 2) on the upper portion of the property, 8.1 acres in size, would include a 13,980 square foot primary building envelope and, as requested, would allow an up-to 9,000 square foot single family house and 1,000 square feet of garage space. He said that the secondary building envelope would allow for the same uses as the other secondary building envelope on Lot 1, and in addition, would allow for construction of up to a 1,000 square foot detached secondary dwelling unit and 500 square feet of garage space, an unlighted tennis court, bocce ball court, and fencing and swimming pool.

Watrous said that an additional 5.8 acre surrounding the building envelopes would be designated as private open space. (He pointed this out to the Council and public on a diagram as a “green area” and noted the developed areas were “red areas” and secondary areas were “blue areas”.) He described the access to the property by private roadway up to the site and leading down to Antonette Drive (another private street).

Planning Manager Watrous said that the Council previously certified an EIR for the project in 2004. However, he said that the property had since changed hands and had been modified from the original five-lot project to the current two-lot development. As a result, Watrous said that the Town had two different addenda prepared to the EIR; one had been previously circulated and the second addendum addressed the current project design and has concluded that the design and its mitigation measures would reduce all the previously-identified significant impacts to less than significant levels.

Watrous discussed the Planning Commission’s review of the project as described in the staff report. He said that the Commission deadlocked 2-2 on how much floor area should be allowed for the proposed Lot 2. He said that two of the Commissioners concluded that the requested floor area was appropriate, saying that the large size of the proposed second lot was much larger than most lots in Tiburon and that this would be an appropriate location for an “estate-type” development. They did note that the Town’s floor area ratio limitations are only guidelines and that these guidelines do allow for more or less floor area to be specified for a particular project if it was approved as part of a precise development plan.

Watrous said that these two Commissioners were confident that a house of that size could be properly designed without excessive visual mass and bulk when properly reviewed by the Design Review Board.

On the other hand, Watrous said that two of the other Commissioners supported the staff recommendations and concluded that the allowable floor area of Lot 2 should be limited to a total of 8,000 square feet combined for the house and any secondary dwelling unit, and 750 square feet of garage space which is the default maximum to be allowed under the Town’s FAR guidelines for any lot over 60,000 square feet. These Commissioners noted that during the recent Zoning Ordinance update, there had been no changes made to the FAR guidelines to try to recognize even larger house sizes and felt that an 8,000 square foot house would be larger than most other homes in the vicinity.

As the Commission could not reach a decision on the allowable FAR, but agreed that the remainder of the precise plan was acceptable, Watrous said the Planning Commission voted unanimously to recommend approval of the precise development plan to the Town Council but left the determination of the maximum gross floor area ratio of that lot to be determined by the Council tonight.

Watrous recommended that the Council hold a public hearing and determine the FAR to be allowed for Lot 2, and adopt the draft resolution making the CEQA findings of fact and conditionally approving the Parente Vista Precise Development Plan and adopting a Mitigation Monitoring Program.

Mayor Collins opened the hearing to questions from the Council.

Councilmember Fredericks asked whether the homes on either of the lots had useable floor space that did not count in the floor area, like daylight basements, or the like.

Planning Manager Watrous said that the designs were only conceptual at this stage and that neither design presented had any basement space, as described by Councilmember Fredericks.

Fredericks then asked whether they were built into the side of a hill, such that it would be a reasonable expectation that they would. Watrous said that the lot was fairly sloping in nature and that both of the conceptual designs were “terraced into the hillsides” to some extent.

Fredericks asked if there were “inboard” views of Lot 2 from the Bay. Watrous said that it would probably be more noticeable from Paradise Cay as opposed to some of the surrounding properties. He noted that the EIR indicated in the visual analysis that the homes were at such a distance that they were not particularly noticeable from afar.

Fredericks asked whether the usual way of calculating the maximum FAR included the secondary dwelling unit that is, was the secondary dwelling unit counted as part of the total FAR in this instance. Watrous answered affirmatively.

She asked what rules were employed to determine garage size. Watrous said that for lots over 60,000 square feet, and noted that both lots were, in this instance, they would have a maximum of 750 square feet of garage space. He commented that it was possible to have a larger garage than that but, if it’s larger, the additional space would count toward to the rest of the FAR.

In response to a question from Vice Mayor Slavitz about the requested garage size in this plan, Watrous said that the Zoning Ordinance contains the aforementioned sizes as a guideline, unless otherwise specified in a precise development plan. Therefore, Watrous said that it was possible for a different number to be used in the precise development plan.

Slavitz asked for background about house size in Tiburon. Watrous said that the current guidelines date back to 1991, and have not been changed since. He said that the intent at that

time was to establish some sort of cap and that the sentiment was that an 8,000 square foot house was appropriate, despite the possibility of escalating lot size. He added that provisions were included, however, to allow for the floor area exception process.

Watrous gave an example of a recent approval of an 18,000 square foot home on Gilmartin Drive to replace a 16,000 square foot home that was approved before these guidelines were in effect. He said that the current owners asked for, and received, an exception. He said that the findings made by the Design Review Board had to do with the visual mass and scale of the building in comparison with the surrounding neighborhood; whether the physical design of the house seemed to be compatible with the overall physical lay-out of the site so that it did not seem overly bulky; that it fit within the contours of the property, and was appropriate with the visual mass and scale of the surrounding neighborhood. He said those were the only findings that were needed to make a floor area exception.

With regard to the house sizes in Parente Vista, Watrous said that a couple of the Commissioners felt that something could be appropriately designed that would fit the visual mass and scale of some of the other properties in the area, similar to the 5,000 – 6,000 square foot homes on Taylor Road. He said that there was a 7,000 square foot home on Antonette and generally people commented that it was not overwhelming visually in mass and bulk. He noted that several of the Commissioners felt that something could be designed that wasn't excessively "bulky" from a visual standpoint even if it did have a much larger floor area. This would be left up to the Design Review Board to ensure that a design was appropriate to the property.

Councilmember O'Donnell asked some questions concerning the history of the property. He asked if the Town approved the location of the homes on the five-lot project in 2004; Watrous said that it did not. He added that the EIR was certified as adequately evaluating the potential environmental impacts of that project; however, he said the Planning Commission felt very strongly, and it was echoed by the Council, that the five-lot development was too many homes on the site and the applicant was encouraged to come back with two or three lots.

Councilmember Fredericks said that she had looked at the 140 Antonette house on Google Earth; she said it appeared "quite large" and while it may "fit" into the hillside, she said that she was really concerned with exceeding the Town's 8,000 square foot standard and thereby creating a "slippery slope" for future approvals. She said if the criteria of approval were simply "mass and bulk," then there were no floor area limits.

Watrous said that statement was not entirely correct; he said that the 8,000 square foot limit did not necessarily guarantee an entitlement of approval. He said that the DRB had every right to require a smaller house, or approve something smaller, especially if the Board feels the design is inappropriate.

Fredericks said that in reviewing an application for a nearby home in the County of Marin, "numbers" were cited as precedent, not design appropriateness. Watrous agreed that two of the Tiburon's Planning Commissioners expressed a similar concern, that the County's approvals

were not necessarily an appropriate development pattern for the area. Therefore, he said these two Commissioners felt that the 8,000 square foot limit was appropriate in Parente Vista.

Vice Mayor Slavitz asked if there were other homes in Tiburon as large as that requested for Lot 2. Watrous said there were a “handful” of homes in Tiburon that large, on Tanfield, Gilmartin, and Place Moulin.

Mayor Collins asked about the size of the lots for these homes larger than 8,000 square feet. Watrous said that most of the examples cited above were on smaller lots; the 18,000 square foot home mentioned earlier is on about three acres, the Place Moulin site is about three or four acres, the lots on top of Tanfield and Gilmartin are each on approximately two acres. No site is as large as Lot 2 of Parente Vista.

The Mayor asked how the 8,000 square feet figure in the Town’s FAR was arrived at. Watrous said that he was not certain how the formula was arrived at, and it was before his tenure with the Town. He said that historically, it was a time the Town was wrestling with development pressures to the point of instating a building moratorium that resulted in a number of lawsuits, several of which the Town lost. He said that he thought it was a way to try to establish some control over the beginning of the large “mansion” boom and rein it in.

Planning Manager Watrous said that it had worked fairly effectively and there had not been a lot of pressure to change it. He noted that during the recent review of the Zoning Ordinance, there was no clamor at all to try to change it or bump those numbers up.

Councilmember Fraser asked whether the large home planned on Gilmartin Drive, as well as the plan on Place Moulin, were on “flat lots”. Watrous said that the two on Gilmartin were fairly flat, and the one on Place Moulin was a hillside lot that sloped quickly down off of Mt. Tiburon.

Fraser also noted that the DRB recently approved a house on St. Bernard that was over 8,000 square. Watrous said that he thought it was actually 7,000+ square feet. He said the lot was a little bit over an acre which would create the ability to build a home around 6,000 square feet. A floor area exception was granted, he said, and the DRB noted the design buried a lot of the floor area into the hillside and created a visual effect that made it look smaller than a 6,000 square foot house.

Councilmember Fredericks asked if there was a 1,000 square foot limit on garage size, was there any extra allowance for another garage for a secondary dwelling, or did it count of the FAR?

Watrous said that for lots over 60,000 square feet, an applicant was allowed 8,000 of floor area and 750 square feet of garage space. If more than 750, any additional square footage must be counted towards the 8,000 square feet. Secondary dwelling square footage must be included in this total, as well, according to Watrous.

Mayor Collins summarized that the current applicant was asking for a 9,000 square foot house and a 1,000 square foot garage, or 10,000 square feet, with a secondary dwelling unit and garage, for a total of 11,500 square feet.

Mayor Collins opened the public hearing.

Property owner Lionel Achuck spoke. He said that the Planning Commission had approved the plans for Parente Vista, but had deadlocked on the size of the structures on Lot 2. He said that the site was very unique to the neighborhood in that it is eight to ten times bigger than most of the lots in the immediate area. He said that the surrounding newer construction of homes in the area were about 6,000 square feet, on average, on one-acre lots. He noted that his proposal is for 9,000 square feet on the eight-acre portion.

Mr. Achuck said that the Tiburon Zoning Ordinance referred to the FAR as a “community yardstick” for the appropriate residential size and scale relative to the overall size of the property. He said this was an important consideration for his proposal. He said it was not to say that a larger lot can automatically support a larger home, however, in this case he said he believed that the lot, based on the topography of the site, and the locations of the surrounding neighbors, it does fit.

Achuck said that the proposed building envelope did not obstruct any other homes’ views, nor did it interfere with anyone else’s privacy. He said the property is zoned RPD and that the FAR guidelines noted that a precise development plan can specify other sizing outside the guidelines for approval.

Achuck said that the Planning Commission had told the previous owner of the property that they preferred to see a three-lot subdivision over the five-lot subdivision originally applied for. Assuming equal size lots, Mr. Achuck said there would have been three lots over three acres’ each in size, with the FAR allowance of 8,000 square feet each, which create a total of 24,000 square feet. His proposal was for two lots, with a total of 16,000 square feet.

Mr. Achuck said that his desire and that of other Tiburon residents was to have as much natural space as possible between homes so that the visual impact is more “green” than man-made structures. In that case, he said, it would be better to see one slightly larger structure surrounded by greenery than it would to see multiple homes with less greenery in between them. He said his proposal had 60% of the 10 acres slated to be private open space.

To help mitigate the size of the proposed size, Achuck said that they had redesigned the layout of the building envelopes and took into consideration the potential size of the house. This was addressed, he said, by pushing the envelopes further back into the hillside by utilizing the existing valley in which the slide repair is to be done. He showed the area on the plan map. From a view standpoint, Mr. Achuck said that it was “nestled back” into the hillside quite far.

Achuck said they had brought the primary and accessory buildings away from the ridgeline, as well, and more into the valley. The building envelope for the primary structure is on a hillside, allowing much of the structure to be designed in a way in which much of it will be in the hillside itself. Referencing 140 Antonette, Achuck said that over 30% of that house was built into the hillside itself.

Achuck said that the final architectural design on this lot will determine what 9,000 square feet will look like. He said that mass is not always synonymous with large square footage; how a building is designed will determine its “mass effect.” A prime example, according to Achuck, was the project at 110 Gilmartin Drive, approved about six months ago by the DRB, for 18,590 square feet of gross floor area, mainly for the primary structure. He noted that this was 10,590 square feet over the FAR. He said the lot was just over three acres and also includes a tennis court, swimming pool, and accessory structures. He said the DRB approved this based heavily on the design of the structure and the uniqueness of the lot.

Achuck said that even though his 10-acre lot is more than big enough to sustain the size of the home, he said that it is the final design that will determine that its mass is appropriate.

In conclusion, Achuck said that based on the uniqueness of this property, he requested that this application be approved for a 9,000 square foot primary residence.

Questions from Council:

O'Donnell said that he did not recall the Planning Commission having as much trouble with the size of the house as opposed to the location of the tennis court and parking area behind the tennis court. Mr. Achuck said that the tennis court was subsequently moved into the valley area, the parking lot was eliminated, the secondary garage to the 1,000 guest house was eliminated, as well as the driveway for it. He said the Planning Commission requested a consolidation of the structures and moved everything. He showed the envelopes on a map/plan, and how it increased the amount of open space, as well.

Mayor Collins closed the public hearing.

Mayor Collins asked the Town Attorney on a comment by Commissioner Tollini vis a vis the provision in the Zoning Ordinance that creates an exemption for house size, “as specified in a precise development plan.” He asked whether that made the Zoning Ordinance “flexible.”

Town Attorney Danforth said that the Zoning Ordinance allows a precise development plan to be used to set certain regulations other than those specified, so that if the Council chooses, it could approve a PDP that modifies the otherwise applicable zoning ordinance standards in a number of ways, including FAR. In other words, yes.

Councilmember Fredericks asked whether any multi-lot development application is a PDP with that potential flexibility?

Planning Manager Watrous said that most of the large vacant lots within the Town limits were designated RPD (Residential Planned Development) which requires that you establish a precise development plan to establish the standards for those. He said there were few or no other large lots that look like they would be carved into any more R-1 lots; most of the remaining lots that are undeveloped have unusual characteristics and need to be addressed on a case-by-case basis, according to the Planning Manager, which lends itself to a PDP review.

Councilmember Fredericks likened the question to one of “a tree falls in the forest...”. She suggested that if the square footage was hidden so that there was not an issue of mass and bulk, what’s wrong with a person building the biggest house he/she could possibly build in a PDP, as long as no one can see it?

Fredericks said that her basic concern was that this approval would set a precedent for certain properties on Paradise Drive that will be developed in the County that don’t have the mass and bulk considerations that the Town has, and then when they are annexed, the Town would end up with an area of enormous houses, some of them not as thoughtfully designed as this one, and others sticking up on a promontory and 11,000 square feet in size. (She said that the latter was not hypothetical and such an application was being considered by the County Planning Commission tomorrow night.) She noted that the Parente approval would require trust in the DRB to control mass and bulk. She said that she would like to see the total square footage downsized a little on the property, especially with respect to the size of the main house and perhaps the garages. She reiterated her concern about establishing precedent.

Councilmember O’Donnell said that he was very familiar with the property, having hiked up there to take a look around. He said that he remembered voted against the square footage of the home at 140 Antonette when he served on the Design Review Board he thought there was too much “hardscape” at that time, and that he was the sole dissenting vote. Subsequently, he said when the property changed hands, he said he was on the Planning Commission, and that a lot line adjustment was contemplated to bring a driveway around into the acquired property, and he said he thought it made the property at 180 Antonette into a really nice, beautiful home. He acknowledged that the Achucks were also developing a home at the bottom of the property. He said that he thought they had done a lovely and tasteful job on the two homes he had seen.

O’Donnell said that the Town had been “happy” when they purchased the property from the previous owner because the Achucks were interested in developing it with fewer properties.

Councilmember O’Donnell commented further that the issue at the Planning Commission level was not so much the size of the house as the location of the tennis court, parking areas, etc., which was subsequently addressed very well by the applicant. O’Donnell said he agreed with Councilmember Fredericks’ metaphor of a tree falling in the forest, but with a different conclusion.

O'Donnell said that he knew of no opposition to this project which he found remarkable. He said that the Achucks seemed to have the support of their neighbors, particularly the neighbor closest to Lot 1.

O'Donnell said that it was also hard to make a decision without knowing what the house would look like. He said it would not be appropriate to have an "Italian palazzo" and that the DRB should not allow it, nor did he think the Achucks would promote that design. O'Donnell said he felt confident that the DRB would scale back on mass and bulk.

In conclusion, O'Donnell said that he would support the applicant's request for a 9,000 square foot home on Lot 2.

Councilmember Fredericks suggested that there was a way to attain this kind of square footage without it actually counting as living space. It would also give the market value of the square footage without setting a precedent. She said she would be interested in this approach and would approve a reduced FAR for this application, on that basis.

Vice Mayor Slavitz said he agreed with everything he had heard so far about the great job the Achucks had done developing other properties. However, Slavitz said there were three reasons why not to approve the requested FAR, in this case:

1) Maintenance of community character – no other homes in the area are 8,000, let alone 9,000 square feet; plus 1,000 for an additional structure; such an approval would not maintain the character of the community; plus, it would signal a change of community character to increased house size and approval would set a precedent for larger homes in that area;

2) If you look at Exhibit 7, he said that staff has done a great job analyzing the consistency of this PDP with the Tiburon General Plan and Tiburon Zoning Ordinance, and cite several examples of where it is inconsistent: LU-I talks about the intensity of development and intensity to be consistent with the surrounding neighborhood—this PDP is inconsistent with that; LU-5 says that development should be harmonious with the neighborhood—this PDP is inconsistent with that;

Slavitz said that if we write our General Plan and our zoning ordinances and we state that these are our goals, and then we start approving things that do not meet those goals, we are not consistent. And we should state why we want to be consistent.

3) It sets a precedent, not just for this neighborhood, but for other neighborhoods that might have a large lot that could be used to justify a bigger house that is not visible by the neighbors.

The Vice Mayor said that approval would "send the wrong message" to the rest of the community and to future developers, and is inconsistent on several points, as previously stated. He said that he thought the house would be beautiful, but that it was not the right thing to do in this situation. He said he would side with the staff's recommendation to allow the maximum FAR of 8,000 for the house and 750 square foot garage.

Councilmember Fraser said that he, like Councilmember O'Donnell, was familiar with the property and had visited the site three times—once, during the application to move the road, the second time when the applicant came before the Planning Commission with the proposal, and the third time this week.

Fraser said that applications were not “apples to apples” and if they were, the Council could just “push a button” and it would not be necessary for the Council to review them. He said history showed, both at the Council level and Design Review Board level, that there were times to look beyond guidelines and make findings to approve variances. He said that the house on St. Bernard Lane was an example of this, and also the approval of the Peterson application on Gilmartin. Both of those were significantly over the allowable FAR for the particular sites, and are much more visible from a topography standpoint than the application under review.

Councilmember Fraser commented on the topography of Parente Vista, its being nestled in a valley, and he noted that Councilmember Fredericks had a good point about the possibility of building into the hillside. He said that the house, when built, would probably not look as large as the number indicated. He said that he would be in favor of giving direction to the DRB and approving the size of the house “up to” but not guaranteeing it, and requesting the DRB to take strong efforts with the design of the house (which has not been designed yet) and make sure that it is nestled into the contour of the land, and fits in the valley in a proper manner, so that we minimize mass and visual effects, from wherever they might be.

Fraser said that another development is coming on the Rabin Property, which he and Councilmember O'Donnell walked a year or so ago when they served on the Planning Commission. He said that the proposal there was for some houses nestled into the hill, and working with the contour of the hillsides, and that they would be fairly large houses. He said that this concept seemed to resonate fairly well with the Commission at that time.

Fraser said he would be in favor of approving the application as requested by the applicant, with the direction to the DRB for a house that will not provide a huge mass and a huge visual impact to the hillside, as well as that side of the Tiburon community.

Councilmember O'Donnell added that he had given a lot of thought to the “generous gift” of private open space as part of this application, and the fact that the owner could have established a third lot up there and increased the overall square footage to 24,000 square feet (according to Achuck's figures).

Councilmember Fredericks added that she thought that the applicant could accomplish what he wanted to accomplish with a 9,000 square foot FAR through designing a smaller house.

Mayor Collins reiterated the square footages of the application of the primary and secondary buildings and garages.

Mayor Collins said that the discussion was really more about form versus substance. He agreed from visiting that site that it was “tucked back in” and when you look in either direction and behind you, you see hills, trees in the foreground and below, Paradise Cay. He said that a roof of a home was visible in another direction but that there were no homes of proximate size in the area.

The Mayor said that when he thought of what a “neighborhood” meant, he visualized a street with homes around it; he said this was certainly a neighborhood, albeit a different kind of one. He described it as “an area within an area.”

Mayor Collins said that seemed to be a way to approve the application without upsetting the Zoning Ordinance because it is a PDP and does have flexibility, with different limitations. However, Mayor Collins said that he, too, worried about precedent and the “slippery slope” described by Councilmember Fredericks, and said that it was an important consideration.

On the other hand, Mayor Collins noted that the parcel was eight acres and that he viewed it differently than if it was three parcels with maximum square footages. He said that the way the development was designed and sited, as proposed, depending on how it could be cut into the hill, he tended to favor approval with the conditions or recommendations delineated by Councilmember Fraser, and determine an “up to” amount of square footage, and minimized mass and bulk.

Councilmember Fredericks said that she would like to focus on the main house remaining at 8,000 square feet but that she would consider the request for a larger garage. She said that she would also consider approval of the 1,000 square foot secondary dwelling, in addition.

Councilmember Fraser said that he was reluctant to “sit on a number” when he had not seen a design; he said that it was important to look at elevations and how the house fits into the hillside, etc. He said that just looking at numbers was not the right approach and that he would like to empower the DRB to have a look at it and understand the direction of Council.

Fraser also noted that the applicant had a “good track record” within the community and said that should be taken into account.

Vice Mayor Slavitz said that while he could see both sides of the argument, his position was clear—that he was more adamant about sticking with the FAR than his colleagues and that it did not make sense to try to negotiate a larger FAR for this lot.

He cautioned about relying on the good will of the applicant; he said that just because the applicant (who is highly regarded by the community) has proposed this project, it does not mean that he would not sell the project and someone else could take it over who had a different point of view about the property.

Councilmember O'Donnell said that concurred with the approach of Councilmember Fraser to "empower" the DRB to approve a reasonable project. He said the applicant stated that 30% of the floor area for the property he developed at 140 Antonette was below grade and that although the Parente Vista property did not appear as steep, O'Donnell said it appeared to him that some part of the 9,000 foot FAR would have to be put into the hillside.

O'Donnell also commented on the 7,000 square foot home on St. Bernard Lane built on an unusual, curving lot that was successfully designed to not minimize the mass and bulk. He said that if these "stringent conditions" were given to the DRB, he could support the applicant's request.

Councilmember Fredericks said that when an applicant cuts into the hillside, they can end up with "perfectly livable, not dark space" that doesn't count toward the FAR, so that functionally, when a house is sold, it can be listed as square footage. For example, Fredericks said that a website listed the Antonette house as having higher square footage than what is noted in the approval process for this very reason.

However, Fredericks said that using the 8,000 square foot standard "relieves us" of having to second-guess every property that comes before the Council that wants a greater FAR. Vice Mayor Slavitz concurred with this comment.

Fredericks asked Planning Manager Watrous to describe the Town's definition of "basement". Watrous said that it was a fairly complicated formula that included space that was "below grade" on a separate level. Watrous said that it would be "livable space" with standard ceiling heights; but he said that a basement could not have a door leading to the outside. He commented that it allowed for "creative construction." Fredericks asked if that meant that all four walls were below grade. Watrous said that it did not have to be "completely submerged space" and could have windows.

In sum, Councilmember Fredericks said that while the Council might stay within the FAR approvals of 8,000 square feet, the applicant might well dig into the hillside to increase the square footage for a more marketable house. Planning Manager Watrous said that this would be true if the below grade construction met the Town's definition of "basement."

Watrous clarified Condition of Approval No. 5 that described "maximum allowable square footage;" he said that this meant the requested square footage was not an entitlement and that the DRB could approve less square footage. He read the language, "it is understood that the floor area for each lot as specified above is a maximum allowable square footage and the Design Review Board in its reasonable discretion in reviewing site plan and architectural review applications for each lot may approve a less amount of square footage in order to ensure that the building sizes are consistent and compatible with surrounding neighborhoods and in compliance with and set forth in General Plan Land Use Element LU-I."

Watrous said that this would be the place the Council might clarify its conditions of approval for regarding mass and bulk for this project.

Vice Mayor Slavitz asked if this language was not already part of the Hillside Guidelines. Watrous said that it was but that it might be useful to have specific direction to the DRB, and noted that the 9,000 square foot home was not an entitlement and that the Board would have discretion to approve a lesser amount to achieve the compatibility.

Councilmember Fraser agreed that Council direction would lend more “weight” to the issue.

Mayor Collins asked whether it might be useful to change the verb to “shall minimize it” or lesser square footage, in this instance.

Fraser agreed, and recommended, as an example that the Council direct the DRB to ensure that the final house design minimizes mass and bulk and fits within the contours and current topography of the site.

Planning Manager Watrous, based on Councilmember Fraser’s remarks, stated a possible motion:

To adopt the draft resolution with condition of approval No. 5 to reflect (for Lot 2) the FAR requested by the applicant with the additional sentence to read that the DRB is directed to ensure that the final house designs minimize the mass and bulk and fit within the current contours and topography of the site.

No motion or second; Motion failed.

MOTION: To approve the application [Lot 2] with an 8,000 square foot house, 1,000 square foot garage, 1,000 square foot secondary dwelling unit, and 500 square foot garage.

Moved: Fredericks, seconded by Collins

Vote: AYES: Collins, Fredericks

NOES: Fraser, O’Donnell, Slavitz

Motion failed.

MOTION: To approve the project with Lot 2 conforming to the Zoning Ordinance guidelines of 8,000 square foot house, 750 square foot garage, and a secondary dwelling with square footage that would fit into the overall FAR.

Moved: Slavitz, seconded by Fredericks

Vote: AYES: Fredericks, Slavitz

NOES: Collins, Fraser, O’Donnell

Motion failed.

MOTION: To approve the project as submitted by the applicant with the additional language stated by Planning Manager Watrous, as stated in the first motion.

Moved: Fraser, seconded by O'Donnell

Councilmember O'Donnell, amended the motion and recommended a compromise: Lot 2 house size 8,500 square feet, 750 square foot garage; 1,000 square foot secondary building with 500 square foot garage.

Vice Mayor Slavitz said that it was not about the size of the house, rather, it was about upholding the principles of the Zoning Ordinance and General Plan. He said that the size of homes did have an impact and would change the community, and that the 8,000 square foot FAR should be upheld. He said that this application was surrounded by 6,000 square foot homes. Slavitz said that he attended the Tiburon 2020 meetings and spoke of the importance of maintaining standards for the long run.

Councilmember Fraser said that the difference was the lot size (eight acres) and that as a PDP, it was subject to approval on a basis that did not strictly fall within the guidelines referenced by the Vice Mayor. He also stated that the Town had approved more significant variances in areas of greater density.

Councilmember O'Donnell contended that this was "not a neighborhood," per se.

Councilmember Fredericks said that the question on the table concerned FAR.

Mayor Collins said that while he thought the 8,000 square foot limit was appropriate in most cases, he thought that a "ceiling number" was not all to take into account in this instance; he said that he took into consideration that fact that the project could have had up to 10 homes which would greatly increase traffic and other impacts in the area; he said he also concluded that approving a greater FAR was not a precedent due to the size of the parcel and the way the home would be situated on the property.

Councilmember Fraser restated and amended the motion:

MOTION: To adopt resolution approving the application, as submitted, for a 9,000 square foot home on Lot 2, with 750 square foot garage, and an 1,000 square foot secondary dwelling with 500 square foot garage, and to direct the DRB to approve a final house design that minimizes mass and bulk and fits within the current contours and topography of the site.

Moved: Fraser, seconded by O'Donnell

Vote: AYES: Collins, Fraser, O'Donnell

NOES: Fredericks, Slavitz

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4. **2 Miraflores Lane Precise Plan Amendment** – Consider amendment to Miraflores Precise Plan to extend existing secondary building envelope to accommodate a proposed gazebo, fencing and outdoor barbeque area (Planning Manager Watrous) – *continued without hearing until September 1, 2010*
Applicant: Davoud Sadeghi
AP No.: 039-271-21
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Continuation of Del Mar Valley 2010 Supplemental Utility Undergrounding Assessment District: Public Hearing, Talley of Ballots and Decision whether to Form the District (Town Attorney Danforth; Town Engineer Nguyen)

Mayor Collins said the ballot tabulation was complete and results were known. He asked the Town Clerk to read the results of the ballot tabulation.

Town Clerk Crane Iacopi said that 123 official ballots were received by the Town; 98 were in favor of the district and 25 were opposed. She said with the addition of the advisory ballots, the percentage in favor was 74.7%; opposed, 25.3%.

Mayor Collins asked if any additional information was needed by the Council concerning the vote.

Town Attorney Danforth read the findings, contained in the staff report, necessary to support the formation of the proposed district:

1. The general benefits conferred by the undergrounding project have been appropriately identified, quantified and separated from the special benefits, as set forth in the Final Engineer's Report;
2. Only that portion of the estimated cost of the Project which represents local and special benefits (net of the Town's contributions) has been assessed against the respective parcels of land which are assessed;
3. The proposed assessment of the portion of the estimated cost and expense of the Project that represents local and special benefit upon the respective parcels of land in the Supplemental District is a fair and equitable apportionment of such estimated cost and expense in proportion to the estimated benefits to be received by each of the parcels from the Project;
4. The amount of the Supplemental Assessment proposed for each of the parcels being assessed does not exceed the special benefit conferred on each such parcel by the Project

improvements;

5. Under the facts and circumstances pertaining to the Supplemental District, the Town Council concurs in the conclusion of the District Engineer, as set forth in Section 5.2 of the Final Engineer's Report, that all of the benefits conferred are direct and local in nature, and there are no general benefits conferred by the work and improvements of the Project.

Danforth said that if the Council finds that each and every one of the findings is appropriate in light of the evidence in the record, it could proceed to adopt the resolution approving the district and order the work.

The Mayor surveyed the Council and all members indicated that they agreed with the findings and evidence in the record.

Mayor Collins read, "A Resolution of the Town Council of the Town of Tiburon Overruling Protests, Approving Final Engineer's Report, Levying Supplemental Assessments without Modification, Approving and Ordering the Work and Improvements for the Utility Undergrounding Project, and Authorizing and Directing Related Actions with Respect to the Del Mar Valley 2010 Supplemental Utility Undergrounding Assessment District."

MOTION: To adopt resolution, as written.
Moved: Fredericks, seconded by Slavitz
Vote: AYES: Unanimous

Mayor Collins thanked everyone who had supported the district for their efforts, and also those who had opposed it, stating that "this is a democracy and we listen to the majority." The Mayor said that it had been a "long and bumpy road" for everyone; he thanked them again for their participation in the process.

Mayor Collins returned to an Item that was removed from the Consent Calendar.

5. **Voting Delegate at League of California Cities Annual Conference** – Appoint voting delegate to represent Town of Tiburon at League of California Cities annual conference (Town Clerk Crane Iacopi)

Town Manger Curran said that the item had inadvertently been placed on the Consent Calendar but required action by the Council.

Councilmember Fredericks said that she was planning to attend the annual conference and would be happy to serve if no one else requested the opportunity.

MOTION: To appoint Alice Fredericks to be the Town's voting delegate at the League's annual conference.

Moved: Fraser, seconded by Slavitz
Vote: AYES: Unanimous

TOWN COUNCIL REPORTS

Councilmember Fredericks said that Proposition 22 had qualified for the November ballot. She said the League of California Cities' sponsored initiative would help cities in that it would require the State to reinstate constitutional protections for HUTA (transportation funds) and Redevelopment Agency funds that were crucial to many cities in creating jobs and revitalization of their downtown areas.

TOWN MANAGER'S REPORT

Town Manager Curran commented on the upcoming meeting calendar. She said that two Council members would be on vacation in the coming few weeks and she recommended that the August 4 meeting be cancelled. She noted that the next regular meeting was scheduled for August 18, and that a special meeting would be called on August 25 to consider the sale of the Del Mar bonds.

Council concurred with the recommended meeting schedule.

WEEKLY DIGESTS

- Town Council Weekly Digest – July 9, 2010
- Town Council Weekly Digest – July 16, 2010

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Collins adjourned the meeting at 8:59 p.m.

RICHARD COLLINS, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK