

**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, November 17, 2004, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

**ROLL CALL**

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

PRESENT: EX OFFICIO: Town Manager McIntyre, Town Attorney Danforth,  
Director of Public Works/Town Engineer Echols,  
Director of Administrative Services Bigall, Chief of  
Police Odetto, Planning Manager Watrous, Town  
Clerk Crane Iacopi

Prior to the regular meeting, the Council met at 6:45 p.m. in closed session and discussed the following items:

**CLOSED SESSION**

**CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**  
(Section 54956.9(c))

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

**CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**  
(Section 54956.(b))

Potential litigation arising under Section 9.2 of the MERA Joint Powers Agreement because of delays to MERA Project

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

Mayor Fredericks said that direction was given to Staff but no action was taken in closed session.

## ORAL COMMUNICATIONS

Michelle Aswalt, representing “Afghans4Tomorrow,” said that news commentator Dana King would be speaking on Afghanistan at the Community Congregation Church on Thursday, November 18, 2004.

## CONSENT CALENDAR

1. **Approval of Town Council Minutes** – November 3, 2004
2. **Recommendation by Director of Administrative Services** – Reallocation and Transfer of Reserves for FY 2004-05
3. **Recommendation by Planning Manager** – Partial Upholding of Appeal of Design Review Board Decision to Approve a Site Plan and Architectural Review Application for Construction of a new Single Family Dwelling at 79 Round Hill Road

Appellants: Charles and Dale Sofnas, 75 Round Hill Road  
Applicants: Ron Oznowicz & Carl Weissensee  
Assessor Parcel Nos.: 58-301-17 & -35

- a) A Resolution of the Town Council of the Town of Tiburon Partially Upholding Appeal Charles and Dale Sofnas and Granting Conditions Thereto

It was the Council consensus to remove Item No. 3 from the Consent Calendar. Mayor Fredericks said that Item No. 3 would be discussed during the ballot tabulation recess for Item No. 4 below.

Vice Mayor Berger made corrections to page 10 of the November 3, 2004 minutes.

MOTION: To adopt Consent Calendar Item Nos. 1 and 2, as amended.  
Moved: Gram, seconded by Slavitz  
Vote: AYES: Unanimous  
ABSENT: Smith

## PUBLIC HEARING

4. **Recommendation by Director of Public Works/Town Engineer** – Formation of Lyford Cove Undergrounding of Utilities Assessment District

- a) Project Summary. There will be a brief summary of the project and proposed financing by representatives of the proposed District and Staff.
- b) Public Hearing. Speakers will have three (3) minutes and will be asked to state their name, address and identify the property they own or represent within the proposed Assessment District.
- c) Submittal of Ballots. The Mayor will ask for the final submittal of ballots to the Town Clerk.
- d) Tabulation of Ballots. The Public Hearing will be closed and the Council will take a short recess to allow the Town Clerk time to open and tabulate the ballots.
- e) Results. Based upon the results of the balloting, the Town Council will then discuss the matter and determine how to proceed. If the Council decides to proceed with the formation of the Assessment District, it will adopt the following resolution:
  - (i) A Resolution of the Town Council of the Town of Tiburon Adopting the Engineer's Report, Confirming the Assessment, Ordering the Work and Acquisitions and Directing Actions with Respect thereto – Town of Tiburon, Lyford Cove Undergrounding Assessment District

Mayor Fredericks described the order of hearing and made the following announcement: *“Those homeowners who have not yet submitted a ballot, or those who wish to change their vote on the ballot already submitted, may do so at any time up to the close of the Public Hearing.”*

Director of Public Works/Town Engineer Echols gave a brief Staff report outlining the history and steps taken to form the district.

Joan Cox, District Engineer, Harris & Associates, touched upon the changes made to the final Engineer's Report and outlined the method of assessment.

Ms. Cox said that the costs associated with the formation of the district had gone down slightly from the time the preliminary report was adopted, and the total project cost was now estimated at \$4,244,000.

She said that the special benefits were calculated on three factors—safety, aesthetics and reliability. It was determined that each property would benefit equally in the first two areas.

Ms. Cox said that reliability was calculated using the single-family residential parcel as the basic unit of comparison. Each single-family parcel received one benefit point; multiple residential properties were assigned .7 points for each potential or actual dwelling unit (based on current zoning) and non-residential properties were rated based on the average size single-family lot within the district.

The Engineers also assigned benefit points based upon the “highest and best use” of existing properties and vacant lots within the district, according to Cox.

Ms. Cox explained that assessment formula consisted of Safety Benefit Points + Reliability Benefit Points + Aesthetics Benefit Points = Total Benefit Points. There were also some exceptions, such as portions of the district that had previously undergrounding their utilities (Mar East Assessment District No. 83-1 and Linda Vista Assessment District No. 1994-01). These parcels were calculated separately, using reduced benefit points.

Ms. Cox noted that since adoption of the preliminary engineer’s report, 10 properties had been reviewed and their assessments reduced and that one property in the Mar East District had been reduced to zero benefit points.

Vice Mayor Berger asked whether any consideration had been given to the size of a property. Ms. Cox said that parcels were reviewed to see whether there was a potential for two units (within the R-2 zoning designation) but noted that it had been determined that some of the properties were in fact unable to support two units due to their lot size.

Mayor Fredericks opened the public hearing.

The following members of the public spoke:

- Steve Patterson, resident of San Rafael, owner of 2078 Paradise Drive, said that his property had four legal units but that he had been unaware of the formation of the district when he purchases the property in March 2004; said that beautification was not always a factor taken into account when purchasing income properties and that he would be unable to pass through the assessment to his renters; asked for reconsideration of his assessment because his building was less than 3,000 square feet and that he was a “downhill” property [with little view impact from poles and wires].

Mayor Fredericks said that the amount of the assessment was not a decision made by the Council.

Vice Mayor Berger commented that people who live in the neighborhood were, in fact, greatly affected by the totality of the views and that removal of poles and wires would make the entire street more desirable and perhaps even increase rental values.

- Lawrence Livingston, 2311 Mar East, said the previous speaker neglected to mention the effects of power outages on the area and said that there had been three already so early in the winter season; said that reliability was a major factor in creating a livable environment and was given due consideration in the engineer's report.
- Sean Eilers, 55 Linda Vista, said that his area was literally "covered" with power lines which concerned him if any one of them broke and came down in the yard where his children might be playing; said that there were 8-10 power outages the first year that he and his family lived in the neighborhood, and that they were without heat for three days.
- Jim Coggan, 2350 Mar East, 30-year resident, said he had never once seen a downed power line and that the reliability issue might be a false assumption and create false expectations; said that no water side properties in the neighborhood had poles or lines in their view and that the [assessment] methodology was "seriously flawed" and unfair.
- Ed Lynch 2441 Paradise Drive, pointed out that property owners had "very little control" over what kinds of equipment the utility companies put on the power poles; urged the audience not to let the opportunity "pass us by," because any delay would result in increased costs and the possibility of more poles and equipment in the future.
- Knowles Hall, 2336 Mar East, downhill side, said that it was "ludicrous" to pay the same assessment as the uphill neighbors, and said the methodology was "grossly unfair."
- Mark Cunningham, 2088 Paradise Drive, said he was against the cost allocation and that he already paid "substantial taxes" on his duplex; asked why no [public] funds were available to underground utilities; disputed that the utilities could "put poles anywhere."

Mayor Fredericks said that the utilities could indeed place poles anywhere they wanted because of existence of utility easements across properties.

The Mayor said that "newer communities" were required by zoning laws to underground utilities but that older ones had the above-ground infrastructure which the residents themselves took on the cost of undergrounding. She pointed out that it was not a "tax."

Vice Mayor Berger concurred, adding that in the newer subdivisions, the developers paid for the cost of undergrounding which was passed onto the buyers. He said that this sort of self-assessment and bond funding was "typical" of how older communities got their utilities undergrounded.

- Nico Dirkzwager, 2246 Mar East, said the assessment methodology was "peculiar" and said that in Belvedere, there was a one-third/two-third split. She also complained of the

“blank check” she would have to write for the lateral connection.

Mayor Fredericks said that it was really an “accident” that some people had poles or wires in their views and some did not due to the design of the (electrical) grid. She said everyone in the assessment district benefited from those poles and from the existence of the grid. The Mayor also stated that the engineers had come up with a assessment method that was less subjective and more legally defensible, in this instance.

- Bob Ellsberg, 2250 Centro East, said that he had worked on other undergrounding attempts in Lyford Cove 20 years ago and even as recently as 10 years ago; said that this was a much larger district and a “wonderful opportunity” to underground the “whole neighborhood, not just a few blocks.” He added that most people would be very pleased with the success of the district formation even though everyone was going to be happy with the formula.
- Klaus Meinberg, 2275 Mar East, that while he sympathized with some of the downhill neighbors that he supported the district formation. He referred to a “late mail” letter from Tom O’Neill which proposed forfeiting the subscription deposits and give them to people who really needed financial assistance or were really opposed to the district.
- Marion Hinman, 2074 Paradise Drive & vacant lot, said she would “take the \$1,000;” complained that she would not get any benefit except “maybe fewer power outages.” Asked why the utilities companies didn’t do the undergrounding “like they do in San Francisco.” Also expressed concern that she did not know where the new poles would be placed and that she was certain people might not be happy with the placement.
- Suzanne Lincoln, 2420 Mar East, said she saw only uphill poles and that anyone who was opposed to the district should just “take a walk” through the neighborhood to visualize the benefit; said that all the properties would increase in value with the district.
- JJ Wintersteen, 2315 Paradise Drive, 20 year resident, said he had lived through a lot of storms and had a broken power line on his property which had “sparked;” commented that one of his neighbors, with a utility easement, had gone away for a week and had come home to two poles instead of one on their property; said how “delightful” it was to walk through the Linda Vista area which had already been undergrounded; that \$20,000 was really “not a lot of money,” especially for those who had the benefit of Prop. 13 assessment on their homes.
- Patricia Young, 2298 Paradise Drive, said that she was not opposed to undergrounding but rather the allocation of costs; that is was “unfair” to assign the same benefits to all.
- Mark Pressman, bond underwriter for the district, said that he had a lot of experience with these kinds of districts and that the formulas used to calculate benefits were going to be

subjective in that they depended on the analysis of the engineers; said that different districts had different formulas but that in his estimation, this was a “good stab” at fairness for all the people involved. Gave an example of making the allocation higher for uphill neighbors by \$2,000 and less \$2,000 for downhill neighbors; said that this would result in a difference of \$140 per year or roughly, \$10 per month.

- Steven Mavromihalis, 220 Divso Street, said that he would “benefit enormously” from the district; said that as a “luxury home” real estate broker, aesthetics made “all the difference” to buyers and that the overall cost was a “tiny fraction” of the value of homes in this area; as much as they appreciate in a year’s time.
- David Kirchoff, 2290 Spanish Trail, 40 years, owner of a real estate appraisal company, agreed, stating that in his experience, the undergrounding of utilities resulted in a 5-10% increase in value of homes, and said that this was confirmed in Stewart Drive, Hillhaven, and Corinthian Island districts.
- Joan Lombardo, 2165 Paradise Drive, and Liz Bird, 2205 Paradise Drive, district proponents, said that they appreciated the Council’s action in adopting the 1994 resolution in support of undergrounding of utilities districts; said it was difficult to please everyone but noted that everyone agreed there would be improvements to the neighborhood if the district moved forward. They thanked the District Engineers for a “great job.”

Mayor Fredericks adjourned the meeting to allow for ballot tabulation and to conduct the business below (Item No. 3 and Item No. 5).

At the end of the recess, Mayor Fredericks re-opened meeting to Item No. 4, Lyford Cove Undergrounding Assessment District.

The Town Clerk announced the results: 70% in favor; 30% opposed (based on dollars assessed--\$2,366,979 in favor; \$1,001,731 opposed). Of the 178 ballots received, 125 were in favor and 53 were opposed.

MOTION: To adopt Resolution adopting Engineer’s Report, Confirming the Assessment, Ordering the Work and Acquisitions and Directing Actions with Respect Thereto  
Moved: Gram, seconded by Berger  
Vote: AYES: Unanimous  
ABSENT: Smith

### CONSENT CALENDAR

3) **Recommendation by Planning Manager** – Partial Upholding of Appeal of Design Review Board Decision to Approve a Site Plan and Architectural Review Application for Construction of a new Single Family Dwelling at 79 Round Hill Road

Appellants: Charles and Dale Sofnas, 75 Round Hill Road  
Applicants: Ron Oznowicz & Carl Weissensee  
Assessor Parcel Nos.: 58-301-17 & -35

- a) A Resolution of the Town Council of the Town of Tiburon Partially Upholding Appeal Charles and Dale Sofnas and Granting Conditions Thereto

Planning Manager Dan Watrous reported that on November 3, 2004, the Town Council held a public hearing on the appeal of the Design Review Board's decision to approve a Site Plan and Architectural Review application to construct a single family dwelling on property located at 79 Round Hill Road. At the meeting, the Town Council voted 4-1 to direct staff to prepare a resolution partially granting the appeal. The Council imposed a condition requiring that tree trimming and/or removal be performed to create a slot view or "window" from the appellants' home.

Watrous noted that Council had received late mail from Mr. Rifkind, attorney for the owners of 79 Round Hill Road, opposing the proposed condition of approval of the resolution addressing tree trimming/removal.

Len Rifkind, attorney for the owners of 79 Round Hill Road, introduced Ray Moritz, arborist, who was retained to look at the trees to be trimmed or removed.

Mr. Moritz stated that there was concern over the removal of the two oak trees which are part of the oak grove on the property. He noted the removal of the two stemmed oak may require the removal of a third tree as they are entangled. He also noted the removal of these trees may cause damage to the remainder of the grove due to possible wind damage. He recommended that the trees not be trimmed or removed due to the possible spread of sudden oak disease.

Ron Oznowicz, owner of 79 Round Hill Road, spoke in opposition of the proposed resolution, stating that it would require him to create a possible view for the Sofnas' who had not had a view before.

Mr. Rifkind stated the property owner did not find the condition of removal of trees satisfactory, nor did he believe it was legally enforceable.

Councilmember Gram noted that if the Council did not approve the resolution before them, they would have to reopen the issue and might possibly require more stringent conditions. He asked if that was the desire of the applicant.

Mr. Rifkind replied the applicant was opposed to the condition of tree removal and would like to see the Council consider removing the condition.

Carl Weissensee, applicant, questioned if the condition was in fact giving Mr. Sofnas a view easement over the property at 77 Round Hill Road, which would impact the future siting of any home on that property.

Vice Mayor Berger asked Mr. Sofnas if he could “live with” the resolution as written.

Mr. Sofnas responded that he could.

Mayor Fredericks asked Mr. Sofnas that if he would forego any legal action against the owner of 79 Round Hill Road if a view was created by the removal of the trees.

Mr. Sofnas responded he would, if the trimming was sufficient. He said that he would not be satisfied if he was not given a view by the tree removal/trimming.

Town Attorney Danforth recommended modifying the condition of approval to address the concerns of the applicant, and that there be some reference that Mr. Sofnas would not challenge Council’s action. She stated it was not the intention to give anyone a view easement and the condition would limit the number of trees in question.

Mr. Rifkind stated he could not agree to anything that would significantly affect the siting of the home on 77 Round Hill Road. He recommended wording that would limit the number of trees to be trimmed to 2-3, as determined by Staff and an arborist, to gain views, and that Mr. Sofnas would execute a document releasing his right to challenge this decision.

Mr. Rifkind stated he believed Council had made a good recommendation and would like to see the draft language. He expressed his desire to have sufficient time to see how this language could possibly impact lot 77.

MOTION: To continue the matter to a meeting in January 2005.  
Moved: Berger, Seconded by Gram  
Vote: AYES: Unanimous

## REGULAR AGENDA

5. **Recommendation by Town Manager** – Update on and Authorize Execution of a Proposed MERA Cooperative Agreement Concerning Feasibility Analysis of Wolfback Ridge Site

Town Manager McIntyre reported that the Town Council authorized him to negotiate an

agreement with MERA with regard to the feasibility study to relocate the antenna from Mt. Tiburon to Wolfback Ridge.

Vice Mayor Berger recommended that Page 2, Section 2 (b) be changed to read “Tiburon shall reimburse MERA up to \$23,961.....”

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

MOTION: To authorize the Town Manger to execute the agreement as amended.  
Moved: Berger, Seconded by Slavitz  
Vote: AYES: Unanimous

## COUNCIL, COMMITTEE AND COMMISSION REPORTS

### WRITTEN COMMUNICATIONS

**Town Council Weekly Digest** – November 5, 2004

**Town Council Weekly Digest** – November 12, 2004

### ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Fredericks adjourned the regular meeting at 9:25 p.m., to the next regular meeting scheduled for December 1, 2004.

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ALICE FREDERICKS, MAYOR

ATTEST:

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DIANE CRANE IACOPI, TOWN CLERK