

**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, June 2, 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, Planning Manager Watrous, Director of Public Works/Town Engineer Echols, Chief of Police Odetto, Director of Administrative Services Bigall, Administrative & Financial Analyst Stott, Information Technology Coordinator Monterichard, Town Clerk Crane Iacopi

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Section 54956.9(a))

Siciliano v. Town of Tiburon
Zack, et al. v. MERA et al.

CONFERENCE WITH LABOR NEGOTIATOR
(Section 54957.6)

Bargaining Unit: Management and Mid-Management/Professional/Confidential Employees
(Non-Represented Employees)
Negotiator: Town Manager and Administrative Services Director

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

Mayor Fredericks said that there was no action taken.

ORAL COMMUNICATIONS

None.

PRESENTATIONS BY MARIN COUNTY

Presentation by Marin County Planning Agency – Draft Countywide Plan

Director of Community Development Alex Hinds gave the Council and the public an overview of the draft in a PowerPoint presentation, followed by a brief question and answer period. Public comments ranged from questions on the status of the Ft. Baker project and St. Vincent/Silveira properties to the cost of the countywide plan and who was paying for it.

The theme of the update, according to Hinds, was “planning sustainable communities,” which focused on three elements: natural systems, built environment, and socioeconomic issues. He covered these elements in his presentation and also told the public that they could access the draft plan on-line at www.future-marin.org.

Presentation by Marin Commission on the Aging – Annual Report

As Tiburon’s representative, Mr. Bortel brought the Council up to date on the activities of the Commission as Tiburon’s representative. He said that he also served on the Committee for Housing and Transportation, as well as the Publications Committee (which publishes the quarterly newsletter “Great Age”). He noted that the Council had a resolution in support of “Affordable Housing Week” in Marin County on the Consent Calendar.

Mr. Bortel said that the housing committee was focusing on “home shares” for seniors as a way of utilizing current housing stock for affordable housing. He said that there were many legal protections built into this program for the homeowners. Mr. Bortel also said that there was a cable TV show called on Cable 26 called “A Time for all Ages.”

CONSENT CALENDAR

1. **Approval of Town Council Minutes – May 19, 2004**
2. **Request by Marin County Commission on Aging – Declaration of “Affordable Housing Week”**
 - a) A Resolution of the Town Council of the Town of Tiburon Joining With Other Cities in Marin County to Set Aside June 5 -13 as Affordable Housing Week
3. **Recommendation by Director of Administrative Services – Retention of Nicholson and Olson for Audit Services**

4. **Recommendation by Director of Public Works/Town Engineer** – Authorize Execution of ABAG Grant Agreement for the Trestle Glen Bikeway Project
 - a) A Resolution of the Town Council of the Town of Tiburon Accepting Construction Grant for Trestle Glen Pedestrian Path Improvements Project and Authorizing Execution of Grant Agreement for the Project

5. **Recommendation by Director of Public Works/Town Engineer** – Funding Assistance Request By Golden Gate Transit for Stewart Drive Bus Stop Improvements and Budget Amendment

Mayor Fredericks asked that Item No. 5 be removed for discussion.

MOTION: To adopt Consent Calendar Item Nos. 1 through 4, above.
Moved: Berger, seconded by Slavitz
Vote: AYES: Unanimous
ABSTAIN: Smith, May 19 minutes.

Consent Calendar Item No. 5: Recommendation by Director of Public Works/Town Engineer – Funding Assistance Request by Golden Gate Transit for Stewart Drive Bus Stop Improvements and Budget Amendment

Town Engineer Echols said that since the last Council meeting, he had been informed by the Golden Gate Highway and Transportation District that the construction bids received for the project were \$60,000 over budget. The Bridge District had subsequently contacted the Town Engineer and asked for assistance in meeting this shortfall. Echols recommended that the Town Council consider contributing up to \$30,000 toward construction of the new bus stop improvements using funds from the Town’s Circulation System Improvement Fund.

However, Mr. Echols also noted that an amended proposal had come in, estimating the matching funds to be closer to \$47,130 rather than \$30,000.

Alan Zaradnick, Director of Planning for the District confirmed the above information and said that he had not discovered until “late in the game” that State funding had been lost for this project which was now 10 years old. In addition, he noted that federal funding comprised a major portion of the grant and that these funds might also be lost if the project did not move forward.

Mayor Fredericks asked the Town Engineer if other Town projects would be “bumped” if monies from the Circulation System Improvement Fund were used toward this project.

Town Engineer Echols said that \$60,000 had been earmarked for potential improvements to the Tiburon Boulevard/Reed Ranch Road intersection and that diverting these funds to another

project would reduce the amount accordingly.

However, Echols said that possibly the difference could be made up from gas tax or street impact fee funding sources.

Councilmember Gram asked what would happen if the Town “capped” its contribution at \$30,000 and whether the project would “die” if it did not receive adequate funding.

Mr. Zaradnick indicated that the Bridge District Board would have the final decision about whether to move forward with the project, but noted that dedicated funds, such as the federal grant money, might be lost if it did not.

In response to a question from the public about the apparent high cost of the bus stop project, Mayor Fredericks clarified that the “lion’s share” of the cost was for construction of a massive retaining wall that was needed to create a turn-out area on Tiburon Boulevard (as opposed to the bus shelter itself).

Vice Mayor Berger said that the project was important to create a better line of sight and that buses were currently forced to stop in the Stewart Drive intersection itself to pick up passengers since there was inadequate space to turn out [in the westbound direction].

Town Engineer Echols noted that the Circulation Element of the Town’s General Plan encouraged provision of adequate transit facilities in cooperation with other agencies and that the relocation of this shelter would reduce interference with vehicular traffic, which was also cited as a goal in the Circulation Element. He added that the Stewart Drive bus stop project is identified as one of the Town’s proposed circulation system improvements in the current fiscal year.

Council concurred that the Stewart Drive bus stop project was an important one that should be supported by approving matching funds based on best known estimates, with a cap.

MOTION: To approve the funding shortfall with a cap of \$42,865.

Moved: Berger, seconded by Smith

Vote: AYES: Unanimous

PUBLIC HEARING

- 6. Recommendation by Director of Community Development** – Approve Rezoning and Adopt Amendments to Pt. Tiburon Master & Precise Plan Pertaining to the Belvedere-Tiburon Library Expansion Project

Project Location: 1501 Tiburon Boulevard

Owner/Applicant: Belvedere-Tiburon Library Agency and Town of Tiburon

Assessor’s Parcel No. 58-171-90 & 58-171-62 (portion)

Second Reading and Adoption of Ordinances

- a) An Ordinance of the Town Council of the Town Of Tiburon Rezoning Certain Property from OS (Open Space) to P (Public/Quasi-Public) Zone to Accommodate an Expansion of The Belvedere-Tiburon Public Library Assessor Parcel No. 58-171-62 (Portion)

- b) An Ordinance of the Town Council of the Town of Tiburon Amending the Point Tiburon (Northwestern Pacific Railroad) Master Plan (PD#42) to Accommodate an Expansion of the Belvedere-Tiburon Public Library Located at 1501 Tiburon Boulevard

Council waived reading of the Staff report.

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

MOTION: To read Ordinance (a) above by title only.
Moved: Smith, seconded by Slavitz
Vote: AYES: Unanimous

Mayor Fredericks read, “An Ordinance of the Town Council of the Town of Tiburon rezoning certain property from OS (Open Space) to P (Public/Quasi-Public) Zone to Accommodate an Expansion of the Belvedere-Tiburon Public Library, Assessor Parcel No. 48-171-62 (portion).”

MOTION: To adopt above rezoning ordinance.
Moved: Smith, seconded by Slavitz
Vote: AYES: Berger, Fredericks, Gram, Slavitz, Smith

MOTION: To read Ordinance (b) above by title only.
Moved: Slavitz, seconded by Berger
Vote: AYES: Unanimous

Mayor Fredericks read, “An Ordinance of the Town Council of the Town of Tiburon amending the Point Tiburon (Northwestern Pacific Railroad) Master Plan (PD#42) to Accommodate an Expansion of the Belvedere-Tiburon Public Library located at 1501 Tiburon Boulevard.”

MOTION: To adopt above amending ordinance.
Moved: Smith, seconded by Slavitz
Vote: AYES: Berger, Fredericks, Gram, Slavitz, Smith

7. **Recommendation by Planning Manager** – Appeal of Planning Commission To Deny An Amendment to Pt. Tiburon Precise Plan Amendment (PD#42) to Allow Additional Floor Area

Property Address: 207 Paradise Drive
Applicant/Appellant: Susan Olson and Paul Ortner
Assessor's Parcel No. 59-380-30

Planning Manager Watrous presented the Staff report and grounds of the appeal. He described the Planning Commission's deliberations which resulted in 3-2 vote to deny the application and recommended that the Council hear public testimony but uphold the Commission's decision.

Mayor Fredericks opened the public hearing.

Susan Olson, Applicant/Appellant, read a prepared statement into the record which is attached to these minutes. She told the Council of the years of frustration encountered by she and her husband over the unresolved issue of what to do with a patio area at their unit at Pt. Tiburon Bayside that had suffered water damage and created leakage to the downstairs unit. She said that the Town's approved enclosure of the similar space in the unit below them had helped to exacerbate the situation, as had the installation of a rock garden, fountain, and "illegal" hot tub by the previous owner of their unit. She asked the Council to overturn the Planning Commission's decision and allow her and her husband to enclose the area in question and put an end to the uncertainty and years of battling with the Homeowner's Association Board as to the use of the space in question.

In conclusion, Ms. Olson quoted Commissioner Greenberg, stating that "she always upholds the integrity of precise development plans unless there are exceptional conditions" and that their application was an attempt to remedy an exceptional condition.

Commissioner Greenberg noted [in the Planning Commission minutes] that the "expansion of the lower unit was allowed incorrectly, creating an unsightly condition with a leak problem due to a flat roof." Furthermore, Greenberg had commented that "a 36 square foot enclosure would not make or break the entire complex," as long as "no more expansion" was allowed in Point Tiburon.

Vice Mayor Berger asked Ms. Olson if the same "condition" existed in [neighboring] Unit 209 which also sat atop an enclosed space. Ms. Olson said she was not aware if that unit had the same problem.

Berger said that his understanding was that the Homeowner's Association would fix the leak problem but he wondered whether the Applicants/Appellants would be permitted to replace the rock garden.

Ms. Olson said that they had been told they could not as it contributed to “ponding” on the roof. She also stated that the drainage issue had not yet been resolved.

Nancy Dalton, owner of two units at Pt. Tiburon with similar floor plans, said that she and the other owners “valued” living at Pt. Tiburon and were willing to put up with “consequences” such as not being able to use or enclose 36 square feet of deck space. She said that the Board did not want to spend time reviewing and approving multiple requests for construction such as this one and asked the Council to deny the appeal.

Mayor Fredericks and Vice Mayor Berger asked Mrs. Dalton if she knew of any other changes or enclosures of this nature at Pt. Tiburon. Mrs. Dalton said that she did not know but that she assumed that the buildings were the same as when they had been constructed.

Joseph Englert, past Homeowner’s Association Boardmember and President between 1997 and 2001, said that the Board had received three or four informal requests to enclose a deck area during that time but said that the homeowners were always told that the [Pt. Tiburon] development plan did not allow such enclosures.

Councilmember Gram asked whether a homeowner had to have the Board’s permission and asked what the CC&R’s said about the issue. Mr. Englert replied that his understanding was that the [Pt. Tiburon] development plan was the overriding authority in these matters.

E.C. Grayson, current Homeowner’s Association Board Vice President, said that the Board wanted to maintain the “integrity” of the homes at Pt. Tiburon, including the preservation of views, the lawn area, and adjacent Shoreline Park.

Mr. Grayson quoted from Town Council Resolution 2818, adopted in March 1991, which discouraged future additions to the project in order to prevent a repeat of the approval to enclose the outside of the unit below the Applicants/Appellants’ home. He asked that the Council not “compromise or corrupt” the intent of this resolution and to “put the issue to bed” once and for all.

Mr. Grayson also said that he and General Manager Diane Kay had met with Associate Planner Brian Lynch who told them that Resolution 2818 would “not be violated” by the Town.

Councilmember Slavitz commented that the Applicants/Appellants’ request was not for an “expansion” of their unit but rather to restore it to “looking pretty” again. He asked Mr. Grayson whether Ms. Olson would be allowed to do this.

Mr. Grayson said that Board President Delli Woodring had invited Ms. Olson to her home to see how other homeowners utilized this space and that in his opinion, how to use the space was “not that big a problem” for the homeowners at Pt. Tiburon.

However, he said that the Board felt that the rock garden had caused the leakage problem and

recommended instead the installation of a “trellis” floor on the patio which could then have plants or landscaping installed on top of it.

Mayor Fredericks asked if the Applicants/Appellants’ unit was the only unit that looked out over a roof below it; she was told it was not. Mr. Grayson added that “lots” of units had similar “views.” In response to further questions from the Council, he said that other units used this same lattice flooring to cover the space.

Jay Key, Homeowner’s Association Board Treasurer, stated that the CC&R’s said that if the Town approved a construction application it would then be “kicked back” to the Board. He said that the Town had not consulted the Board on this issue but that the Board’s position was that that they would be “very careful” about what they approved.

Mr. Key also stated that he thought the leak had been fixed.

Stewart Dalton said the issue had been blown out of proportion and that the appeal was essentially a “grudge match” between the Applicants/Appellants and the Board. He said that whether to install a trellis or not was a “side issue” and that the deck area did not represent a “big part” of the 180-degree view from the unit. He said the Appellants were trying to “win a point” that was not relevant to either the view or the value of their unit.

Tom McClintock, who stated that he bought the first Pt. Tiburon unit sold in 1985, and previously served on the Homeowner’s Association Board, said that the HOA had an architectural review committee in the past which informally handled such requests. He said that David Irmer (developer of Pt. Tiburon) had explained the reason for the [open] design of these areas and that everyone was “reasonable” in acceptance of this fact. He complained that now it seemed that people did not want to “work together.”

Mr. McClintock asked the Council whether it thought it was “right” for a homeowner to come to the Council first rather than going to the Board.

Mayor Fredericks said that the Council had no opinion on this subject but that it did not seem to be the current policy of the homeowner’s board.

During her rebuttal, Ms. Olson said that she and her husband had indeed submitted their application to the Pt. Tiburon Board but were told that they would have to go to the Town (Planning Commission) first.

Ms. Olson told the Council that she and her husband had been in mediation with the Board for three years now and that the Board was well aware of all the issues. She said that all they asked was to be able to “put back” the deck area the way it was when she and her husband purchased their unit (12 years ago) with the existing landscaping.

Councilmember Slavitz said that what he heard from the public testimony was that the Board

was intending to cover the Applicant/Appellants' roof area with lattice. Ms. Olson said that this was the first she had heard about this.

Councilmember Slavitz asked Ms. Olson whether that solution would meet her needs and she replied "no," that it was "not as attractive" as what existed when they purchased the unit. She also wondered if the lattice would add to the leak situation.

Mayor Fredericks closed the public hearing.

Vice Mayor Berger said that while the Applicants/Appellants had his sympathy, allowing an enclosure to the deck area would have negative impacts to the neighbors and that it was important not to set such a precedent. He said that the Applicants/Appellants should be allowed a "quality repair" of the leak situation by the Board, such as the installation of an overflow scupper, and that the installation of the trellis flooring would allow a "fix" in that plants or rocks could be added "within a workable setting."

Vice Mayor Berger told Ms. Olson that the Homeowner's Association could solve the situation "technically and satisfactorily" for her and her husband.

Councilmember Smith said that he disagreed with Commissioner Greenberg's comments that the Applicants/Appellants' situation was "unique." He said that this was a crucial factor in evaluating the situation. Smith further commented that the [Pt. Tiburon] project was fully built out, even "over built," and that the [open] spaces had positive design impacts, especially on "prominent" units such as the one owned by the Applicants/Appellants.

Councilmember Smith said that if the area in question was enclosed, it would look "substantially different" from the other units and furthermore, if you allowed one applicant to do it, it would become "increasingly difficult" to explain the reasons and make findings to deny similar applications.

Councilmember Smith concluded that the problem was between the homeowner and the homeowner's association and that he would stand by the 1991 [Town Council resolution] decision that discouraged further additions to the project. Smith said that while it was the Town's "fault" in allowing the enclosure of the unit below, it was not appropriate to exacerbate the problem and that he supported the Planning Commission's denial of the application. He further stated that solutions existed that fell short of "affecting everyone" in the project.

Councilmember Slavitz concurred, stating that expanding the unit was a "big hammer" in the search to correct the leakage problem. However, he said that the appellants had his sympathy and that he hoped the appeal would help move the homeowner's association and the Applicants/Appellants forward in resolving the situation.

Councilmember Gram said that a competent roofer should be able to correct the leakage problem. He agreed with his fellow councilmembers that allowing an enclosure of the space was "not a

good decision.”

Mayor Fredericks agreed, stating that an approval would be an “incursion onto a slippery slope.” She said that Resolution 2818 “strongly discouraged” such changes and said she would vote to uphold the Planning Commission’s decision.

MOTION: To uphold the Planning Commission’s decision and direct Staff to return with a resolution memorializing the findings.

Moved: Smith, seconded by Berger

Vote: AYES: Unanimous

REGULAR AGENDA

8. Recommendation by Town Attorney – Proposal to Join the General Service Joint Powers Authority

The Town Attorney gave a detailed analysis of the proposed agreement between the public agencies involved in the formation of the new JPA (to replace the former Streetlight Acquisition JPA). She told the Council that she had raised certain issues about the agreement at a meeting on May 20 among County-wide directors of public works and city attorneys. She recommended the following amendments:

1. Stipulation that the JPA will comply with local planning and building laws (Section 6.12);
2. That further amendments to the agreement would require a unanimous vote of the membership;
3. Deletion of Section 11 or limit it to projects that comply with state and local law and the agreement;
4. That no more than one official per member agency be allowed to sit on the Board at any given time;
5. Fees and dues should be set to reflect each member’s proportionate benefit from the JPA activities.

Town Manager McIntyre reported that the Marin Manager’s Association had also discussed the agreement in detail and understood the Town’s reluctance to move forward with joining the JPA in its current configuration in light of the recent *Zack et al. v. MERA* litigation.

Council asked whether there would be any technical staff or elected officials sitting on the General Services Board.

Town Manager McIntyre said that it was contemplated that the Board would consist of City Managers and Directors of Public Works who were, in turn, accountable to the elected officials.

McIntyre also stated that an Oversight Committee of elected officials was in existence whose mandate it was to audit the actions of the Marin County JPA's.

Councilmember Slavitz said that he was Tiburon's representative to this Committee but noted that the committee had not yet met in review because the [new] General Services JPA had not yet been formed.

A discussion followed as to what might occur if the Town did not join the JPA. The Town Engineer pointed out that the Town could still participate in certain cost-sharing arrangements but not have a "vote"; or it might be responsible, in some cases, for delivery of services without the benefit of a larger pool of participants.

Town Engineer Echols cited the examples of the GIS mapping JPA and the Stormwater Runoff JPA as services the Town would be unable to provide on its own.

Councilmember Slavitz noted that while the changes recommended by the Town Attorney might benefit all JPA members, there was no guarantee that they would be accepted.

Councilmember Gram said that it would be interesting to see what action the other agencies took.

Council thanked the Town Attorney for her work and directed Town Staff to propose the recommendations to amend the agreement, as stated above, except that No. 4 should be modified to state that the Board shall consist on one representative from each member agency and that said representative shall be either the agency's Manager (or, in the case of the County, Administrator) or Public Works Director, as determined by said agency.

9. **Recommendation by Town Manager** – Introduction of Fiscal Year 2004-05 Municipal Budget

Financial Analyst Stott gave a PowerPoint presentation of the proposed budget showing a projected operating surplus of \$167,000. He reviewed the Town's operating budget, revenue sources (60% from property taxes and other taxes), estimated State takeaways (based on current information from the State), and capital improvement program budget.

He noted in one slide that although the Town's revenues were tapering off, the Town still met its goals in terms of reserves and that it continued to budget conservatively when it came to revenue projections.

An interesting statistic, according to Stott, was that over the last five years, no Town department had varied more than 1% from its projected expenses.

With regard to \$2 million capital improvement program, Councilmember Slavitz asked whether a portion of the budget surplus would go to street rehabilitation, as proposed in a

previous council meeting.

Director of Administrative Services said that once the books were closed in September and the audit completed in November, an actual number would be brought back to the Council for allocation to this fund.

Mayor Fredericks opened and closed the public hearing.

Analyst Stott said that Staff would return to Council on June 16 with the final budget and adopting resolutions.

COUNCIL, COMMITTEE AND COMMISSION REPORTS

None.

WRITTEN COMMUNICATIONS

Town Council Weekly Digest – May 21, 2004

Town Council Weekly Digest – May 28, 2004

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Fredericks adjourned the meeting at 10:15 p.m. to the next regular meeting scheduled for June 16, 2004.

ALICE FREDERICKS, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK