

## **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, May 21, 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, Advance Planner Bryant, Director of Public Works/Town Engineer Echols, Chief of Police Odetto, Town Clerk Crane Iacopi

### **ORAL COMMUNICATIONS**

- Marlene Fowler, an organizer of the Marin Designer Showcase, informed the Council of upcoming dates and hours of the showcase scheduled for September 16 through October 5, 2003 at 138 Lyford Drive.
- Miles Berger announced June 18 as the date scheduled for the Council to hear the Skatepark Task Force Needs Assessment report.

### **RECOGNITION OF OUTGOING BOARD, COMMITTEE & COMMISSION MEMBERS 2000-2003**

Presenter – Mayor Jeff Slavitz

Board, Committee and Commissioner Members:

- Judy Burgin, Parks & Open Space Commission (1998-2002)
- Stephanie Regan – Jt. Disaster Advisory Council (1998-2002)
- Victoria Arnett – Heritage & Arts Commission (1992-2002, now Commissioner Emeritus)
- Miles Berger – Planning Commission (1996-2002); Design Review Board (1993-1996)
- Bill McLaughlin – Design Review Board (1999-2003)

Mayor Slavitz presented the plaques and thanked the recipients for their service to the community. Ms. Regan and Mr. McLaughlin were absent.

## PRESENTATION

- Annual Report by Belvedere-Tiburon Joint Disaster Advisory Council

Co-chairs Judy Bloch of Tiburon and Dr. Tom Cromwell of Belvedere gave the report. They informed the Council that the Council had established a website link to provide disaster preparedness information to the public, in addition to the mailer in the Ark newspaper.

Ms. Bloch said that following the winter storms, the Council had placed articles in the Ark asking if anyone had experienced damage and needed assistance. She said that members Ellen Rony of Tiburon and Chuck Auerbach of Belvedere were working with homeowner's associations on neighborhood preparedness; and that two trainings had been conducted with good attendance on volunteer mobilization and shelter manager training.

Dr. Cromwell spoke about the Field Hospital project which had evolved into smaller "first aid stations" and now had the backing of the Tiburon Fire Department.

Dr. Cromwell said that the purpose of the Jt. Disaster Advisory Council was to focus attention on the area of disaster preparedness and that in so doing, the Council supported the inclusion of the Town and the City of Belvedere in the MERA radio system.

## CONSENT CALENDAR

1. **Approval of Town Council Minutes** – May 7, 2003

Vice Mayor Fredericks and Councilmember Berger added their changes.

2. **Recommendation by Director of Administrative Services** – Accept Town Investment Summary for April 2003
3. **Recommendation by Director of Administrative Services** – Authorize Town Manager to Execute Independent Audit Agreement for FY 2002-03
4. **Recommendation by CMA Town Subcommittee** – Nomination of Tiburon Resident to the Congestion Management Agency Southern Marin Community Advisory Committee
5. **Recommendation by Associate Planner** – Denial of Appeal of an Application for a Sign Permit at 1640 Tiburon Boulevard – Cindy's Hair Salon

Applicant/Appellant – Cynthia Lee Siciliano, Proprietor  
Assessor's Parcel No. 059-101-04

- a) A Resolution of the Town Council of the Town of Tiburon  
Memorializing the Denial of an Appeal of a Design Review  
Board Decision to Deny a Sign Permit Application  
at 1640 Tiburon Boulevard, Unit #12, AP No. 059-101-04
- 6. **Recommendation by Director of Public Works/Town Engineer** – Award of Contract  
for Spring 2003 Street Rehabilitation Program
- 7. **Recommendation by Director of Public Works/Town Engineer** – Proposed Spring  
2004 Street Rehabilitation Program

MOTION: To approve Consent Calendar Items 1-7 as amended above.  
 Moved: Fredericks, seconded by Thompson  
 Vote: AYES: Unanimous

REGULAR AGENDA

- 8. **Recommendation by Director of Public Works/Town Engineer** – Lyford Cove  
Undergrounding of Utilities Assessment District
  - a) A Resolution of the Town Council of the Town of Tiburon  
of Intention to Make Acquisitions and Improvements –  
Lyford Cove Utility Undergrounding Assessment District

Director of Public Works/Town Engineer Echols said that the Board of Supervisors had unanimously approved the Town’s request for extraterritorial jurisdiction at its May 20, 2003 meeting. He said that all other aspects of the preliminary steps to form the district were complete.

Councilmember Berger asked if anyone had responded to a resident who had called him to inquire about joining the district.

Organizer Joan Lombardo said that she had talked to the woman whose residence is located at Vistazo East and St. Bernard Lane. She said they discussed the fact that her property was not in any way contiguous to the district so that she would not be eligible to join; however, she noted that she could join another district in that area if one was formed.

MOTION: To adopt the Lyford Cove Resolution of Intention  
 Moved: Gram, seconded by Thompson  
 AYES: Unanimous

9. **Request by Landmarks Society** – Proposal to Relocate Gallows Wheels from the Belvedere-Tiburon Library to a Site Adjacent to the Donahue Building

Director of Public Works/Town Engineer Echols said that both the Parks & Open Space Commission and Heritage & Arts Commission had expressed their support of the proposed relocation in concept. However, he said that residents of the Point Tiburon Bayside Homeowner's Association had said there would be a negative aesthetic impact if the wheels were placed in the proposed site adjacent to the Donahue Building.

Mr. Echols said that while an exact plan had not yet been determined, it was contemplated that a small berm east of the building would be flattened which would result in not net increase of any kind in height if the wheels were placed in that location.

In response to a question from Mayor Slavitz, Echols said this proposal had been advanced by Town Staff but that the Town had not been asked to become involved in any of the actual logistical planning for the actual relocation, or to bear any of the cost.

Vice Mayor Fredericks asked about any potential liability to the Town if the wheels were placed in that location. Town Attorney Danforth said that the Town had been told that the placement would be as stable as the current one (adjacent to the Library), so that the consequence of moving the wheels to a new site would be nearly the same.

Councilmember Berger said he would like to see the installation kept "clean" and free of landscape intrusion.

Janice Anderson-Gram, representing the Landmarks Society, said that for the last 30 years, the Society had acquired properties of historical significance and had offered them for public use. She said that the Board had voted to pursue relocation of the six cast iron pulley wheels which had been part of the gallows frame in downtown Tiburon back to their original historical site. Ms. Anderson-Gram said that the wheels had been donated to the Town by the Northwest Pacific Railroad when the frame was dismantled in 1974, and were eventually placed at the corner of Mar West Street and Tiburon Boulevard.

According to Ms. Anderson-Gram, the Parks & Open Space Commission had recommended that the Landmark's Society meet with members of the Point Tiburon Board to explore alternative sites. She outlined the attempts of the Society to meet with the Board since the beginning of the year. However, she said that she was told that some members would vote against relocating the wheels to any site on the Waterfront Park.

Ms. Anderson-Gram said that one alternate site that had been identified was in the back of the Donahue Building (facing the Bay). She said that the space was more narrow and because of that it would be difficult and expensive to mount the wheels in a vertical position in that location.

She said that the Commission thought it would be safer to place the wheels in a flat configuration.

Ms. Anderson-Gram also said that the Commissioners had described the wheels as an “important art form of our industrial heritage.”

Mayor Slavitz asked whether the proposed configuration of the wheels would be similar to the one in its existing location at the Library. Ms. Anderson-Gram replied that the wheels would be placed “absolutely flat” in the proposed site adjacent to the Donahue Building (as opposed to being “stacked” in their current location), and that the ones with axels would probably be cemented in the ground which would result in great stability.

Ms. Anderson-Gram said that only one axel would be 12 – 16 inches higher than the current berm. She said that the installation would be on a kind of turnaround configuration, perhaps with river rocks. The aforementioned alternate site contemplated mounting the wheels on a steel frame at the back of the building. Ms. Anderson-Gram said that the first site would be more complementary to the railroad museum (Donahue Building).

Ms. Anderson-Gram also described a proposed treatment of the wheels (wire brushing and the addition of a protective coating) prior to their relocation.

Mayor Slavitz asked whether the Society would maintain the installation. Ms. Anderson-Gram said yes, but that the proposed installation would not require the same level of maintenance as the park if the wheels were placed on a rock surface.

Councilmember Berger said that he had heard from interested residents that it was important to maintain the “green” look of the park and asked whether the Society would be amenable to continuing that surface.

Ms. Anderson-Gram replied affirmatively but also noted that the grass area already terminated at the parking lot adjacent to where the wheels would be placed. She added that the cars parked in that lot were a higher elevation than the wheels would be at that location.

She said that a number of plant choices no higher than 12 inches had been contemplated to surround the river rock border. And in response to a question from the Vice Mayor about safety, Ms. Anderson-Gram said that the Parks & Open Space Commission had said that they would probably be safer than climbing on the sea wall in that location.

Mayor Slavitz opened the public hearing.

Jay Key, Point Tiburon resident, suggested not moving all of the wheels from their current location, and to find an alternate site for them. He said that he had appeared before the Council on previous occasions to oppose projects that would have a negative impact on the waterfront park and the residents of Point Tiburon (the proposed cutting of the trees in front of Guaymas

in the planning phases of the ferry plaza reconstruction, and a floating dock proposed by Blue & Gold Fleet that would extend into the Bay).

Mr. Key said that while view impact was not the main concern of the Point Tiburon residents, seven or eight units in fact looked down on the proposed site. He said that the wheels were so big that the proposed site would be a third as large as the ferry plaza itself and said that all of the berm would have to be removed to accommodate them. He suggested placing some of the wheels behind the Donahue Building and some at Blackie's Pasture at the site of the old railroad trestle.

Mr. Key also stated that the 1984 [subdivision] agreement envisioned discussions between the Town and Point Tiburon residents regarding any future changes to the waterfront park. He suggested that Council table any action until alternatives could be discussed.

Council asked questions of Mr. Key about the views from the affected units. Councilmember Gram suggested a site visit so that Council could see the vistas first-hand.

Steve Wanat, 17-year resident, Mar West Street, said that he was an architect and urban designer. He said that the wheels were not meant to lie flat and that the Town should "make more of the installation rather than less." He said that he recalled the architect of the Point Tiburon subdivision trying to get the Donahue Building moved, as well.

Delli Woodring, 1912 Mar West, member of Landmarks Society and acting President of Point Tiburon Bayside, said that the drawing distributed by the proponents was misleading as to the size of the wheels and location. She said that just the wheels alone would cover 304 square feet.

Ms. Woodring said that the Innisfree Company (developer of Point Tiburon) had given the Town \$10 million for improvements which had resulted in the Shoreline Park and walking path, a 66 inch storm drain, the installation of rip rap along the shoreline, and traffic lights to Highway 101. She said that the owners of each unit at Point Tiburon (except for the below market rate units) were assessed \$1,480 per year through 2008 to pay for these improvements. She asked the Council not to make any changes to the dedicated "serene" park and that the 1984 agreement said that no changes would be made without the agreement of the Point Tiburon residents.

Ms. Woodring submitted petitions to the Town Clerk opposing the relocation of the railroad wheels to the Shoreline Park.

Piper Berger, Landmarks Society archivist, said she supported all efforts to bring the wheels back to a location in context with their historical significance (at the railroad building).

Bill Ziegler, attorney for the Innisfree Company, and author of the aforementioned 1984 [Subdivision Improvement] agreement, gave his opinion. He said as a former [Sausalito] city

council member that he was sympathetic to the position of the Council; however, he said that the Council was in a “trustee” position and that the property was not simply an outright gift. Mr. Ziegler said that the final [Subdivision Improvement] agreement was the result of a serious and long negotiation and that no one issue was discussed more than the Shoreline Park.

Mr. Ziegler also stated that the landscape plan for the area was carefully negotiated in detail and that the pertinent sentence in the agreement stated that “no additional structures other than complementary facilities shall be constructed by the Town” unless agreed upon by all the parties. He said he recalled a meeting in which the Town had asked to place a gazebo on the Waterfront Park for information purposes; this had been turned down.

Council asked the Town Attorney for her interpretation of the terms of the agreement pertaining to “complementary facilities.”

Town Attorney Danforth said that she could not disagree with Mr. Ziegler who had been present during the negotiations. However, she said that “words are what we live by,” and the parties to the agreement are bound by the text of that agreement. In her opinion, Ms. Danforth said that a gazebo was a structure that would be an obstruction and could not be installed without the permission of the Pt. Tiburon Board. This did not mean that the Pt. Tiburon Board had the right to approve any visible change to Shoreline Park.

However, Danforth said it was difficult to define a “complementary facility” and posed the question of whether it would extend to such structures as bike racks and benches. She said that the gallows wheels installation would not be inconsistent with the Town’s definition of open space use, and if it was not a view issue, then the question of whether or not it would be “complementary” remained unanswered (by definition).

Councilmember Thompson said that he recalled a voter referendum regarding the Donahue Building. He said that Town residents voted to “leave it there” precisely because it was complementary, due to its historic significance.

Mr. Ziegler said that at the time of execution of the 1984 agreement, no decision had been made regarding the [location of the] Donahue Building. He said that he agreed that the gallows wheels would be complementary to the building but not to the Shoreline Park.

Town Attorney Danforth said that she was glad to hear him say that the wheels would be complementary to the museum which would leave the decision as to whether the location was suitable up to the Town Council.

Councilmember Gram said that two issues had been presented--aesthetic and legal. He asked Mr. Ziegler which issue he was attempting to bring forward. Gram said that because the agreement allowed the installation of “complementary facilities,” the Council should stick to deciding the aesthetics of whether the installation was a “complementary facility.”

Philip Richardson, Greenwood Beach Road, said that the wheels should be placed in a vertical position to reflect their original use and encouraged Council to find a place to do that. He said he also could envision some sort of “kinetic sculpture.”

Ms. Woodring said that she walked the Shoreline Park path every day and that the consensus of people she met there were in favor of maintaining the “sweeping blend of grass and water” (without obstruction). She reiterated her remarks that the wheels would also pose a safety hazard for children if they lay flat and suggested that they be mounted elsewhere in a vertical position.

E.C. Grayson, Pt. Tiburon Bayside Board of Directors, concurred with this remark. He said that as a former Assistant Secretary of the Navy, he had seen numerous tort claims arising from accidents which had occurred on the retired planes given by the Navy to municipalities across the country.

Dennis Ciocca, Paradise Drive, invited the Council to view the proposed site from the ground level unit owned by he and his wife at Pt. Tiburon. Ciocca said that while they were also members of the Landmarks Society, they had not heard a discussion of finances for the proposed relocation and wondered why they were being told that the alternate site was not financially feasible. Mr. Ciocca said that the grassy areas of Shoreline Park were used as picnic sites by families and should be left alone.

William Dunlay, 304 Paradise Drive, who said he was the newest member of the Pt. Tiburon Board, said that the Board expected the Landmarks to bring the matter back to them for further discussion of alternate sites before it went to Council. He said that he thought the massive wheels would become an eyesore and recommended finding another location for them.

Phil Cassou, President of Landmark’s Society, agreed that the group was trying to find a suitable place and a presentation that would not endanger children. He said that the gallows wheels represented the “industrial nature” of the Tiburon Peninsula and that the Society was trying to bring the pieces of that history together in an appropriate setting.

In response to questions from Council, Mr. Cassou said that he could lay out cardboard models of the wheels for Council’s view. He also said that he could “tape off” the affected area in question.

Susan Wolf, 412 Paradise Drive, said she liked the wheels in their current location and did not envision them on the Shoreline Park. She said it was not just the residents of Pt. Tiburon who felt this way and she asked the Council to “protect our treasure” and keep the “splendor of the Bay and green grass.” Ms. Wolf said she concurred with those speakers who had suggested an alternate site at Blackie’s Pasture.

Mayor Slavitz closed the public hearing.

Councilmember Thompson said that while he was happy to explore other site solutions, except for Blackie's Pasture, he thought the Donahue Building was where the wheels belonged. However, he thought that landscape should be kept at a minimum and he wanted to view the site from the units at Pt. Tiburon prior to making a decision. Thompson said he thought other solutions might be to not use all of the wheels or have them coming out of the ground in some fashion. He said that he thought a sculpture would be problematic.

Vice Mayor Fredericks said that the Library recognized that relocation of the wheels was the Town's decisions. However, she said that individual members of the Board had expressed two different opinions about the relocation, with some members favoring their current location at Mar West Street marking the "entrance" to downtown, and others favoring their relocation to the Donahue Building.

In addition to aesthetics, the Vice Mayor said that the other question for the Council to consider was whether it wanted to "give up" 1200 square feet of grassy area at the Shoreline Park.

Councilmember Gram gave Mr. Key credit for being right about the ferry dock and plaza issues mentioned previously. He agreed with Councilmember Thompson that the wheels would be complementary to the museum; however, Gram said he wanted to see aesthetically how it would affect the units at Pt. Tiburon.

Councilmember Berger said that he was mindful of the fact that the wheels would be more accessible to children playing on them in the proposed location than at the library location. He said a reconstruction of the gallows frame would be fantastic but also agreed that it was important to look at the site from the point of view of the residents at Pt. Tiburon.

Berger reflected on the decision to place a gazebo at Blackie's Pasture and said that he was never certain about the "rightness" of that decision. He concurred with others regarding the importance of ensuring that the "sweeping beauty" of the Shoreline Park was not hurt by the placement of the wheels.

Councilmember Berger, who stated that he was married to the Landmark's Society archivist, Piper Berger, said that he thought the relocation of the wheels to their historic context made sense but that the placement needed "aesthetic meaning," as well. Berger said that if wheels could be placed in an overlapping manner, they would take up less space; he said he was not certain where else they could go.

Mayor Slavitz concurred with the comments of his fellow Councilmembers. He said that liked the idea of a mock-up proposed by Mr. Cassou, which he said should be installed before the Council made a visit to the site. The Mayor said that past legal issues should be put aside; that more communication was needed with the residents of Pt. Tiburon about the proposed placement on the Waterfront Park, as well as continuing to explore alternate sites.

MOTION: To continue the matter to the July 16, 2003 meeting in order to allow the Council to visit the Pt. Tiburon units and to view a mock-up of the lay-out of the gallows wheels at the Donahue Building.

Moved: Berger, seconded by Fredericks

Vote: AYES: Unanimous

10. **Report by Town Attorney** – Review of Amicus Participation in *Barden v. City of Sacramento*

Mayor Slavitz said that the the City of Sacramento had entered into settlement negotiations with the plaintiff. Town Attorney Danforth concurred and said that she was told by the Sacramento City Attorney that settlement was probable but not certain due to a dispute over attorney's fees. The plaintiffs were demanding \$950,000 and the City had offered \$500,000, a difference of \$450,000 being demanded by the plaintiff in attorney's fees. She said that there was no need for the Town to take any action on the matter due to the pending settlement.

In response to a question from Mr. Rocky Birdsey, Ms. Danforth said that if the case settled, the Council would table the matter.

MOTION: To continue item to June 4, 2003 pending outcome of current settlement negotiations.

Moved: Fredericks, seconded by Berger

Vote: AYES: Unanimous

11. **Report by Advance Planner** – General Plan Update: Goal, Policy and Program Refinement of Downtown Element Issues Paper

Advance Planner Bryant said that downtown element was in its goals and policy refinement phase. He said that the Downtown Element Issues Paper had been presented to the Planning Commission whose role was to do most of the work; he said that the Council, as the Town's policy-making body, would be asked to affirm the Commission's work and provide additional direction. Staff would then draft a new document for Council's review, according to Bryant.

Planner Bryant asked that the Council review five areas where no consensus had yet been reached and described the issues as follows:

- Parking in Downtown
- Fast-food take-out Restaurants
- Waterfront Promenade
- Office Uses Downtown
- Affordable Housing

- 1) Parking—consider leasing private pay parking lots from their owners for public parking and pay for the leases through revenue generated by parking meters; and/or to institute a preferential parking program for residents in the downtown lots.
- 2) Fast-food—Does the Town wish to maintain the prohibition on “fast food, take-out restaurants” and does it wish to prohibit franchise or chain restaurants?
- 3) Should it be Town policy to complete a formal waterfront promenade from the ferry plaza to Corinthian Yacht Club, or take a position that there is already adequate waterfront access downtown and no more is needed; or encourage additional public access where it can be reasonably accomplished without serious detriment to property owners or businesses?
- 4) Office uses Downtown—is additional language needed to allow property owners greater flexibility in management of their properties?
- 5) Affordable Housing—Planning Commission did not recommend applying overlay to all of Downtown; status quo recommended.

Other suggestions for consideration by Council were whether to a) close Main Street to automobiles on weekends; b) implement a jitney system to serve downtown; and c) look for opportunities to provide educational or entertainment facilities downtown for children.

Mayor Slavitz opened the public hearing.

Regarding parking, Steve Sears, owner of Sam’s Anchor Care, said that the public perceived the lack of parking as the No. 1 problem downtown, but that in fact the lots rarely ran out of spaces. He suggested that the issue be addressed through better signage and validation of parking, but noted that the Town should also figure out how to “control” parking in the long run through the purchase of lots at Bank of America and on Main Street.

Councilmember Thompson and Vice Mayor Fredericks said that the lots were not for sale; however signage could be improved.

Councilmember Gram said that purchase of the lots should not be ruled out but that it should not become policy in the General Plan; he said that preferential parking for residents should be.

Councilmember Berger concurred with Mr. Gram; he said that maybe there could be more free parking.

Mayor Slavitz said that he agreed but that in the future the Town should pursue purchasing the lots.

2) Fast food. Planner Bryant said that there were three questions before Council regarding the “intent” of the existing General Plan language (Policy DT-7)—whether to keep franchise or “chain” restaurants out of Town (“chains” being defined by uniformity of look and menu); whether to keep out drive-through restaurants; and to better define “fast food” and “take out.”

Mayor Slavitz asked whether a farmer's market or crab shack fell within those definitions.

Vice Mayor Fredericks asked for clarification of the "problem" with fast food or take out.

Mr. Bryant said that within the last 10 years "take out" had been defined as an accessory use.

Vice Mayor Fredericks said that "take out" seemed to be defined by "no seats" or a few seats in a restaurant and she asked whether there was another use that could be approved within the definition of "take out." She surmised that the intent of the language was to reduce the number of people littering and looking for places to sit and eat along the waterfront and downtown.

Councilmember Thompson said that the language needed to be reworked to provide for uses like a crab shack or other local foods. He said that the existing language offered no protection from franchises or fast food restaurants as currently defined; and alternatively asked whether a restaurant such as "Paradise Burger" was considered fast food or take out under the current rules

Councilmember Berger said that more work was needed on the definitions, and that "good take out" or "fast food" was a fact of modern life and should not be prohibited.

Philip Richards, 418 Greenwood Beach Road, suggested that the Council let economics drive the equation rather than language. He asked the Council whether it wanted a "downtown or a mausoleum."

Mayor Slavitz said that Staff should explore "opening up" the current language to allow take-out food.

Councilmember Thompson said that drive-throughs and franchises should be restricted, along with take-out restaurants, but that "fast food" was still a gray area.

Councilmember Berger said the language should be less restrictive because it might exclude uses desired by the Town.

Vice Mayor Fredericks disagreed, stating that it would open up to a big change downtown. For instance, she said that while Boudin Bakery provided "take out," it also supplied seating which should be maintained.

Councilmember Gram said that he was against drive-through and primarily take-out restaurants but that chains and franchises were okay. He suggested that take-out should be an "ancillary" use if it was provided by the restaurant.

Mr. Bryant said that the language could be changed to provide for "specialty shops" like a crab shack, or "specialty foods;" he said that he would work on a better definition of "take out".

Bryant also noted that neither the Planning Commission nor the Council had reached a consensus on whether to “outlaw” chain restaurants.

3) Waterfront Promenade. Mr. Bryant asked whether the Downtown Element should explicitly say that the gap between the ferry plaza and CYC should be closed.

Jim Wheary, owner of 39 Main Street and the property on which Sam’s is located, said that he was opposed to the extension of the promenade and that a walkway was not feasible or practical. He said that it would be adverse to street front businesses and would reduce seating in the Sam’s dining room by 40% and by 30% on Sam’s deck. In addition, Mr. Wheary said that BCDC had never raised the issue of public access and that existing Town policy (DT35) already protected the public in the event any future changes were made to Sam’s.

Steve Sears concurred. He said that there was no benefit to the Town in encouraging BCDC to pursue the promenade.

Councilmember Thompson asked whether the walkway between Sam’s deck and the Angel Island Ferry dock would remain “open” in perpetuity. Mr. Sears said that the property was owned by Mr. Zelinsky and leased by Sam’s and that it had been deemed “public access.” He said that it acted as a fire exit and would have to be leased by someone, if not by him.

Philip Richardson said that there was plenty of waterfront access and that it was smart to keep people on the [Main] street. He suggested that Council leave the promenade extension out of the General Plan.

Helen Lindqvist, Cazadero Lane, said that water “access” meant just that; not just viewing but being able to put one’s “toe” in the water. She said that she would like to see public access along the waterfront for kayakers and others where currently there was none on public property.

Berger advised the Council to keep BCDC “out of the equation.”

Councilmember Gram asked whether BCDC had required access with the application to remodel Tiburon Tommie’s. Director of Community Development Anderson said yes, and that BDCD would not look at an application until the local agency had reviewed it first. He noted that the Town would have to continue to work with BCDC.

Vice Mayor Fredericks said that perhaps the General Plan should acknowledge the role of BCDC in applications for development that included waterfront access, and perhaps add language that pointed to the opportunity to create access if existing uses or access changed.

Councilmember Berger said that the opposite might be true; that if the Town took a position against the creation of a promenade [in the General Plan] it might give the downtown merchants some “ammo” if confronted with demands by BCDC.

Ms. Fredericks countered that the language she proposed would “give us the opportunity but not the duty.”

Councilmember Gram said he was unsure whether that Town should remain quiet on the issue or not. He said that a proviso could be added that would ensure that there was no loss of seating for restaurants on the waterfront.

Vice Mayor Fredericks said that the Town should “preserve the waterfront access we have” and also preserve the opportunities to provide additional access.

Councilmember Thompson said that the dream of his late father was for public access on the Tiburon waterfront and that the “Allan Thompson” bridge was a result of that. However, he noted that there was much more access now (such as the Shoreline Park) which was not there when his father was alive, and that the goal was pretty close to being achieved. He also said that it was important that the Town ensure that the walkway across the McDonogh dock (between Servino’s and Sam’s) was not locked off to public access.

Mayor Slavitz said that a promenade would be nice but advised against making changes to any existing uses. He said that the promenade idea might be included in a 15-20 year vision plan.

4) Office Use Downtown. Mr. Bryant said that the prohibition of ground floor offices would apply to underdeveloped or undeveloped sites on Main Street, Ark Row and any new buildings constructed on underdeveloped or undeveloped sites on Tiburon Boulevard from the library to downtown.

Councilmember Thompson suggested broadening the definition to include “resident-serving businesses.”

Mayor Slavitz concurred, stating that Tiburon Boulevard lent itself to these kinds of services and would encourage pedestrian access.

Mr. Bryant said that the idea emerged from the downtown design guidelines wherein it was recommended that buildings be designed to keep the pedestrian alley open and offices could be located on the second floor of buildings.

Philip Richardson, 418 Greenwood Beach Road, said that the market is what creates real estate use, so that a designation of “office/retail” would allow the market to fluctuate. He added that planners do not understand the real estate market.

Councilmember Gram said that he liked the direction of having office space upstairs and in the back which would address the pedestrian vision and the needs of retailers.

Ark newspaper reporter Deirdre McCrohan asked whether the Ark would be denied a permit in the future because it was not a retail business.

Councilmember Berger said that any kind of formula that included ratios could lend itself to rent control, in effect. He said that the current uses would, in that case, result in them being vested in their current locations.

Councilmember Thompson said that he supported the continuation of retail businesses on Main Street but that some office space on Ark Row and other locations was acceptable. He cited the example of the failure of retail at Pt. Tiburon Plaza which was then successfully converted to office space.

Director Anderson said that the word “prohibit” was perhaps too strong and could be changed to “discourage.” Councilmember Gram said that the prohibition should still apply on Main Street.

Vice Mayor Fredericks said that she was certain that the suggestions made would result in a reasonable balance.

6) Affordable Housing. Council directed Mr. Bryant to keep four designated sites downtown in the plan rather than apply the overlay to all of downtown.

Regarding the other miscellaneous suggestions, Council directed Staff to a) not include any closure of Main Street, and that the idea of b) a jitney service or c) recreational facilities were programs that would be explored at a later date, but not as part of the General Plan.

## PUBLIC HEARING

12. **Recommendation by Director of Community Development** – Town-initiated Text Amendments to the Tiburon Zoning Ordinance – Modified Regulations Regarding Detached Two-Family Dwellings in the R-2 Zone; New and Modified Definitions; Establishment of New Regulations Regarding Parking Areas and Parking Lots

*Introduction and first reading of Ordinance*

*Read by Title Only*

- a) An Ordinance of the Town Council of the Town of Tiburon Amending Chapter 16 (Zoning) of the Tiburon Municipal Code

Director of Community Development Anderson gave the report. He said that at its November 20, 2002 meeting, the Council had referred a policy issue to the Planning Commission which concerned the adequacy of text contained in Section 2.05.01 of the Zoning Ordinance relating to principal permitted uses in the R-2 zone. The issue arose during an appeal of a Design Review Board decision to approve two detached dwelling units on an R-2 lot located at 2355 Paradise Drive.

Mr. Anderson said that the Commission held three public hearings on this matter, and on April 23, 2003, adopted a resolution recommending approval of this and several other zoning text amendments. He said the majority of the Commissioners were in favor of a change to the text pertaining to the R-2 zone. He said the Commission's recommendation set new criteria and conditions for approval of two detached units in the R-2 zone. The proposed amendments would allow two detached units only upon approval by the Design Review Board of a "Detached Two-Family Dwelling Exception," and would regulate approval of these units by a procedure described as an "Exception Procedure" that would include a policy statement, criteria for review, and required and recommended conditions of approval for the Board to consider during its deliberations on such applications.

In his opinion, Mr. Anderson stated that the new criteria and conditions would give the Design Review Board improved policy direction without being overly burdensome, while establishing a single-step review process which would leave the discretion for approval entirely to the Board. He stated that the Commission had concluded that approval of detached, two-family dwellings in the R-2 zone would, over time, alter the neighborhood character and would constitute a de facto "upzoning" of the area.

Mr. Anderson briefly touched on the other proposed amendments which included clarification of existing regulations regarding parking of vehicles in unimproved yard areas and the addition of regulations requiring design review for substantive modifications to the layout or design of parking lots in non-residential zones and in parking lots with more than 10 spaces in multi-family residential zones.

Mayor Slavitz opened the public hearing.

Barry Kahn, Corte San Fernando, said the new definition of improved parking surface and the new section concerning front yard parking should not be addressed in a piecemeal manner, and that the real issue was whether to prohibit parking in front yards.

Director Anderson said that the Planning Commission had forwarded one more proposed change to the text of the ordinance. He said that currently no permit was needed to pave over front yards; the Planning Commission said that such an application should now require design review, which would in essence regulate the parking issue.

Mr. Kahn said that Corte Madera and other cities specifically regulated front yard parking directly rather than in the context of design review. He said that Tiburon was trying to regulate the surface but not what goes on it (the use), and that he'd like to see the Town's ordinance be more specific. He asked the Council to continue the item until the different components of the ordinance could be addressed at the same time.

Toni Kessler, 1800 Vistazo West, said she and her husband had purchased their home with the idea in mind of creating parking improvements in their back yard in the future, and possibly

build a second unit over the [new] garage. She asked if the changes to the ordinance would prohibit such an activity.

Councilmember Berger said the changes to the ordinance did not prohibit it but that she would first be required to submit to design review. Director Anderson said that a second unit over the garage might be problematic.

Mayor Slavitz closed the public hearing.

Vice Mayor Fredericks said that the Planning Commission had reached a good conclusion in its review of the R-2 zone language. She said the fact that the [current] ordinance did not require findings for approval of two detached units could result in a de facto lot split, but that the new language would give due respect to the design aspects, as well.

Councilmember Berger said that the proposed ordinance changes would make it “unattractive” to “do the right thing.” He said that the language was punitive and was not going for correct design or solving the problems of difficult lots and rather, would make it impossible or economically unfeasible for some people to develop their property.

Mr. Berger said that the zoning itself was not for single families; that “R-2” meant that two families could live on one lot. Mr. Berger said that bad designs should not be allowed just to achieve one unit and that the Design Review Board should decide whether the units were attached or detached through the design review process.

Berger said that he would strike the prohibition against condominiumization in the proposed approval process, along with the “60/40” split (the requirement that at least one unit to be significantly smaller than the other unit).

Vice Mayor Fredericks said that condominiums were not favored because they tended to deplete the rental housing stock. She said that there were other methods to enter into ownership arrangements, such as tenants in common, which might be harder to finance but would be allowed under the ordinance.

Ms. Fredericks said that condominiums did in fact create “re-zoning” in neighborhoods like Lyford’s Cove where the lots were substandard sizes.

Councilmember Berger said that he felt the prohibition was unfair; that he and his wife would not have been able to afford to live in Tiburon unless they had condominiumized. He said he feared it would have the effect of driving some people out of Town.

Councilmember Gram said that he had been satisfied with the existing language of the ordinance; that the changes now seemed negative in nature and prohibitive; and that he was unsure about the condominiumization prohibition.

Councilmember Thompson said that he too thought the existing language was okay. However, he said that condominiums tended to lead to lot splits and maximum build-outs. He agreed that they reduced the rental stock. Thompson said that he was in favor of less density and maintaining the Town's rental stock. On the other hand, he said that detached units also could break up the "mass" of a development.

Mayor Slavitz said that he thought the language of the current ordinance should be made clearer and that he liked certain aspects of the recommended changes, such as the requirement of four on-site parking spaces for two detached units. He suggested that the "policy" section be reworked in general to sound less punitive.

Councilmember Gram suggested deleting the 60/40 requirement. Vice Mayor Fredericks said this was put in specifically to avoid lot splits; Mayor Slavitz pointed out that it is a recommendation rather than a requirement.

Mayor Slavitz also asked how often requests to condominiumize came before the Town. Mr. Anderson said there was about one request per year; but that all (three) detached two-family dwelling projects built in the last several years had been condominiumized.

Councilmember Berger said that he predicted the outcome of adoption of the ordinance would be the development of large, single-building duplexes in the R-2 zone which the Town would later come to regret.

Council asked Staff to make the following changes to Section 16-2.5.4 (A) Policy:

Second paragraph, first sentence: Change the word "predominant" to "preferred" to read: "Attached Two-Family Dwellings are, and have historically been, the *preferred* and nearly exclusive form of two-family dwelling allowed in the R-2 zone."

Second paragraph, last sentence, to be deleted: "Detached units also have the potential to increase visual, privacy, and other impacts both within and without the property boundaries."

MOTION: To read ordinance by title only.

Moved: Fredericks, seconded by Thompson

Vote: AYES: Unanimous

Mayor Slavitz read, "An Ordinance of the Town Council of the Town of Tiburon amending Chapter 16 (Zoning) of the Tiburon Municipal Code."

MOTION: To pass first reading of the ordinance, as amended above.

Moved: Fredericks, seconded by Gram

Vote: AYES: Berger, Fredericks, Gram, Slavitz, Thompson

COUNCIL COMMITTEE AND COMMISSION REPORTS

None.

WRITTEN COMMUNICATIONS

**Town Council Weekly Digest – May 9, 2003**

**Town Council Weekly Digest – May 16, 2003**

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Slavitz adjourned the meeting at 11:35 p.m., sine die.

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JEFF SLAVITZ, MAYOR

ATTEST:

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DIANE CRANE IACOPI, TOWN CLERK