

TOWN COUNCIL MINUTES

CALL TO ORDER

Mayor Slavitz called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, November 16, 2011, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

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

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

Prior to the regular meeting, the Council met to conduct interviews, at 7:00 p.m., as follows:

INTERVIEWS

(Planning Commission Vacancy – one pending vacancy)

- Rick Waterman, 36 Southridge West
- Patrick McNerney, 1691 Mar West
- Kam Shadan, 38 Reed Ranch Road

ORAL COMMUNICATIONS

None.

PRESENTATIONS

- Sanitary District No. 5 Update – Board Vice President Catharine Benediktsson

Vice President Benediktsson gave the report. She said that the district was in the midst of 12 million dollar main plant rehabilitation and that the board had gone to bond to fund the project. Plant Manager Lynch detailed the components of the rehabilitation and how it would improve the process with new, more efficient equipment.

In response to questions from Collins and O'Donnell, Ms. Benediktsson said that the project would be paid off through residential and commercial rate increases previously adopted by the district.

Collins asked if a sinking fund had been established to deal with ongoing capital improvements over the next 20 years. Lynch said that it had, but that in reality it was only good for about five years.

Ms. Benediktsson said that the construction was estimated to begin in August of 2012 and run for 12 months. Councilmember O'Donnell noted that this was during the upcoming America's Cup. Benediktsson thanked Councilmember O'Donnell for noting this and said the district would be mindful of it in their planning. Manager Lynch said that the district was accelerating the construction schedule but that most of the work was being done on equipment inside the building and that there would be very little equipment on the street.

Council thanked the district representatives for their report.

CONSENT CALENDAR

1. **Town Council Minutes** – Adopt minutes of November 2, 2011 Regular Meeting (Town Clerk Crane Iacopi)

MOTION: To adopt minutes, as written.
Moved: Collins, seconded by Fraser
Vote: AYES: Unanimous

ACTION ITEMS

1. **Alta Robles Precise Development Plan** – Consider actions related to the Alta Robles Precise Development Plan and rezoning applications for the eventual subdivision of 52.2 acres of land, currently developed with one single-family dwelling into 14 single-family residential lots - *Item continued without discussion from November 2, 2011*

Planning Manager Watrous gave an update and overview, as detailed in the written staff report. He recommended that if the Council found Alternative 6 to be acceptable that certain actions should be taken or, the Council could ask for more detailed plans and new story poles and continue the meeting to a date certain.

Applicant Ariel Rabin gave a brief presentation. He said that the project had been refined five times and that at the August 31 meeting, Council had given direction that it sought more refinements, thereby resulting in Alternative 6. Rabin said that in this alternative, home size had been reduced and houses had been moved around on the lots, resulting in submerged, nearly

invisible structures. He said that a total of 8,000 square feet of above ground square footage had been removed from the plan.

Mr. Rabin said that a typical submerged home in the Alta Robles development would average 4,200 square feet above grade, and that overall the project would preserve 76% of the land as open space. He noted that this would be the lowest density project in the town's history.

Clay Clement, attorney representing the Rabin family, said that the family had gone to extraordinary efforts to comply with the General Plan and that the application (Alternative 6) should be approved with no further density reduction. He said that staff had recommended first reading of an ordinance to set the density of the project in its report. Mr. Clement said that he agreed with this recommendation and noted that the Council could then come back and review the particular [house] designs so that they would know the project would be constructed properly. He also recommended that the Residential Use Areas (RUAs) shown on the plans be approved as is; he said that the Council could prohibit residences being built in the RUAs but that it should not limit landscaping features, and the like, at this stage of the process which would best be left to the Design Review Board.

Architect Kao reviewed the revised plans (Alternative 6) and highlighted the reductions in mass, bulk and height to some of the proposed structures. He showed some photos of the Acacia Drive area where homes are three and four stories above grade; he compared the Rabin proposal with this type of development and showed how much less intrusive visually it would be.

Kao also said that the secondary ridges had been mapped, along with plant species, since the last meeting. He said that CSW Stuber-Stroh had double-checked their work where minor boundary adjustments had been made.

During this part of the presentation, Mr. Kao took comments and answered questions from Council.

Councilmember Fredericks said she couldn't figure out what the changes meant in totality. She said she would like to see story poles for the revised structures. She also expressed concerns about structures in the RUA and asked whether state law would allow the town to regulate placement of secondary dwelling units in the RUAs.

Planning Manager Watrous said that part of the precise development process was to determine what could go in those areas. Fredericks asked if there was a possibility that direction could be given to place secondary dwelling units in the least constrained part of the lot. Watrous said that state law prohibited this but that the Council could say whether the structure was attached or detached, and to place it over here or over there. He said there was no blanket statement that allowed the Council to say, for instance, "don't place it on a ridge," without a blanket prohibition.

Councilmember Fredericks asked whether the building footprints included garages.

Planning Manager Watrous said that they did. She also asked which lots would have (RUAs) located on the ridgelines. Planning Manager said that while it was difficult to tell precisely from the provided map, it appeared that Lots 3, 7, 8, 9, 10, 11, 12 and 14 did.

Mayor Slavitz noted that at the last meeting, the Council had asked the applicant to place the proposed houses in the white areas of the lots. He asked if Lot 8 in Alternative 6 complied with this direction. Planning Manager Watrous said that in general, the intrusions [of the relocated Lot 8 house] were into the oak areas but not in protected areas (such as wetlands) or sensitive species (such as grassland) areas, on the site. He said that the Town wanted to protect the oak woodlands but that these trees had not been identified as a threatened or endangered species; also, that a mitigation measure was in place to plant replacement trees.

Mayor Slavitz asked if any homes on the other lots intruded into the woodlands [as a result of the latest changes]. Watrous said that Lots 5 and 6 came into the trees; Lots 9 and 13 did so slightly, as did Lots 2 and 3.

Councilmember Collins asked about the issues raised in a late mail letter from Botanist Eva Buxton. Planning Manager Watrous said that the applicant had answered the questions raised in her letter at the last meeting. He also said that some of the information in her letter was incorrect. Director Anderson said it was his understanding that the biological surveys referenced by Mrs. Buxton identified additional sensitive species in open space areas outside of RUAs.

Councilmember Collins said he wanted the RUAs staked so he could see where they were; he also expressed concern about how the revised plan would affect the tree removal list and proposed that a new list be developed reflecting Alternative 6. Collins agreed with Councilmember Fredericks that it would be best to address the RUA issue before moving forward.

Mayor Slavitz concurred, as did Vice Mayor Fraser.

Councilmember O'Donnell said he was ready to move forward with Alternate 6. In fact, he said he had been ready to approve Alternative 5, with some of the reduced square foot home size suggestions from the staff report at the final Planning Commission meeting. However, he said that some of the changes in Alternative 6 made for an even better project.

Mayor Slavitz re-opened the public hearing for comment on Alternative 6.

- Julian G, Redwood High student, asked if any new roads would have to be built over the property. (Watrous said that one new private roadway would come off Paradise Drive, however, no roads would cross the Tiburon ridge or lesser ridges).
- Doug Currens, Hacienda Drive, said that the Rabins kept meeting the bar set by the Council and that he had seen very few architects who could do what Mr. Kao was doing; he recommended moving the process along as quickly as possible; he said that he would be proud to claim this project as a neighbor.

- Sandra Swanson, Seafirth Estates, said that the applicant did not show the visual impacts of the project on the 30 homes in Seafirth; she said that the relocated homes could result in more tree loss and asked for specific data on this; noted that maximum density did not represent entitlement, and that on such a highly constrained site the maximum density could not be justified.
- Joannie Pratt, Reed Ranch Road, said that the Rabin project was a striking model of environmental sensitivity and would be unique in the town, county and state. Ms. Pratt said that a majority of the neighbors and local people supported the plan which exceeded most if not all of the Council and Town's guidelines; she said that this compliance should be rewarded and that to delay the project further called into question the integrity and efficacy of government.
- Norm Traeger, neighbor contiguous with the Rabin property, said he did not want to look at the Acacia/Gilmartin Drive-type houses, and asked the Council not to drive this development out the door for all the wrong reasons. He referenced other project approvals in the County that far exceeded the square footage of the Rabin project; he said the Council had done its diligence in saving the endangered and sensitive species and asked the Council to "just give us neighbors a shot" by approving the project.
- Randy Greenberg, Norman Way, asked the Council not to take the next steps until new story poles were erected to see where the houses had been moved and their impacts on views, etc. She also asked for tree loss data. She said that Lot 13 still loomed at the edge of the property; she said that stepped down or not, 7,000 square feet was still a massive house size and that these houses would not be hidden, rather, they would comprise a "glowing hillside" at night.
- Varda Rabin, applicant, said that being "invisible" was not a Town requirement;
- Tyler Brown, Redwood High student, said that the beautiful homes in Kao's plan added aesthetic value and would be interesting to look at.
- Dr. Maurice Zucker, Paradise Drive, said he had followed some of the proceedings and was impressed by the accountability and oversight of the Council; he commended the Council but asked when "enough was enough"; said that the bar was being raised continually and asked what was the intention of that, conscious or unconscious [he noted that he was a psychiatrist].
- Phil Richardson, Greenwood Beach Road, said he was struck by the question of density; he asked what had happened in the Town that only 14 homes were being considered on 52 acres while just over the ridge, there were approximately 250 on the same acreage.
- Attorney Clay Clements said that the family needed to know, one way or another, if 14 units was a "go" before any more money was spent on the project.

Mayor Slavitz closed the public hearing.

Staff recommended that the Council consider holding first reading of the rezoning ordinance and then deal with the RUA and other issues during the precise development plan discussion. Councilmember Fredericks said that it felt like giving a tentative approval for 14 units through rezoning would paint the Council into a corner if they want to reduce the number of homes later. She said that she was not prepared to make those decisions without more information. She

said that she would like to see residential use areas moved off the ridges, especially on lots contiguous to open spaces, or require any secondary uses to be moved away from those areas, or reduce the height of improvements or locate them on the least sensitive part of the area. However, she said that she was encouraged by the progress made in Alternative 6.

Fredericks said that the applicant had not counted square footage as the Town reports it, so she would like to see what the total square footage [of the houses] was as counted by the Town. She said that it might be necessary to reduce the square footage of the homes on Lot Nos. 5 and 6 to 4,500 square feet or increase the contiguity of the open space for those lots in order to be compatible as viewed from the Middle Ridge area. She noted that the houses in the Seafirth, Norman, Acacia and Hacienda neighborhoods were all smaller than what it proposed, but she added that the sensitivity of the applicant's designs might make larger square footages possible.

In addition, Fredericks said it would be useful to have more information on how the changes (in Alternative 6) would impact grading and traffic. She noted that projects approved by the County should not be used as a precedent for approval of this project. Fredericks said that she grappled with the idea that the lots would be sold over time and the original designs would be lost; she noted that history had shown that it was possible to change a precise development plan.

Vice Mayor Fraser also acknowledged the responsiveness of the applicants to the Council's suggestions. He said that process was very encouraging; he said that new story poles were a good idea and that it was important to "get the language right" for the RUAs in any approval to avoid having secondary buildings on the ridge. He said that the road to Lot Nos. 9, 10 and 11 seemed to be on the spine of a secondary ridge and asked whether someone could address that issue.

Fraser said that architect Kao had done a spectacular job in the home designs, while considering all aspects of the property and the environment. He also said that Mr. Kao had paid attention to the Council's advice regarding mass and bulk. He wondered if the Council moved forward with the rezoning whether it was setting themselves up for a problem or backing themselves into a corner.

Councilmember Collins said that it would be more costly to the applicant to design homes based on the rezoning ordinance than if the Council was first able to look at the story poles for the revised lots (in Alternative 6). He said he would like to see the RUAs staked and be able to analyze the impacts on trees from the homes that had been moved in Alternative 6. Collins complimented the applicant on the beautiful home designs and reduced roof heights, and that the story poles will help the Council evaluate the changes. He said that he still had questions about Lot No. 13, and even though it had been reduced he wondered whether it would still be a looming presence and whether there might be an alternative possible. He said that the applicant had come a long way.

Councilmember O'Donnell said that he had liked the project for a long time and had been ready to approve it prior to Alternative 5. But he said that reducing the size and footprints of the

particular homes in this alternative [6] also worked very well. He complimented the applicant on the environmental sensitivity and beauty of the project, as well as the respect shown to the Town's General Plan and process. O'Donnell agreed that it was important to find out more about the specifics of the RUAs, but said that it could be done during the design review process. He asked the Council not to hold up the applicants any further on this issue.

O'Donnell also agreed with Councilmember Fredericks that it would be useful to understand how the square footage of the houses was counted since the Town guidelines do not count underground [below-grade] square footage in the floor area.

O'Donnell said that the design and architecture in the project was remarkable. Opposition of it based on neighborhood compatibility isn't fair, according to O'Donnell, because along Paradise Drive the issue of neighborhood compatibility is a double-edged sword. He said that he believed the Rabins would do everything in their power to keep these beautiful standards.

O'Donnell said that the specific changes made in Alternative 6 were excellent, including pulling homes off the ridgelines, splitting Lots 5 and 6, and a particularly excellent design for Lot 8. He said that he can support the application for Alternative 6, but still needed language to tie in the house designs, defining floor area and how the RUAs will be handled.

Mayor Slavitz agreed that the application was improved in Alternative 6 but he said that in the 30 years since approval of the Acacia Drive neighborhood, the Town had adopted a new General Plan and had learned a lot in the process. He said that Alta Robles was located in an environmentally sensitive area and some of the land could not be developed. He said that it was important to "do it right" and at the same time acknowledged that the applicants had made great headway.

Slavitz said that the RUA issue was important; that it would not make sense for the Council to prohibit houses being built on the ridge and then allow a patio, fence or pool in that area. He said it was important to send a clear message to the Design Review Board on this issue, but this should be defined by the Council.

Mayor Slavitz said that the Rabins were asking for a commitment to approve 14 lots too soon; that Lot Nos. 8 and 13 were sticking points last time and that the Council did not want to send the message that 14 units were acceptable, if there is a need to reduce units later. He said that the goal of the hearing tonight was to see if the latest alternative was worth considering and putting up story poles [for further review]. He said that it was worth seeing more detailed plans. He said that he liked the smaller house sizes on Lot Nos. 5, 6 and 12, which were more along the lines of what the Planning Commission had recommended, but the homes on Lots 5 and 6 might still need to be smaller, per the Commission's recommendations.

Councilmember Collins agreed that it would be difficult to approve anything until the new lot lines were staked. He said he still thought some of the homes might be too large. He asked staff to clarify the next steps for the Council.

Director of Community Development Anderson said that the first reading of the rezoning ordinance committed the Council to nothing. He said that the rezoning action applied only to the SODA property and that the actual density of the project would be determined in the Precise Development Plan approval. He said that the Planning Commission had recommended adoption of the rezoning ordinance which would set the maximum density at .4 units per acre (8 lots), with no further subdivision permitted. He said that the applicant's proposed seven units on the SODA property would equate to a maximum density of .34 units per acre; he recommended that the Council approve that figure for first reading in order to move forward.

Councilmember Fredericks asked what the value of rezoning was at this juncture. Mayor Slavitz said that not passing first reading of the ordinance would only delay the process two weeks; he again stated that he did not want to send the wrong message.

Vice Mayor Fraser said that the applicant had shown earnestness and responsiveness and that adoption of the rezoning ordinance would send a cooperative signal to the applicant and not obligate the Town Council. Fraser said that he and Councilmember O'Donnell were serving on the Planning Commission during the first presentation of the project. He said that each step taken by the applicant had been progressive and that he would not be uncomfortable with adoption of the rezoning ordinance at this juncture.

Councilmember Collins noted that the ordinance included Lot Nos. 9, 10, 11, 12, 13, 14 and 8 on the Soda property and did not pertain to the "upper reaches" of the project. However, he said that he did not understand the practical effect to the applicant of approving the rezoning tonight.

Town Attorney Danforth said that passing first reading of the rezoning ordinance did not obligate the Council to adopt the ordinance in its current form. She also explained that there was enough flexibility in the ordinance that if the Council so desired, it could lower the number of units in the Precise Development Plan even after adopting the rezoning ordinance. She said that no one was proposing that the Council adopt a precise development plan tonight.

Councilmember Collins asked if changes were made to the rezoning ordinance after first reading, would a new public hearing be required. Staff said that the ordinance could be amended after first reading, and would not take effect until 30 days after adoption [second reading]. Staff reiterated that the ordinance only set forth a maximum density on the property, not a specific number of units.

Attorney Clement agreed with staff's assessment. He said that the applicant wanted to know, by way of Council passing first reading of the rezoning ordinance, that a maximum of 14 units was not "impossible"—and if it was, to let the applicant know tonight.

Vice Mayor Fraser said that it appeared the sides were getting "hung up" on a number. He said that acting on the rezoning ordinance was not the same thing as saying the number of units was okay.

Attorney Clement said that the applicant was not “taking it as a commitment” but that the Council’s reluctance to take a step that didn’t bind it to anything made his clients nervous. Mayor Slavitz responded that the reverse was true for the Council.

Daniel Rabin said that acting on the ordinance would send a message that “you are working with us” to reach a conclusion; that it was an act of good faith to move the process forward. He said that not adopting first reading of the ordinance was “worrisome”.

Town Attorney Danforth said that the ordinance was limited and would not draw lot lines nor promise a number of lots; she said that it set an “up to” maximum number, not a minimum. She repeated there were no irrevocable commitments in the ordinance.

Councilmember Fredericks commented that establishing a maximum density was often used to “beat us [the Council] over the head that we’re not giving applicants what they’re entitled to.” She said she did not have enough specific information to consider the rezoning ordinance.

Councilmember O’Donnell stated that there was more than enough specific information presented; he said that the only thing not specific was the staking of the new RUAs. He said that the Council had been rigorous in its requests and that it was now important to send a message of cooperation to the applicant that the parties would continue to work together to resolve any differences.

Vice Mayor Fraser agreed, and said that passing first reading of the rezoning ordinance and approving a maximum density did not guarantee a number of units.

Councilmember Fredericks said that she wanted to see more specific outcomes, for instance, to see whether moving Lot Nos. 5 and 6 met the Town goal to create more open space between those lots and also to see the effects of the changes to Lot 13. She said there would probably be a positive outcome of this review but there was no saving of time in approving the rezoning ordinance tonight.

Councilmember O’Donnell gave examples of the kind of changes made by the applicants, for instance, reducing the height of the home on Lot 6 from 24 feet to 16 feet, as well as the square footage; he said these revisions changed the visibility of the homes dramatically. O’Donnell commented that this meeting may have been a waste of time for the applicant.

Mayor Slavitz said that the goal of the meeting had been for the applicant to come back with a new conceptual design and see what the Council thought. He said the Council had agreed that the applicant was moving in the right direction. He said to the applicant, “you’re pretty much there and we want to see the story poles.” But he also said that he did not understand the rush to introduce the rezoning ordinance.

Daniel Rabin said that it would shorten the process for the family, and save additional time and expense.

Councilmember Fredericks made a motion, which was seconded by Councilmember Collins, to adopt Staff recommendation No. 2 (in the staff report) asking the applicant to do certain things and continuing the item to a date certain. This motion passed, with Councilmember O'Donnell voting against it. The specific actions requested of the applicant were:

- new story poles for revised lots only
- staking of the RUAs for revised lots only
- new list of trees set for removal as a result of the latest revisions
- larger scale drawings to make lot lines and RUA limits more legible

The Rabins and their attorney said that they needed to know tonight whether they might be allowed to have 14 lots on 52 acres, and said that they might go in a different direction if the Council did not introduce and pass first reading of the rezoning ordinance. They also said they were simply tired of making changes, then being asked to make more, with no guarantee of an approval. They said the costs to the family were emotional as well as financial.

Councilmember Collins reminded the applicants that the Council had shown good faith moving forward with their application, with all the lots intact, after the Planning Commission wanted to reduce the number of lots by four. He said the Council had asked the Rabins to "see what they could do" to address the Council's concerns; he praised them for being responsive to Council's comments, suggestions and direction to date.

MOTION: To read the rezoning ordinance by title only.
Moved: Fraser, seconded by O'Donnell

Councilmember Collins asked if a paragraph could be added to create an understanding that the approval was not approval of a number of units. Town Attorney Danforth said that it could be noted in the record and also could be included in the findings.

Director Anderson noted that the language in Section 2 of the ordinance would state that a maximum density would not exceed 0.34 dwelling units per acre.

Vote: AYES: Collins, Fraser, O'Donnell, Slavitz
NOES: Fredericks

Mayor Slavitz read, "An ordinance of the Town Council of the Town of Tiburon Rezoning Unincorporated Territory (Soda Property) in the Paradise Drive Portion of the Tiburon Planning Area – Assessor Parcel Number 039-301-01."

MOTION: To pass first reading of ordinance, as amended.
Vote: AYES: Collins, Fraser, O'Donnell
NOES: Fredericks, Slavitz

Due to the impending holidays, Council continued the matter to January 18, 2012.

2. **CalPERS Side Funds** – Consider recommendation to retire both the Local Safety and Miscellaneous Employee’s Side Funds (Director of Administrative Services Bigall)

Director Bigall gave the report. She explained that in 2003, CalPERS required all employers with less than 100 employees to be placed into risk pools. She said that the Town had no option to decline participation in the risk pools, and on June 30, 2003, the Town was placed into the Miscellaneous 2% @ 55 plan pool and the Local Safety 3% @ 55 plan pool.

Bigall said that upon being placed in the respective pools, CalPERS no longer calculated the Town’s individual unfunded actuarial liability. On June 30, 2003, she said the Town’s unfunded actuarial liability for each plan was replaced with a debt to the pool referred to as a Side Fund Liability. Bigall said the Side Fund Liabilities are amortized over a specified number of years determined by CalPERS. The Side Fund Liabilities are credited each year with CalPERS’ investment return assumption of 7.75%.

The Director said that essentially, the Town is financing its Side Fund Liabilities through CalPERS at an interest rate of 7.75%. After recently closing the books on the fiscal year, Bigall said, Staff met with the Town’s Finance subcommittee and recommended paying off this liability from unallocated reserves. The money would then be reapplied to the General Fund reserves. Bigall said this recommendation was also consistent with the MCCMC Pension Reform Committee’s recommendation for towns and cities to pay off or refinance these liabilities. Director Bigall noted that some other cities had gone to bond or borrowed money to pay off the side funds.

Mayor Slavitz asked why the Town had not done this sooner. Director Bigall said this had been considered by the Town in 2003, however, since the Town was receiving a more favorable interest rate at that time, no action was taken.

Councilmember O’Donnell, the Town’s representative to the MCCMC Pension Reform committee, gave some historical background and perspective on this and other CALPERS’ actions.

Council raised other questions as to how the action might affect the general fund reserves and whether the saved interest should be placed in a fund to be used toward future unfunded retirement liabilities. The Town Manager said that these and other policy questions could be discussed in more detail by the Council. In any event, she said that paying off this liability was a money-saving opportunity for the Town.

MOTION: To pay off the Side Funds as recommended.
Moved: Collins, seconded by O’Donnell
Vote: AYES: Unanimous

TOWN COUNCIL REPORTS

None.

TOWN MANAGER'S REPORT

None.

WEEKLY DIGESTS

- Town Council Weekly Digest – November 4, 2011
- Town Council Weekly Digest – November 11, 2011

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Slavitz adjourned the meeting at 10:10 p.m.

JEFF SLAVITZ, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK