

**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, October 15, 2003, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

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

PRESENT: EX OFFICIO: Town Manager McIntyre, Town Attorney Danforth, Director of Community Development Anderson, Planning Manager Watrous, Director of Public Works/Town Engineer Echols, Chief of Police Odetto, Director of Administrative Services McVeigh, Administrative & Financial Analyst Stott, Town Clerk Crane Iacopi

CLOSED SESSION

Conference with Legal Counsel
(Section 54956.9(a))

Howard Zack, Diane Zack v. MERA
MERA v. Town of Tiburon and Dean Bloomquist
Citizens for Open Process in Antenna Siting (COPAS) v. MERA

Public Employee Performance Evaluation
(Section 54957)

Title: Town Manager
Title: Town Attorney

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

Mayor Slavitz said that the Council discussed current litigation and the performance review of the Town Attorney. He said that no action was taken on these matters.

ORAL COMMUNICATIONS

None.

CONSENT CALENDAR

Mayor Slavitz removed Item No. 5 from Consent for discussion immediately following.

1. **Approval of Town Council Minutes** – September 17, 2003
2. **Approval of Town Council Minutes** – October 1, 2003
3. **Recommendation by Director of Administrative Services** – Accept FY 2003-04 Municipal Budget Interim Financial Reports for Quarter ended 9-30-03
4. **Recommendation by Director of Administrative Services** – Update Authorization for Investment of Monies in Local Agency Investment Fund (“LAIF”)
 - a) A Resolution of the Town Council of the Town of Tiburon Authorizing Investment of Monies in the Local Agency Investment Fund
5. **Recommendation by Town Manager** – Join Marin County Tourism Business Improvement District
 - a) A Resolution of the Town Council of the Town of Tiburon Authorizing the Town of Tiburon to join a Countywide Business Improvement District
6. **Recommendation by Town Manager** – Endorse League of California Cities Proposed Ballot Initiative to Protect Local Tax Revenues
 - a) A Resolution of the Town Council of the Town of Tiburon Supporting a Statewide Ballot Initiative to Require Voter Approval before State Government may Confiscate Local Tax Funds
7. **Recommendation by Director of Public Works/Town Engineer** – Award of Contract for Town Hall Roof Replacement

MOTION: To adopt Consent Calendar Items 1, 2, 3, 4, 6 & 7 above.

Moved: Fredericks, seconded by Gram

Vote: AYES: Unanimous

Item No. 5 - Recommendation by Town Manager – Join Marin County Tourism Business Improvement District

- a) A Resolution of the Town Council of the Town of Tiburon Authorizing the Town of Tiburon to join a Countywide Business Improvement District

Town Manager McIntyre said that the Tiburon Peninsula Chambers of Commerce had expressed some concerns about the proposed Business Improvement District and had asked for the opportunity to address the Council on the subject.

Mayor Slavitz opened the public hearing.

Terry Koenig, President of Koenig & Associates, representing the Chamber of Commerce, said that although the Chamber encourages tourism in Marin County, it wanted to ensure that local hotels and businesses got the best “bang for their buck” out of the proposed program. He said that while the Chamber was not opposed to the promotion of tourism county-wide, the question was whether the money slated for the County Business Improvement District (BID) could be better spent locally.

Specifically, Koenig said the Chamber had questions about the \$35,000-\$40,000 line item in the budget for media.

Town Manager McIntyre said that the \$35,000-\$40,000 figure was based on the amounts currently collected by the Town for its Transient Occupancy Tax.

Mr. Koenig asked the Council to defer adoption of the resolution until the Chamber could meet with the organizers of the County Business Improvement District.

Councilmember Thompson said that he thought the Town should move forward with the program as agreed in the September 17, 2003 meeting, but said that he also had some questions about the budget.

Sheri Sweet, Marin County Convention and Visitor’s Bureau, said that the proposed BID budget was a “sample budget” based on figures obtained from districts in similar size areas throughout the country.

Councilmember Thompson said that he had not realized that there was additional staffing in the budget and that the amount of money slated for media overall seemed low.

Ms. Sweet said that \$200,000 of the \$600,000 budget was planned for staff salaries, such as an Executive Director and Director of Sales, but that these positions would not be appointed right away.

Ms. Sweet also noted that the BID would be set up as a special assessment district which would allow a city to “drop out” after one year, if it chose to do so.

In response to another Council question, the BID representative noted that all the other cities in the County who had heard the presentation had voted to join the district, except Sausalito, where the matter was still under discussion.

MOITON: To continue the action of joining the Business Improvement District to an unspecified date.

Moved: Fredericks, seconded by Bach

Vote: AYES: Berger, Gram, Fredericks, Slavitz

NOES: Thompson

REGULAR AGENDA

8. Report on Proposed Library Expansion – Library Director Deborah Mazzolini

Director Mazzolini gave a Powerpoint presentation showing the growth of circulation in the Belvedere-Tiburon Library since its opening in 1997. As a result of this expansion in circulation and services, Ms. Mazzolini said that the Library had created an ongoing building program to review its current space requirements and to plan for future needs.

Ms. Mazzolini said that in 2002, a special committee, Community Partners for Library Expansion (CPLE), was formed. Chaired by Rita Fink and Ed Zelinsky, she said that the committee members also included Tiburon Town Council representative Alice Fredericks, Corinne Wiley of Belvedere, Library Agency Boardmembers Victoria Fong and Justin Faggioli, representatives from the Library Foundation, as well as representatives of the Landmark’s Society and Belvedere/Tiburon Joint Recreation Department. The Committee had voted to hire a consultant to submit a permit application for a proposed expansion plan to the Town of Tiburon.

According to Mazzolini, a preliminary list of the space needs identified by CPLE was:

- Larger Children’s Room
- Young adult room
- Homework Space
- Computer Lab
- Additional Meeting and Program Space
- Storage and Office Space
- A Quiet area
- Building Maintenance Space

Director Mazzolini showed a possible “footprint” of the proposed expansion plan, drawn up by Jim Levorsen, which would include enclosing the patio off the current Children’s Room and expanding the area behind the Library into two, 7,200 square foot floors to accommodate the above needs.

Councilmember Berger asked if the above floor plan included the Landmark's Society or Recreation Department.

Ms. Mazzolini said that the Landmarks Society would need around 7,000 square feet for its archives, while the Recreation Department had stated that their current office space area of 1,400 square feet was probably adequate. She also said that while the Belvedere-Tiburon Library Agency was committed to the expansion of the library, the other interested organizations, Landmarks and Recreation, were not yet certain.

However, Mazzolini said that CPLE was very much interested in pursuing "joint ventures" for the project. She said that in addition to the aforementioned groups, a librarian from the Reed Union School District had been consulted, as well as Dr. David Steinhardt of the local Audubon Society. She noted that a concept such as a Community Center would obviously exceed these space requirements.

Mayor Slavitz asked if the proposed expansion plan would have any environmental impacts on the Pt. Tiburon Marsh. Ms. Mazzolini said that an environmental consultant had been retained and had stated that there would be no major obstacles to the proposed expansion but that some mitigation measures would be probably be required. She also said that one of the ideas that had been "floated" was a possible marsh education center in the Library.

In response to a question from Council, Director of Community Development Anderson confirmed that the next step would be for the Town to authorize the Library's permit application on Town-owned land, and that the matter would come before the Council on November 5, 2003.

Mayor Slavitz said that the Belvedere-Tiburon Library was a "jewel to the city." Ms. Mazzolini responded that all the services and programs would not be possible without the 320 volunteers who offered their time and services in addition to the Library Staff and Board.

9. **Report on Downtown Plaza Art Project** – Heritage & Arts Commission Chair Dave Gotz

Chair Gotz summarized his written report. He said that the Heritage & Arts Commission had been contacted by Steering Committee representative Harry Matthews who had expressed the Committee's concerns about not having met its fundraising goal for the project. He said that the Committee members had reached the conclusions that the "Hulls" design was not going to work due to a lack of community support and that fundraising efforts had been halted.

Mr. Gotz said that the Heritage & Arts Commission was now seeking Council authorization to contact the donors and give them the option of getting their money back or leaving it in the Town fund for a different art project in that location.

Andrea Morgan, Chair of the Steering Committee, said that the Committee had raised \$80,000 of the \$100,000 goal. Nevertheless, she said that the “water” issue [for a fountain or “water element” in that location] had never fully been resolved in the community’s mind and that two questions remained for the Council if it decided to move forward with the project: 1) where would the water come from; and 2) the costs associated with bringing water to the site.

Mayor Slavitz opened the public hearing.

Jim Mallott commented that the process had not really been an “open competition” and that the Town might get more involvement if it did not “winnow” the competition up front.

Ms. Morgan responded that the RFQ was circulated to 750 artists between Santa Cruz and the Oregon border; that the panel had received 40-45 submittals and had reviewed 5,000 slides, which it then narrowed down to five finalists.

Mayor Slavitz closed the public hearing.

Town Manager McIntyre said that on November 5, Staff would bring the item back for Council consideration to respond to the funds return question and to determine what the next step in the process for the art project would be.

Councilmember Berger said that the whole process to date had gotten people to think about “public art” in their Town and that while it was not a “happy day” to acknowledge that this particular project had failed, something would come of the project in future. He thanked all the Commissioners and Committee members for their hard work, which was echoed by the Mayor.

10. Report by Town Manager – Mill Valley Refuse Service Franchise Agreement – Single Stream Recycling and the “Blue Can”

Town Manager McIntyre said that while single stream recycling was already underway in Tiburon, several issues remained about the new containers, specifically, their size, color, and the ability of residents to store them.

Jim Iavarone, Mill Valley Refuse Service (MVRS), said that the “blue can” program had been underway in Mill Valley for over two months in Mill Valley with few complaints, and with some favorable comments about the ease of recycling with the new cans.

He said that the company had begun running Public Service Announcements in local papers to educate people to remove their blue cans from the sidewalks after pick-up. He also said that some of the supervisors were placing “stickers” on cans left out and that slowly but surely, he hoped that people would get into a routine of not leaving them out.

In response to a question from Mayor Slavitz, Mr. Iavarone said that residents of Mill Valley and Corte Madera had also been offered the options of receiving a large, 42-gallon can, a half-size

can, or no can (continue to recycle as before). He said that the vast majority of people liked the new (large size) blue can. However, he brought for Council's viewing the large and half-size can.

Councilmember Berger said that it had been the consensus of the Council to allow the residents a choice of can size.

Vice Mayor Fredericks said that the program should go one step further, requiring residents to call the refuse service and ask for a can. She said that this would create a sense of responsibility about the cans.

Mr. Iavarone expressed his concerns that this system would create a "piecemeal delivery" schedule that would be difficult for the company to execute; nevertheless, he agreed to do it. He also said that MVRS would come up with some way of notifying Tiburon residents of this program, such as a special mailer, and that the company would probably "batch" calls prior to making a delivery.

Mayor Slavitz acknowledged that the proposed delivery program would be more labor intensive for the company but said that the alternative was not desirable to the Town.

Councilmember Thompson asked whether the every other week recycling pick-up was still an option. Mr. Iavarone said that initially it was thought this would be a way of reducing trip costs but that the company had found that its customers were on average filling the new blue cans at 80% which would nullify a bi-weekly pick up option.

Councilmember Berger also stated that weekly pick up was important to customers who had little storage space for recyclables.

Vice Mayor Fredericks asked whether there were additional charges for exceeding the recycling capacity of the cans similar to excess garbage rates. Mr. Iavarone said that the recycling program had always been unlimited.

Mayor Slavitz asked whether there was a possibility of obtaining smaller green waste cans, as well. Mr. Iavarone said that perhaps that could be considered.

Mayor Slavitz opened the public hearing.

Deirdre McCrohan, Ark Newspaper reporter, said that she had heard from people that they "hated the color" of the blue cans.

Mr. Iavarone said that MVRS serviced eight different communities and that it was important to have uniform colors to distinguish between types of refuse. However, he said that the community of El Monte had requested a brown can which the company had provided.

John Kern asked whether the company accepted plastic bags and styrofoam. Mr. Iavarone said that grocery stores accepted plastic bags but that the recycler they used did not accept bags or styrofoam.

Jim Mallott said that the addition of blue cans to the landscape would result in “cumulative visual pollution.”

Mayor Slavitz closed the public hearing.

Council concurred that single stream recycling was a great advantage for the community and encouraged Mr. Iavarone to continue educating the public on removing the cans from the street after pick-up.

Councilmember Thompson said that he was indifferent to the color of the can.

Councilmember Berger and Vice Mayor Fredericks stated their preference for a brown can.

Councilmember Gram said that the “opt in” program was important and also that he preferred the brown can.

Town Manager McIntyre said that he would work with Mill Valley Refuse Service to come up with a “brown can” recycling program for Tiburon.

PUBLIC HEARING

11. **Recommendation by Planning Manager** – Appeal by St. Hilary Church of Design Review Board Denial of a portion of a Site Plan and Architectural Review Application for Grading in Association with Drainage Improvements

Address: 761 Hilary Drive
AP Number: 55-253-18

Planning Manager Watrous gave the report. He said that a compromise had been proposed and agreed to by the appellant and the affected neighbors which was contained in the Council’s “late mail.” He said this compromise addressed the amount of fill which was the main concern of the Design Review Board. He recommended that Council take public testimony and then partially grant the appeal with the addition of some landscaping.

Councilmember Berger asked whether another option would be, after Council deliberation, to deny the appeal and have the new proposal expedited through the Design Review Board. Planning Manager Watrous said that was indeed an option but that there were time constraints due to the impending rainy season.

Vice Mayor Fredericks pointed out that the action recommended by Staff was within the Council's purview and not a change in Town policy.

Mayor Slavitz asked whether the suggested compromise still made the area look like an extension of the playing field.

Town Engineer Echols said that the revised design would "shave back" the existing fill and the revised design of the ditch width would accommodate a 100-year storm.

Councilmember Berger, looking at the plans, said the new plan showed the site sloping down toward the new ditch which would be functional.

Mayor Slavitz opened the public hearing.

Bill Tiedje, St. Hilary Church Business Manager, representing the appellant, said that the construction had started in March 2003 and an opportunity had arisen to fill in the old ditch which was considered by some to be a safety hazard. He said that they did not know a permit was needed to do this work and that the Town had issued a stop work order and had required St. Hilary to submit an application and plan for the fill work.

Mr. Tiedje said that his understanding was that this sort of plan was normally approved at the Staff level. However, he said that St. Hilary was required to appear before the Design Review Board and because their civil engineer was not available to appear before the Board on the scheduled hearing night, St. Hilary requested a continuance which was denied. He said that the DRB then denied the application which was subsequently appealed to the Town Council.

Mr. Tiedje said that the proposed compromise plan was okayed by the neighbors adjacent to the project, the Howards. However, he said that a lot of ill will had been created by neighbors who thought they had "rights to the property" owned by the church and that St. Hilary had been unfairly portrayed as a "bad neighbor" during the construction process.

Nevertheless, Mr. Tiedje said that construction was still on track and ahead of schedule and would be complete by mid to late February. He said that they had taken "extra steps" to ensure that the new buildings would not be a burden to the neighbors.

Deborah Bendenelli, 735 Hilary Drive, asked for clarification about the amount of fill being removed.

Town Engineer Echols said that several cubic yards would be shaved back to a 2:1 slope, up to an estimated total of 75 cubic yards.

In response to another question, Planning Manager Watrous said that the original building permit did not specify the amount of fill, but that 50 cubic yards was the figure that triggered Design Review, per the Zoning Ordinance.

Mrs. Bendenelli concluded then that 240 cubic yards of dirt had been added to the site, 75 of which would be removed under this plan. She characterized the entire process as a “landfill” which had been “dumped” next to the Howard’s’ property.

Mrs. Bendenelli said she also had concerns about the proposed plants in the landscaping plan and asked the Council how they would ensure that they were kept to a certain height so as to avoid potential view problems. She said that the church had not followed the Town’s guidelines with regard to landfill and wondered whether they would stick to the landscape maintenance plan.

Finally, Mrs. Bendenelli asked whether by approving a compromise the Town was actually allowing St. Hilary to “get around” compliance with Town rules.

Councilmember Berger said that while it might appear “circuitous,” that the Town had asked St. Hilary to revise its original plan and seek approval for it. He said that the compromise plan appeared to meet this requirement.

Mayor Slavitz asked Mrs. Bendenelli whether she had seen the plan and was in agreement with it. He also asked Staff about the enforcement mechanism.

Planning Manager Watrous said that the Town did not like to involve itself in enforcement due to limited staffing, so it preferred to see plant species that did not grow any higher than the agreed height limit. He said that Staff would do due diligence to find a species that did not have the potential to grow higher, and to find the right location and do the appropriate calculations to meet this goal.

Vice Mayor Fredericks said that the “Carolina Laurel” mentioned in the compromise plan was just an example. Mr. Watrous agreed, stating the wording of the Agreement said “such as...” this species.

Councilmember Berger said that he thought the slope should be hydroseeded, as well.

Councilmember Gram asked what would happen if the chosen species did, in fact, grow higher (than the roofline of the Howard’s’ home), and that he agreed with Mrs. Bendenelli’s concern in this instance.

Planning Manager Watrous said that traditionally the Town has not included a maintenance clause in its approvals which could result in a view dispute between property owners. However, he reiterated that Staff would try to find a plant that would “top out” at the proposed level.

Mayor Slavitz asked whether there were trees in that area prior to the construction. Mr. Watrous said no, but that the Howards and the Design Review Board had requested screening.

Mr. Watrous went on to recommend that Council not require that all parties agree to a specific plant type.

Councilmember Berger said that Council's action in this matter should not be interpreted as a way for neighbors to negotiate agreements in order to circumvent the Design Review process (after having an application denied by the DRB). However, he said that in this instance, given that the proposal was acceptable and that expediency was necessary, it was appropriate for the Council to give due consideration to the plan.

Berger added that the project itself was looking great and that the process and the required modifications had worked.

Vice Mayor Fredericks added her opinion that the Council had the authority to review and decide any aspect of an appeal and that all parties had been noticed of both the Design Review and Town Council hearings in order to have an opportunity to comment. Therefore, she said that an approval did not represent a "subversion of [Town] policy."

Councilmember Gram said that the affected parties had worked out a compromise which should be blessed by the Council; however, he said he did not want to see a future landscape feud resulting from an approval so that Staff should play close attention to this detail.

Councilmember Thompson concurred.

Mayor Slavitz agreed with Councilmember Gram and Thompson and echoed Ms. Bendenelli's concerns about future maintenance of the landscaping.

MOTION: To Partially grant the appeal and direct Staff to come back with a resolution which reflected the components of the plan to which the parties had agreed; that the landscaping not exceed 8-10 feet without trimming; that the construction proceed expeditiously; and that the fill be stabilized with hydroseeding, top soil or an appropriate planting medium be used for the other landscaping.

Moved: Fredericks, seconded by Berger

Vote: AYES: Unanimous

COUNCIL COMMITTEE AND COMMISSION REPORTS

Vice Mayor Fredericks said that the CAC would meet on the upcoming Saturday to try to reach consensus for a recommendation to the Board of Supervisors on how the proposed sales tax proceeds would be allocated.

Councilmember Berger said that the Governor had signed legislation allowing a bridge toll measure to go to the ballot which would fund the Water Transit Authority. He said that Marin County was connected via the Richmond/San Rafael Bridge link (and Port Sonoma) but that the Golden Gate Route would be unaffected.

Councilmember Thompson said that the Richardson Bay Regional Agency would meet the following evening at 5:30 p.m. and that someone should be considered to be appointed as the Town representative after his departure from the Council.

WRITTEN COMMUNICATIONS

Town Council Weekly Digest – October 3, 2003

Town Council Weekly Digest – October 10, 2003

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Slavitz adjourned the meeting at 9:27 p.m., sine die.

JEFF SLAVITZ, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK