

**TOWN COUNCIL
MINUTES**

CALL TO ORDER

Mayor Slavitz called the regular meeting of the Tiburon Town Council to order at 7:40 p.m. on Wednesday, September 3, 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, Director of Public Works/Town Engineer Echols, Chief of Police Odetto, Director of Administrative Services McVeigh, 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
Siciliano v. Tiburon
Xanadu v. Town of Tiburon

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

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

ORAL COMMUNICATIONS

None.

APPOINTMENTS TO BOARDS, COMMISSIONS AND COMMITTEES

- Design Review Board - (One Vacancy)

Item continued.

CONSENT CALENDAR

1. **Approval of Town Council Minutes** – August 6, 2003
2. **Approval of Town Council Minutes** – August 20, 2003

Council added Item No. 5 (below) to Consent. Mayor Slavitz explained to the public that the cancellation was not of the contract itself but rather the 10-year “evergreen” clause contained in the franchise agreement so that the Council would have the ability to negotiate a more favorable contract for the Town’s ratepayers in future.

MOTION: To adopt Consent Calendar Item Nos. 1 and 2 and Item No. 5 from the Regular Agenda.

Moved: Fredericks, seconded by Berger

Vote: AYES: Unanimous

ABSTAIN: Slavitz, Thompson (August 6, 2003 Minutes)

REGULAR AGENDA

3. **Recommendation by Director of Public Works/Town Engineer** – Reconsideration of Approval of Inclusion of Portion of Hawthorne Drive in Del Mar Valley Utility Undergrounding Assessment District – *continued from August 6, 2003*

Council heard a brief Staff report. Director of Public Work/Town Engineer Pat Echols said that at Council’s direction, the homeowners had met with Del Mar District Engineer Mike Cooper on August 13 to learn more about the proposed special district formation. He also said that even though one Hawthorne Terrace homeowner had withdrawn his petition in support of the district, another homeowner had submitted one in support thereby maintaining the 61% level of support for the proposed district.

Mayor Slavitz opened the public hearing.

Frank van Ligten, 682 Hawthorne Drive, said that the letter from he and his wife dated August 3, 2003 still represented their formal opposition to formation of the district and that they had also submitted a subsequent letter on August 17, 2003. He paraphrased the latter, stating that if the Town’s primary purpose in the support of undergrounding was public safety, then the entire length of Hawthorne Drive should be included due to the presence of four additional power poles which served that area.

Mr. van Ligten also said that the Town had not held an informational meeting to help the Hawthorn Drive residents understand the process, per the Town’s policy.

Councilmember Berger asked Mr. van Ligten whether any more information had been made available to the residents concerning possible sources of funding for the undergrounding. Mr. van Ligten said it had not.

Frank Presotto, 670 Hawthorne Drive, said that he looked forward to the undergrounding to improve his view and property values.

Hank Broderick, Del Mar district organizer, said that the preliminary engineering work was complete per for that district and that it was estimated that work would commence sometime in 2004, after the Lyford Cove project was underway.

He said that Council might want to hear an opinion from the district engineer as to whether the inclusion of Hawthorne Drive would change the equation [of the assessments] in any way.

Mike Cooper, Harris & Associates, Del Mar District Engineer, said that he did not see any adverse impacts of the inclusion of the Hawthorne district on the larger Del Mar district and, indeed, said that there would be a probable reduction of "soft costs" (such as the cost of the bond placement) associated with the project. However, Mr. Cooper said that the construction costs would be broken out separately for the two areas.

Councilmember Berger asked whether such economies of scale could also be applied to the construction costs without breaking the district into separate "zones."

Mr. Cooper rephrased his statement to clarify that no final decisions had been made with regard to the final assessments and that because the parcels were in located in different areas, different circumstances might apply. However, he said that because the areas were contiguous, the construction in both "zones" would be done at the same time and under the same [master] contract.

Mayor Slavitz closed the public hearing.

Councilmember Berger said that he recognized the concerns of long-time residents on fixed incomes as to the uncertainty of the costs associated with forming an undergrounding district. He said he would like to see a "vigorous pursuit" of financial options which would take the burden off of these residents and to circumvent any "air of unfairness" in the assessment process.

Vice Mayor Fredericks said that the discussion at the last Council meeting had included the fact that another district [Stewart Drive] had provided for cash "up front" from the sale of the bonds to help finance the lateral connections. She said that such an option would have to be worked out by the residents in this district, if desired.

Councilmember Thompson said that it appeared that many of the questions raised at the last Council meeting had been addressed.

Councilmember Gram said that undergrounding of utilities was a “high priority” of the Town but that sensitivity should be demonstrated during the [assessment] process to the residents of the individual districts.

Mayor Slavitz concurred, stating that in the long-run, undergrounding of utilities was both a benefit to a neighborhood and to the community as a whole. He encouraged the Hawthorne Drive residents to continue to work with Staff to have their questions and concerns addressed.

MOTION: To sustain the approval of the inclusion of a portion of Hawthorne Drive in the Del Mar district.

Moved: Berger, seconded by Gram

Vote: AYES: Unanimous

4. **Recommendation by Director of Public Works/Town Engineer** – Presentation by W-Trans regarding Traffic Safety Improvements to Intersection of Tiburon Boulevard at Reed Ranch Road

Director Echols introduced Allen Tilton from W-Trans, 509 7th Street, Santa Rosa.

Mr. Tilton said that his firm had been retained to evaluate the Kimley-Horn report and to present alternatives.

Mr. Tilton gave an overview of the analysis used to evaluate the intersection and said that in fact, no collisions had been recorded at the intersection resulting from left turns from Reed Ranch Road onto Tiburon Boulevard.

He also said that in order to meet CAL/TRANS design specifications, an acceleration lane (one of the Kimley-Horn alternatives) would have to be 560 feet long which would extend beyond the entrance to the turn into Blackie’s Pasture. He said that this design would have its own set of resulting issues.

Mr. Tilton said that his firm’s review led to the conclusion that the “two-step” turn currently utilized by cars turning left onto Tiburon Boulevard from Reed Ranch Road (step one being the move out to the median, followed by a merge into traffic when an opening was available) was actually the most effective and one that would cause the least amount of traffic delay.

However, Mr. Tilton said that his firm had devised a plan for a series of traffic painted “signals” at the intersection which would help “give direction” to motorists making this maneuver and improve the process. He presented a diagram of these signals to the Council.

Council expressed their concerns about undertaking the “two-step” maneuver from practical experience, and Councilmember Berger made some suggestions to modify the diagram to enhance it visually for oncoming and turning motorists.

In response to questions about the acceleration lane proposal, Mr. Tilton said that due to the speed of traffic, motorists utilizing this lane might find themselves “trapped” in the lane [near Blackie’s Pasture] and unable to merge.

Councilmember Thompson expressed his disappointment and outrage that after all this time and after all the alternatives under consideration, the recommendation was to essentially maintain the status quo. He said that the proposed acceleration lane should actually start much sooner, just after the Cecilia intersection, which would neatly stack traffic into one lane and allow for a much longer lane with an earlier start than the one described by Mr. Tilton.

Council and Mr. Tilton also discussed some of the issues associated with the left-turn exit from Blackie’s Pasture. He said that the “stacking” lane there was known as a “trumpet lane” and its purpose was to allow vehicles of different sizes to have a safe place to pause out of traffic prior to merging. He said that a similar situation was currently realized at Reed Ranch Road in the “shadow” of the median strip.

Mayor Slavitz said that as a resident of the Reedlands, the number one concern he heard from residents of that neighborhood was the difficulty of making that turn onto Tiburon Boulevard.

Mayor Slavitz opened the public hearing.

Chris Wand, 5 Burrell Court, President of the Reedlands, made several additional suggestions: a) an alternating right or left turn light at the intersection; b) moving the left turn lane back thereby creating a “Y” instead of a “T” configuration; c) widening Tiburon Boulevard to create more space [for a merge lane] in the vicinity of the entrance to Blackie’s Pasture.

In response to a question from Council, Mr. Tilton said that his firm had indeed talked to CAL/TRANS about “narrowing the shoulder” of Tiburon Boulevard in the vicinity of the Reed Ranch Road intersection but said that such a proposal would be very expensive. On the other hand, Mr. Tilton said that his firm’s [diagram] proposal would cost around \$4,000.

Mayor Slavitz noted that the previous proposal to create a stacking lane at Reed Ranch Road had come with an estimated price tag of \$60,000-\$70,000.

Councilmember Thompson said that it was a miracle that no accidents had occurred at the intersection and he urged his fellow Councilmembers to “take stronger action.”

Vice Mayor Fredericks asked if other proposals had been rejected by the Council and why.

Mr. Tilton said that the acceleration lane was in the Kimley-Horn proposal, which his firm had been asked to evaluate. However, he reiterated that creating a dedicated acceleration lane per that proposal would cause the merge to happen at Blackie’s Pasture and that unless the average

speed of cars on the Boulevard was reduced from 50 mph to 35 mph, it could not be achieved safely.

In response to more Council queries, Mr. Tilton said that speed limits were governed by State Law and that absent a collision history or design defect, CAL/TRANS would be unlikely to accept a new design proposal in that area.

Town Engineer Echols asked whether CAL/TRANS might consider lowering the speed limit if no other [design] changes were proposed. Mr. Tilton said that they might consider it but that there was no guarantee of approval. He said that there were also other ways to “calm” traffic, such as narrowing the roadway or lanes and/or widening the medians.

Councilmember Berger said that he would defer to the residents of the Reedlands and that merging farther “upstream” sounded like it might be a good idea.

Councilmember Gram said that he had worked with many traffic consultants and that their analyses were invariably correct. However, he said that it was a good idea to keep working on the problem.

MOTION: To implement the W-Trans recommendation and evaluate its merits once in place; to continue to look at other alternatives, including a “fix” to the right-hand turn from Reed Ranch Road onto Tiburon Boulevard.

Moved: Gram, seconded by Berger

Vote: AYES: Unanimous

5. **Recommendation by Town Manager** - Notice to Cancel Extension of Mill Valley Refuse Service, Inc. Franchise Agreement

Item adopted on Consent Calendar.

PUBLIC HEARING

6. **Recommendation by Director of Community Development** - Certification of Final EIR / Tiburon Glen Residential Project
 - a) A Resolution of the Town Council of the Town of Tiburon Certifying the Final Environmental Impact Report for the Tiburon Glen Precise Development Plan (PD#22) to Create Eight Building Sites on 26.03 Acre Parcel; 3700 Block of Paradise Drive near Norman Way; Assessor’s Parcel #39-241-01

Director of Community Development Anderson introduced the consultants: Carolyn Cole, traffic, Dr. Rick Hopkins, biologist, and the two members of the Nichols/Berman firm who had prepared the draft and final environmental impact reports.

Jayni Allsep, environmental coordinator and project planner, gave an overview of the project and the EIR process to Council. She also described some of the ongoing concerns and controversies with the EIR to the Council. Ms. Allsep said that some of these concerns, such as the proposal for a landslide repair plan, had required the recirculation of the original draft EIR.

Ms. Allsep said that the comment period on that recirculation had ended on July 14, 2003 and that the Planning Commission, after taking public comment on the matter, had directed Staff to finalize the EIR. The final document included all public comments and revisions, according to Allsep.

She said that on August 27, 2003, the Planning Commission held a public hearing and thereafter voted unanimously to recommend certification to the Council.

Ms. Allsep said that the report concluded that several significant environmental impacts associated with the project could be mitigated and others could not. She said that some secondary impacts were unavoidable, such as the effects grading, tree removal (up to 522 trees), visual impacts of the project and tree removal, and cumulative impacts of all of the above. She said that these impacts were labeled, "significant and unavoidable."

Ms. Allsep said that the action before the Council was to consider certification of the final EIR and that certification did not mean approval of the project, rather it was a necessary step to comply with State law (CEQA) to demonstrate that the Town had exercised independent judgment and analysis of the document.

She said that the Town's policy guidelines further required that the Town Council consider the merits of the project but that the consideration was not the purpose of the meeting tonight. Ms. Allsep said that some of the issues ("areas of controversy") that might be further considered by the Council at the appropriate time were: traffic safety on Paradise Drive, tree loss, mitigation measures, proximity of proposed new residences to Norman Estates, sewer service, and cumulative impacts from the proposed development.

Ms. Allsep said that Staff believed that these issues had been adequately addressed in the EIR, noting that mitigation measures themselves go through a metamorphosis and must be modified and tailored to any project. Furthermore, she said, sometimes they (mitigation measures) could not be implemented at all in the final analysis.

Ms. Allsep said that once the EIR was certified, the Planning Commission would hold hearings on the merits of the project which would then go to the Council for final approval.

Councilmember Berger asked whether certification of the EIR meant approval of the mitigation measures, and who had come up with the measures and how they had been arrived at.

Ms. Allsep said that the environmental “team” had devised the mitigation measures in conjunction with input from Town Staff and the applicant. She also noted that the purpose of the mitigation measures was to lessen the environmental impacts of the project but that certification did not mandate their implementation.

To further elaborate, Town Attorney Danforth said that the Council could make detailed findings during its hearings on the project and look at the impacts of the mitigation measures and decide whether or not to implement them, or whether to impose other measures. In short, she said that the Council would have a great range of options in reviewing the merits of the project.

Vice Mayor Fredericks asked whether in certifying the EIR, the Council was saying that [the contents of the EIR] was all the information it needed on the project in order to proceed with the review of the project.

Ms. Danforth replied, “in no way,” and reiterated that the Council was entitled to make other findings and overrule a mitigation measure in an EIR.

Ms. Fredericks asked whether the Council could request additional information from the applicant concerning, for instance, the visual impacts of the proposed project. Specifically, she asked whether the Town could request story poles or visual overlays.

Ms. Allsep said that Staff had anticipated this request and that it could be pursued, if desired by Council. She said that various methods had been discussed, such as “wrapping” the areas of trees and the like.

Councilmember Thompson reiterated that certification did not mean approval, or even a guarantee of a certain density of a project which might change during the project approval phase.

Mayor Slavitz opened the public hearing.

The following people spoke:

- Richard Grasetti, environmental consultant retained by Norman Estates residents, discussed incomplete information contained in the EIR which he said existed from the “get go”; said that to say the project was “planned for development” did not address conditions “on the ground”; that the mitigation measure to remove certain [sick] trees and replace them with smaller trees was “experimental” and inconsistent with the Town’s tree ordinance and did not “mitigate anything”; that there were secondary effects associated with tree removal that were not addressed, such as hydrology; and other issues such as inadequate sewer service in the area; said that certifying the EIR would “lower the risk” of addressing these issues;

- Anne Norman, 42 Norman Way, resident since 1968, said that her home was not even shown on the project map; said that the Fire Department would not approve roads being built with more than an 18% grade; said EIR had “major problems”;
- Bill White, attorney with Shute, Mihaly & Weinberger, representing the Last Chance Committee and Norman Way residents, said that the primary issue was the adequacy of the EIR which would render it subject any project approval to legal challenge; said that the mitigation measures pertaining to tree removal had changed significantly during the recirculation process and now required replacement of only 25% of the current woodlands and allowed cutting more trees than before; said that one of the SODS (Sudden Oak Death Syndrome) experts named in the EIR now refuted the measures claiming they were “socially and environmentally irresponsible;” said the EIR was “not approvable” under the Town’s General Plan and questioned why it did not provide for any other options, such as a three-lot or two-lot alternative;
- John Kunzweiler, 16 Norman Way, said the EIR was “full of holes” and lacked credibility; said it plagiarized an expert on SODS (Sudden Oak Death Syndrome) whom he personally knew; said that he understood that certification was required due to other factors but that he would like to see story poles to show the mass and location of the proposed 8-unit project and (22-foot) retaining walls; said that the Town should “get serious” about other alternatives, not just three-lot alternatives, but 0, 1 and 2-lot alternatives;
- Sandra Swanson, Seafirth Estates, said there were inconsistencies and outdated information in the traffic consultant’s report (dated 2000); that there were safety issues for bicyclists and pedestrians on Paradise Drive and that the two proposed “rest stops” would actually encourage an increase in bike traffic and said this mitigation measure should be removed from the EIR;
- William Simon, 63 Norman Way, said he was faced with the potential of two 8,000 foot homes directly in front of him; that he was disturbed by the perceived acquiescence of Staff toward the developer and that Council should not be deterred by legal threats to certify the EIR; that he would continue to use his resources to support the [neighborhood] legal defense fund;
- Jerry Riessen, 616 Ridge Road, Last Chance Committee, said that the EIR was flawed but that the unfortunate time constraints imposed by the lawsuit seemed to prevent recirculation; said that the Planning Commission and Town Council would be in an awkward position if they certified the document and that the merits would have to be resolved in a public forum; encouraged as much public information be made available on the project as possible; and that the Town’s General Plan talked about “prime open space” and that the citizens overwhelmingly demanded preservation of open space;
- Scott Pearson, 40 Norman Way, echoed the need for story poles and markings, and especially to show the impact of retaining walls which he calculated would require an entire additional acre of development;
- Dave Cousy, 3312 Paradise Drive, participant in the Paradise Drive Visioning Plan, described the project as a “flagrant slap in the face” of the neighborhood, the General Plan and the County’s standards for the area.

Mayor Slavitz closed the public hearing.

Council concurred with the need for a clear representation (story poles, tree “wrapping”, visual overlays, etc.) to allow the public to see the visual impacts of the proposed project.

Councilmember Berger asked for an explanation of the five versus six acres of development question, raised by some correspondents and Mr. White.

Ms. Allsep responded that about one acre of “residential use area” was outside the actual building envelopes; that the proposed landscape repair mitigation could result in “worst case” disturbance of six acres of tree removal. She said that the additional acre would not be included in the conservation easement (mitigation) but that the Town’s tree ordinance would govern in what might occur.

Councilmembers Gram and Thompson asked the team to address the tree expert dispute.

Dr. Hopkins, EIR biologist, said that the “experts” were in no way quoted in his report but he acknowledged that it may have been unclear from the way the report was written. He said that his report and the resulting mitigation measure were based on “consultation” with experts, not on actual their experience.

Vice Mayor Fredericks said that, in her reading, the statement was misleading to the public in that it gave the impression the named experts had agreed with the mitigation.

The Vice Mayor said that the public comment on the EIR was useful and that the EIR itself was invaluable in that it highlighted the issues of the project. She said she would support the request of her fellow Councilmembers for story poles, visual aids to show retaining walls heights, and overlay maps for grading, which would be useful in a presentation of the eight lots as a point of comparison for other possible development scenarios.

Councilmember Gram said that the Council was under court order to approve the EIR and that he had concluded, based upon the input from the experts and the public, that there was enough information contained therein to allow the Council to move into the merits phase of the process. He agreed that there was a need for story poles and overlays. Gram also said that the issue of compliance with the Town’s General Plan would be addressed.

Councilmember Berger concurred. He said that he had come into the hearing with a lot of questions about the mitigation measures and the efficacy of some of them but he said that they might change as “we work our way through the process.” He said that there was “ample detail” to move into the merits phase, and he complimented the work done by everyone on the project, including the letters written by residents and their input.

Mayor Slavitz said that citizen participation and knowledge of the project “spoke volumes,” and that it was important that the visual impacts of the project be demonstrated with story poles, tree wrapping, or other means. He said that he thought the EIR was certifiable at this point in time.

Councilmember Thompson said he regretted that he would not be on the Council when the project came before it again [due to his not seeking re-election]. But he concurred with the recommendation of his fellow members to certify the EIR.

EIR team leader Allsep said that alternate wording had been devised to replace the language in Master Response 8.3-1—Tree Replacement and Enhancement Program Mitigation Measure 5.3-4 (b). She read the following language into the record:

[Paragraph 3 of the above response]

“While this mitigation approach may be somewhat unique, it is appropriate for mitigating impacts to a diseased woodland that shows signs of continuing decline. This determination is based on the *consultation with several well known SODS researchers including David Rizzo with UC Davis, Janice Alexander with Marin County UC Davis Extension, Matteo Garbelotto with UC Berkeley, and individuals with the non-profit organization Marin Releaf, as well as the project’s arborist, James MacNair. While these experts were consulted on various issues relating to SODS, the mitigation measures provided for here was [sic] developed solely by the EIR preparer.*”

MOTION: To adopt the resolution certifying the final EIR, as amended above.
Moved: Gram, seconded by Berger
Vote: AYES: Unanimous

COUNCIL COMMITTEE AND COMMISSION REPORTS

Mayor Slavitz reported on a meeting with Main Street Properties owner Ed Zelinsky regarding the desire to reinstate the downtown planter boxes. Councilmember Gram suggested that Staff continue to work with the Chamber on a comprehensive plan for planters and furniture in the downtown area.

Mayor Slavitz also announced the upcoming 40th birthday party for the Town on May 21 & 22, 2004. Town Manager McIntyre said that he would come before Council in future with a proposed budget appropriation for the event.

Town Manager McIntyre announced that the Chamber of Commerce said that there would be no holiday parade downtown this year.

WRITTEN COMMUNICATIONS

Town Council Weekly Digest – August 8, 2003

Town Council Weekly Digest – August 15, 2003

Town Council Weekly Digest – August 22, 2003

Town Council Weekly Digest – August 29, 2003

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Slavitz adjourned the meeting at 10:38 p.m., sine die.

JEFF SLAVITZ, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK