

**TOWN COUNCIL  
MINUTES**

**CALL TO ORDER**

Mayor Fredericks called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, October 6, 2004, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

**ROLL CALL**

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

PRESENT: EX OFFICIO: Town Manager McIntyre, Town Attorney Danforth,  
Director of Community Development Anderson,  
Director of Public Works/Town Engineer Echols,  
Administrative/Financial Analyst Stott, Town Clerk  
Crane Iacopi

**CLOSED SESSION**

**CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

(Section 54956.9(a))

Claim No. E200405A0326-00-se\37AA404490

**CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

(Section 54956.9(c))

Initiation of Litigation - Case name withheld because disclosure would jeopardize existing settlement negotiations

**ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY**

Mayor Fredericks said that no action was taken on the items discussed in closed session.

**ORAL COMMUNICATIONS**

Betty Girtler, 11 Linda Vista Avenue, asked the Council to consider adopting an ordinance that would limit the time to complete building projects. She described a project which was a source of great irritation to the neighborhood (due to traffic, noise, etc.) that had been going on for a number of years and said that the current permit would not expire until March of 2005.

Vice Mayor Berger asked Mrs. Girtler if she was familiar with the Belvedere ordinance, and also if she had a specific time limit in mind. Mrs. Girtler said that she thought that no more than two years should be the limit.

## **PRESENTATION**

### **Statewide Initiative Proposition 1A – Amy O’Gorman, League of California Cities**

Ms. O’Gorman asked the Council to adopt a resolution in support of the bi-partisan agreement between the Governor and the League of California Cities that would offer long-term protection from State “take-aways” in future in exchange for a specific limited contribution (by the cities) over the next two years. She said that this was an opportunity for true fiscal reform.

Ms. O’Gorman said that the Town of Tiburon had lost \$5.6 million to the State since 1992, and that the County of Marin had lost \$266 million in property tax revenues that had been lost to the State. She said that the success of the proposition would require the State, beginning in 2006, to fund any shortfalls in the VLF backfill, and would allow the Town (and County) to suspend all state-mandated programs (if not fully funded by the State). She said that the Town’s total contribution would be \$148,000 for two years.

In response to a question from Vice Mayor Berger, Ms. O’Gorman said that any shortfalls in the backfill would be paid back with interest, within three years.

Mayor Fredericks adjourned the meeting temporarily and, as citizen Fredericks, presented Ms. O’Gorman with a check for \$1,000 in support of Proposition 1A. Ms. Fredericks urged the Council to also contribute to the campaign, stating that she had lobbied for two years with the League of California Cities in support of the proposition.

Mayor Fredericks then reconvened the meeting.

## **CONSENT CALENDAR**

1. **Approval of Town Council Minutes** – September 15, 2004
2. **Approval of Town Council Minutes** – September 29, 2004
3. **Recommendation by Director of Administrative Services** – Adopt Town Investment Summary for August 2004
4. **Recommendation by Town Clerk** – Ratification of Reed Union School District Appointment of Library Board Liaison

5. **Recommendation by Town Manager** – Support for Local Government Agreement Proposition 1A
  - a) A Resolution of the Town Council of the Town of Tiburon In Support of Statewide Proposition 1A
  
6. **Recommendation by Town Manager** – Support for Measure A – “Transportation Authority of Marin Transactions and Use Tax Ordinance”
  - a) A Resolution of the Town Council of the Town of Tiburon Supporting Measure A on the November 2, 2004 Ballot – “Transportation Authority of Marin Transactions and Use Tax Ordinance”
  
7. **Recommendation by Town Manager** – Resolution Commending Belvedere-Tiburon Joint Recreation Committee Director Barbara Creamer Upon Her Retirement for 15 Years of Outstanding Service to the Community
  
8. **Recommendation by Planning Manager** – Request by Marin County Department of Public Works for Fee Waiver to Install Fence at Pamela Court Pump Station Site
  
9. **Recommendation by Director of Community Development** – Approval of Future Annexation Agreement

Property Address: 3535 Paradise Drive  
 Owners: Young & Hartnett Trust  
 Assessor Parcel No. 58-032-08

MOTION: To adopt Consent Calendar Item Nos. 1 through 9, above.  
 Moved: Slavitz, seconded by Gram  
 Vote: AYES: Unanimous

PUBLIC HEARING

10. **Report by Planning Manager** – Appeal of Design Review Board Decision to Deny a Site Plan and Architectural Review Application to Modify Previously Approved Plans to Legalize Construction of an As-Built Addition to an Existing Single-Family Dwelling

Property Address: 100 Lyford Drive  
 Applicants/Appellants: Fred and Rhonda Soofer  
 Assessor Parcel No.: 58-222-14

Planning Manager Watrous gave the report, stating that five previous applications for modifications to the project had been reviewed and approved by the Town. However, Mr. Watrous said that in July, the Design Review Board had denied the application in question, this time for submittal of “as-built” plans that would have legalized construction of an addition to the property, with a floor area exception.

Mr. Watrous reviewed the grounds of the timely appeal that was filed by the Applicants/Appellants, Fred and Rhonda Soofer, and commented briefly about each item. He stated that the Board had acted in accordance with the Town’s guidelines with regard to floor area ratios which “discouraged overbuilding of property” in denying the application and he recommended that the Council deny the appeal.

Prior to opening the appeal hearing, Mayor Fredericks asked Staff whether any of the additions had increased the footprint of the house. The Planning Manager answered affirmatively, but noted that the application on appeal was for a space beneath a deck that had already expanded the footprint of the house.

Mayor Fredericks opened the public hearing.

Fred Soofer, Applicant/Appellant, gave the Council a lengthy history of the remodel project at 100 Lyford Drive. He stated that he and his family had lived there since 1978. He said that he had appeared before the Design Review Board six times since 1999 and that he respected the process. He admitted that the plans for the area in question had changed many times since the remodel project began.

In response to a question from Vice Mayor Berger, Mr. Soofer said that the area in question was originally intended to be for storage and that it was to be enclosed, with no windows.

Vice Mayor Berger asked why the windows now looked different from what appeared in the approved plans. Mr. Soofer said that they had been placed differently at the recommendation of the window representative, but with the same total square foot coverage.

Mr. Soofer admitted that once the window was placed in the area in question, a bathroom had also been built into the space. He said he had spoken with Planner Brian Lynch about the addition, who was quoted as saying he would “have no problem with” the design if it received Building Department approval.

Mr. Soofer said that he then contacted the Building Department Official who recommended that Soofer submit “as-built” plans for the existing room and have them reviewed for approval through the planning process.

Mr. Soofer said that he regretted the “misunderstanding” that had arisen from his as-built application but he denied that there was any deception involved nor any “flaunting” of the process on his part.

Furthermore, Mr. Soofer said that [visually] the neighbors liked what he had done to that side of the house and found it to be attractive.

In response to a question from Council, Planning Manager Watrous said the approved area was to be fully enclosed, without windows. Councilmember Slavitz noted that it was also approved without a floor and would have been an “empty shaft.”

Mr. Soofer disagreed, stating that a floor was part of the approved plans; Vice Mayor Berger looked at the plans and stated that there was no floor. Mr. Soofer stated that his structural engineer said that a floor would act as a platform to support the house above.

Councilmember Slavitz asked why Mr. Soofer had not gone to the Design Review Board for approval of this modification to the plans.

Mr. Soofer said that he had gone before the Board many times but was afraid to keep going back. He said that he had worked closely with Planning Manager Watrous and that he had even volunteered to “tear out” the room in question. Mr. Soofer said that Mr. Watrous had advised him to seek DRB approval instead.

Councilmember Smith asked if the room had been “discovered” during a field inspection by the Town. Mr. Soofer said no, that he had taken Building Official Bloomquist into the room and showed it to him; that he could just as easily have kept it “hidden” since it had not been noticed during previous inspections.

Mr. Soofer asked the Council to approve the as-built room and window, stating that the room would only increase the floor area of his project by 600 feet, while the Design Review Board had approved an increase of 2,780 square feet (for another project on Lyford Drive) the same night they had denied his application.

Peter Brekhus, attorney representing the Soofers, and author of the appeal, said that it was not true that his client had been “warned” by the Board concerning changes to the plans (and stated that the remark pertained to something on the other side of the building). He said that one DRB member said “they weren’t sure what happened” with all the changes that had occurred.

Mr. Brekhus said that the “as-built” room did not change the visual style or scale of the house and said that it was compatible with the neighborhood.

Mike Figour, Design Review Boardmember, said that the Board had reviewed three or four iterations of the plans but that he remembered the approvals as being “quite different” from what was actually built.

Figour said that the Board had approved the enclosure of the space beneath the deck in order to avoid a visible beam system (from the hillside) that was “quite unattractive.”

In response to a question from Councilmember Smith, Mr. Figour said that the Board would not have approved the space if they had seen the plans “in their totality,” and admitted that they had “lost control as a Board,” so that when the final application came in, it was “the straw that broke the camel’s back.”

Councilmember Gram asked the Planning Manager what would happen if the appeal was denied. Mr. Watrous said that the floor, windows, and any openings into the space would have to be removed, along with any improvements (such as plumbing).

In response to a question from Mayor Fredericks, Mr. Watrous responded that a common [DRB] remedy to ensure an area was for “storage only” was to approve a substandard ceiling height (such as seven feet). However, in this instance, he said that the floor would have to be moved up in order to achieve this, and that it could be easily changed back.

Mayor Fredericks closed the public hearing.

In its deliberations, the Council noted the difficulties that arose from approvals of these enclosed spaces within the framework of existing homes that eventually “turned into” other uses.

Vice Mayor Berger said there were two warring principles; that the FAR limits were to control mass and bulk of a structure, but that once an FAR exception was granted to enclose such a space, it led to a tendency to “build more.” He noted the recent approval of the addition of a room in a house on Corinthian Island.

The Vice Mayor said that the City of Belvedere actually counted “potential volume” as FAR; he suggested that Council take up this issue and add it to the Town’s FAR guidelines.

With regard to the appeal at hand, Vice Mayor Berger said that the windows were not “beaming into anyone’s bedroom” and that he would vote to allow the Soofers to keep the “minimum amount” of [additional] space and the windows, while not waiving any penalties for an after-the-fact approval.

Mayor Fredericks said that the question in her mind was would the total of six applications have been approved by the Board if they had been brought in at the same time.

She also stated that there were other issues, such as whether the lot was overbuilt, and the increased intensity of use due to the creation of another room and bathroom.

The Mayor noted that the FAR increase was granted not during the original plan approval but during the remodel process; she said she was not sure that this application should be the “test case” for what the Vice Mayor was proposing.

Councilmember Smith said that it was “blatantly obvious” what happens with these types of [enclosed space] designs; that the “Lego approach” was just “bad land use planning,” but that it was a reflection of a problem with the process which should be remedied.

Smith said that it was too late to get the value [recommended by Berger] out of this project; that any changes to the application would result in a “worse appearance” to the house and that he would vote to uphold the appeal and find a way to stop this kind of thing from happening again.

Councilmember Slavitz said that he too had agonized over the issues presented in the appeal. He said that he agreed that unused but livable space should be measured in the FAR guidelines; that “incremental permitting” should stop.

Slavitz said that he agreed with Councilmember Smith that the room added by the Soofers was “not hurting anyone” but noted the danger in approving such an application if it might tie the hands of future Councils. However, he said it did not make sense to tear out the floor or remove the improvements at this point.

Councilmember Gram concurred. He said it made no sense to take out a floor. Gram said that he would like to see this project finished (since it had been in progress since 1999). He also agreed with his fellow Councilmembers of the need to “fix” the greater problem dealing with the floor area calculations of storage or unused areas.

Vice Mayor Berger said that it might be possible to mitigate the appearance of the stucco wall resulting from the enclosure of the space with additional landscaping that could be reviewed by Planning Staff.

MOTION: To uphold the appeal; to direct Staff to return to Council with a resolution memorializing the proceedings, with the added condition of approval that a revised landscaping plan be submitted and reviewed by Planning Division Staff to help screen the addition from below.

Moved: Berger, seconded by Smith

Vote: AYES: Unanimous

11. **Recommendation by Planning Manager** – Certification of Final Environmental Impact Report for Parente Precise Development Plan

Property Address: End of Parente Road and End of Antonette Drive  
Applicant: Tom Newton/Planning Advisory Corporation  
Owners: Amerippon, Inc.  
Assessor Parcel No.: 38-111-16

Planning Manager Watrous gave the report and recommended certification of the FEIR.

Mayor Fredericks asked why a final environmental impact report was being certified if it was known that the applicants were planning to modify the project.

The Planning Manager replied that the applicants had expressed an intent to make changes to the proposed project that would result in lessened impacts. He said that the EIR certification was an important point in the process and one where it was important to move forward so that the project could be reviewed on its merits.

Mayor Fredericks opened and closed the public hearing. There was no public comment.

Councilmember Smith agreed that the applicants had done a good job in addressing the issues of soil stability and access since he had reviewed the project while sitting on the Planning Commission.

MOTION: To adopt Resolution Certifying Parente Project FEIR

Moved: Berger, seconded by Slavitz

Vote: AYES: Unanimous

REGULAR AGENDA

12. **Recommendation by Director of Public Works/Town Engineer** – Proposed Solar Panels at Town Hall

Director Echols said that Staff was looking for direction from Council on whether it wished to proceed with the installation of solar panels at Town Hall and whether to finance such a project or pay it back over time.

He reviewed the latest proposals submitted by Cooperative Community Energy (CCE) and said that based upon the feedback received at the April 7, 2004 Council meeting, a 30 kilowatt system was still not recommended but that further analysis and design of a 23 kilowatt system seemed to be warranted.

Council heard a brief presentation by representatives of CCE and discussed issues of design, costs and rebate programs.

Mayor Fredericks commented that although the panels were not “beautiful,” it was not a reason not to install them.

Chris Nelder, CCE Field Representative, said that unlike other projects undertaken by the Town, this project would actually “put money in the Town’s pocket.”

Councilmembers Slavitz and Gram expressed discomfort at the long “pay pack” period before costs were actually recouped; CCE representatives said that with rising energy costs there really was no good alternative. They also said the projections presented were “conservative” estimates, in their opinion.

In a discussion of warranty and maintenance, Dan Pelligrini, CCE President, said that the panels had a 25-year warranty but would last for 40 years, and that they would need to be cleaned on a regular basis, which required leaving an 8-inch space along the roofline for someone to walk.

Vice Mayor Berger said it would be visually preferable to have the panels come to the edge of the roofline but he understood the reason for leaving a space.

Councilmember Slavitz said that it would be nice to see examples of other installations.

Councilmember Gram asked if any other public agencies in Marin County had similar installations and were told that they did not.

Director Echols referred to an exhibit to the Staff report which listed other public agencies throughout the state that had installed solar systems on public buildings.

Mayor Fredericks opened the public hearing.

John Kern, Stewart Drive, and Helen Lindqvist, Cazadero Lane, referenced other solar systems in Town, such as the Romberg Center, and asked some additional questions.

Mayor Fredericks closed the public hearing.

MOTION: To proceed with the design drawings for a 23Kilowatt Solar Panel System for Town Hall (for final approval by Council) and to authorize funding for such project

Moved: Berger, seconded by Smith

Vote: AYES: Unanimous

13. **Recommendation by Director of Public Works/Town Engineer** – Design for Permanent Restroom Facility at South Knoll Park

Council waived the Staff report.

Mayor Fredericks opened the public hearing.

Helen Lindqvist, POSC member, asked if there would be replacement seating for the benches and tables that would be removed to make way for the new facility.

Director of Public Works/Town Engineer said that the matter would be discussed and considered at an upcoming Parks and Open Space Commission meeting.

Mayor Fredericks closed the public hearing.

MOTION: To approve the design depicted in Exhibit No. 5 (without the “trim enhancements” on the roof)  
Moved: Smith, seconded by Berger  
Vote: AYES: Unanimous

14. **Recommendation by Director of Community Development** – Revised Landslide Mitigation Policy

Council waived the Staff report, noting that most of the information had been presented at a previous hearing.

Mayor Fredericks opened and closed the public hearing.

There was no public comment.

MOTION: To adopt the revised policy, as presented.  
Moved: Berger, seconded by Gram  
Vote: AYES: Unanimous

15. **Report by Town Manager** – Discussions with the Tiburon Peninsula Club Representatives Concerning Potential Use of Property

Town Manager McIntyre gave a brief report, stating that he had met with TPC General Manager Chris Horn to discuss potential joint uses of a portion of TPC land (approximately one acre) nearest Mar West Street and the library.

One of the suggestions offered by the TPC was for a gymnasium; Mr. McIntyre said that it could be “programmable space for a Joint Recreation Department.”

McIntyre also said that the joint use could be tied to the library expansion program for additional civic uses.

Councilmember Smith said that he would “love to try to do a deal,” and that the opportunity should be explored.

Vice Mayor Berger said that he would like to see a soils test.

Councilmember Slavitz wondered whether the joint use would have to be that particular corner (of the property) but said that some sort of joint use agreement should be explored.

Mayor Fredericks said that while the library was developing its “wish list” for its expansion plan, some of the ideas that arose were for programmable space, a community room where people could “hang out,” and a coffee bar.

Tiburon Peninsula Club General Manager Chris Horn said that he was “intrigued by the possibility” of increasing recreation on the Tiburon Peninsula without duplicating services. He highlighted the fact that there was a Joint Recreation Department (on the peninsula) but no recreation center.

Mr. Horn that his Board would be hearing a similar report in future and most likely form a subcommittee to meet with Town representatives for further discussions.

Mayor Fredericks opened the public hearing and agreed that it was an “extraordinary opportunity.”

During the public hearing, Helen Lindqvist also asked if improvements could be made to the Mar West Street at the same time.

Mayor Fredericks closed the public hearing.

Councilmember Gram and Vice Mayor Berger agreed to serve on a Council subcommittee to study the matter further with the Tiburon Peninsula Club.

**16. Report and Recommendation from MERA Sub-Committee – Authorize Continued Negotiation and Terms of Proposed Agreement for Substitute Site for Mt. Tiburon**

After hearing a presentation from Mt. Tiburon representative/negotiator Barry Lemieux, in which the Town was asked to state its commitment to a cost-sharing arrangement with MERA and the Mt. Tiburon neighbors to relocate the Mt. Tiburon facilities, there was a general consensus that the Town’s share might be in the range of \$200,000, depending on possible cost savings, such as the re-sale of the Mt. Tiburon equipment to another party, but that other issues, such as indemnification, had to first be resolved prior to entering into a three-party agreement.

At the suggestion of Councilmember Slavitz, Council considered the idea of paying the fee for Motorola to test its facilities at the alternate site, Wolfback Ridge, as a show of support of the Town's commitment to work with the other parties to reach an agreement for an alternate site outside of the Town's residential neighborhoods.

The neighbors, through their appointed representative, Barry Lemieux, indicated their approval of this idea, with the understanding that they would hire the consultants and manage the work [test].

The negotiating team, consisting of Mayor Fredericks and Vice Mayor Berger, also were given direction to continue to work towards an appropriate agreement with MERA and the Mt. Tiburon neighbors that would address the Town's concerns about cost and liability in relocating the facilities.

MOTION: To return to Council with a budget appropriation in an amount not to exceed \$25,000 in order to reimburse the Mt. Tiburon neighbors for moving forward with the test of the Wolfback Ridge site facilities.

Moved: Fredericks, seconded by Berger

Vote: AYES: Unanimous

### **COUNCIL, COMMITTEE AND COMMISSION REPORTS**

Town Manager McIntyre reminded the Council of the Homeowner's Summit on October 9 at Town Hall.

### **WRITTEN COMMUNICATIONS**

**Town Council Weekly Digest – September 17, 2004**

**Town Council Weekly Digest – September 24, 2004**

### **ADJOURNMENT**

There being no further business before the Town Council of the Town of Tiburon, Mayor Fredericks adjourned the regular meeting at 11:26 p.m., in memory of Tiburon resident and benefactor, Ed Zelinsky.

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ALICE FREDERICKS, MAYOR

ATTEST:

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DIANE CRANE IACOPI, TOWN CLERK