

**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, September 15, 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, Advance Planner Bryant, Director of Public Works/Town Engineer Echols, Chief of Police Odetto, Director of Administrative Services Bigall, Administrative & Financial Analyst Stott, Town Clerk Crane Iacopi

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL
(Section 54956(a))

Zack et al. v MERA et al.
Fenster v. Town Council, Planning Commission & Library Agency

CONFERENCE WITH LABOR NEGOTIATOR
(Section 54956.9(b))

Bargaining Unit: Tiburon Police Association
Negotiator: Town Manager

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

Mayor Fredericks aid that no action had been taken.

ORAL COMMUNICATIONS

None.

CONSENT CALENDAR

1. **Approval of Town Council Minutes** – August 18, 2004
2. **Recommendation by Director of Administrative Services** - Adopt Town Investment Summary for July 2004
3. **Recommendation by Director of Public Works/Town Engineer** – Authorize Agreement w/ Kimley-Horn Engineering Services for Plan to Create Merge/Acceleration Lane at Reed Ranch Road and Possible Improvements to Trestle Glen Intersection
4. **Recommendation by Director of Public Works/Town Engineer** - Award of Contract for 2003-04 Drainage Improvements
5. **Recommendation by Advance Planner** - Adoption of General Plan Annual Report
6. **Recommendation by Director of Public Works/Town Engineer** – Amend Storm Water Runoff Impact Fee
 - a) A Resolution of the Town Council of the Town of Tiburon Amending the Stormwater Runoff Impact Fee

MOTION: To approve Consent Calendar Item Nos. 1 through 6, above.
Moved: Slavitz, seconded by Berger
Vote: AYES: Unanimous
ABSTAIN: Slavitz/Smith, August 18 minutes

PUBLIC HEARING

7. **Recommendation by Director of Public Works/Town Engineer** - Lyford Cove Undergrounding of Utilities Assessment District
 - a) A Resolution of the Town Council of the Town of Tiburon Preliminarily Approving Engineer's Report and Directing Related Actions

Lyford Cove Neighborhood Organizers Liz Bird and Joan Lombardo gave the Council some background on the undergrounding effort that had first started 20 years ago. They said that in the Fall of 2002 there seemed to be enough interest to start anew. The organizers said that the Stewart Drive project had been their model and that although they had started small, the proposed district had grown from about 50 homes to 228, or the whole of the Lyford Cove area.

Ms. Bird and Ms. Lombardo said that they had obtained petitions in favor of the district from almost 70% of the affected residents in May of 2003. In addition, they collected \$130,000 from the proponents in order to begin the engineering work. They noted that this community improvement would not only enhance the enjoyment of the streets and thoroughfares of the Lyford Cove area but would improve the safety and reliability of the power service delivery.

They said that the lower interest rates and other economic factors also led to the timeliness of the decision to move forward with the district at this time.

Ms. Bird and Ms. Lombardo said that the engineers had carefully researched every parcel in the district. They said that all of the transformer boxes would be undergrounded so that there would be no above ground facilities or a need for encroachment permits over any private property. They also noted that new street lights were being considered that would be shaded and that several design were being looked at.

Ms. Bird and Ms. Lombardo thanked Harris & Associates for their work in preparing the preliminary engineer's report and also thanked the Town Staff for their dedication and hard work.

Joan Cox, District Engineer (Harris & Associates) described the project. She said the it would include the removal of all above-ground vaults and poles and would result in the undergrounding of all wires within the boundaries of the district.

Ms. Cox said that the total cost to fund the project was \$4.26 million which did not include private service connections [a cost to be borne by the individual property owners].

She then describe the benefit assessment methodology. Ms. Cox said that they had looked at the existing conditions of each parcel and had determined to use the "highest and best use" (of either the existing or potential development) of that property to which benefits points were assigned.

Ms. Cox said that the aesthetic's factor was rated the same for all properties, regardless of existing view corridors, since it was deemed that views were both uphill and downhill in nature. She said that each parcel was then assigned one benefit point for aesthetics.

Vice Mayor Berger asked for clarification of this point and whether any consideration was given to those properties without poles or wires in their existing view corridor.

Ms. Cox said that view qualities were hard to define. She reiterated that everyone had some sort of view, whether it was upon ingress or egress from their property, or uphill or downhill. She said that all of the homes in the area had "gorgeous views," which resulted in high property values. She said that the most important thing was to be able to defend the assessment formula in court and noted that some engineers had been challenged in court and lost when they assigned benefits based on different types of views.

Ms. Cox described the other factors of the benefit formula:

--Improved Safety Benefit was given one point per parcel;

--Improved Service Reliability was given one point per single family residence and .7 point for multiple dwelling units based on the analysis presented in the PG&E design manual.

The combined points for “highest and best” use factors, plus aesthetics, safety, and reliability, resulted in an estimated assessment of \$18,313 for single family residence; \$16,482 for condominiums; \$20,755 for duplex.

Engineer Cox also noted that properties in two previous undergrounding districts, Linda Vista and Mar East, which were now included within the boundaries of the larger district, would receive reduced benefits due to their previous participation.

Finally, Ms. Cox said that if the Council adopted the preliminary engineer’s report and determined to move forward with the district, ballots would be mailed on September 24 which would be opened at a public hearing on November 17. She said that a majority vote, weighted by assessment value amount, would be needed to form the district, and that the Council would have the final say, after the votes were counted, whether the district would be formed.

Ms. Cox also said that there would be a 30-day cash discount period in which individual property owners could pay off their assessments, and then bonds would be sold to fund the district, with the first assessment appearing on the property owner’s September or October 2005 tax bill.

Mayor Fredericks asked for an estimate of the annual assessment. Ms. Cox said that it was about 10% [of the total assessment].

Mayor Fredericks stated that the Council was being asked to adopt a resolution approving the preliminary engineer’s report and nothing further at this meeting.

Councilmember Smith asked how a \$358,000 contingency had been calculated (page 4 of the report). Engineer Cox said that it was a construction plus incidentals contingency, totaling approximately 13% of the project cost. Smith asked if this number was based on prior construction or undergrounding experience.

Town Engineer Echols said that a typical construction contingency was 10% but that the engineers had taken a conservative approach due to the increased uncertainty of the condition of roads and infrastructure in old Tiburon.

Councilmember Gram confirmed that the Town had typically adopted a 10% contingency.

Vice Mayor Berger asked if “creative ways” to fund assessments had been explored.

Bond Underwriter Mark Pressman said that they had tried to keep the assessments to about \$100 per month in the Beach Road [Belvedere] and Stewart Drive projects, had bond issues of 25 and 27 years, respectively. He stated that he tried to keep all the options “open” until the construction bids came in. He also agreed that the engineer’s report had a lot of “hedge” and “fat” built into it, otherwise, the district would have to be formed all over again if the assessments proved to be greater than estimated. He said that the numbers would be refined prior to the election [ballot count].

The Vice Mayor said that there were some people on fixed incomes and that the Council had been told “early on” that there would be creative ways to finance the assessments.

Mr. Pressman said that, in working with previous districts, they had tried to be sensitive to those needs. He said that some residents might qualify for a tax deferment, based on income, or that there were other tools, such as reverse mortgages, which could be employed. He also stated that in Stewart Drive, funding was made available on a first-come, first-served basis for a few property owners who could not afford to cover the cost of the lateral connections, which could range from \$1,000 - \$4,000. However, he noted that at this time no provision had been made for laterals in the Lyford Cove project.

Vice Mayor Berger asked if this might be included. Mr. Pressman said that the subject would be discussed before the next public hearing. He said that in Belvedere, for instance, some neighbors paid for others who could not afford it. He said that this was a community project and that the “community” would try to address these issues, but that it was hard to address them until the “real numbers” were available.

Mayor Fredericks opened the public hearing.

Lauren Stotter, Vistazo East, asked how [timing of] the undergrounding and conversion would take place. Mike Cooper, District Engineer (Harris & Associates), briefly explained the conversion process from the pole to the house to the underground service.

Mayor Fredericks closed the public hearing.

Councilmember Slavitz congratulated the organizers on their efforts and said that this was a “great moment.”

Vice Mayor Berger said that he was comfortable with the process, even though through his experience on the Design Review Board, he had come to analyze views based on the [Town’s Hillside and Design Guidelines] definition of “significant views from significant rooms.”

Councilmember Smith said that he was “encouraged” by the formula employed in the engineer’s report and that a large segment of the population seemed to favor the district which would be a “tremendous benefit” to the area. He thanked the organizers, Liz and Joan, and noted that in his neighborhood, the residents “sit in the dark for weeks every winter.”

Mayor Fredericks confirmed that it was up to the residents within the district to decide whether it should be formed or not, but that the benefit formula was based on a legally defensible point of view.

MOTION: To adopt the Resolution adopting the Preliminary Engineer’s Report for the Lyford Cove Utility Undergrounding Assessment District

Moved: Berger, seconded by Smith

Vote: AYES: Unanimous

8. **Report by Advance Planner** – General Plan Update: Goal, Policy and Program Refinement - Noise & Safety Elements Issues Paper

Advance Planner Bryant gave the report. He said that no significant issues had emerged at the Planning Commission hearing on the final two elements of the General Plan review, and that the Council was being asked to endorse the recommendations contained in the Noise & Safety Elements Issues Paper.

Bryant said that the first recommendation was to delete the policy from the General Plan that called for adoption of a Town noise ordinance. He said that the Town Council had taken a different approach in recent years by limiting noise based on source rather than decibel level and that this approach had seemed to work.

However, he said that the Planning Commission and the public had requested that the Town consider expanding the ban on gas-powered leaf blowers to include the areas around the Town’s hotels, and also to consider limiting the use of cleaning equipment at the two markets during early morning hours.

Advance Planner Bryant said that if the Town Council chose to pursue these suggestions, that they be done through amendments to the Municipal Code since both suggestions were too specific for inclusion in the General Plan.

With regard to the Safety Element, Bryant said that some policies in the current General Plan were statements of specific strategies used by the Town during the development and environmental review process to ensure that the possible impacts of hazards were adequately addressed. While the Town would continue to implement these strategies, Bryant recommended that these policies be refined in language more suitable to the General Plan.

In addition, the Advance Planner said it was recommended that the scope of the Safety Element be expanded to address community policing and emergency preparedness.

Bryant said that the Planning Commission had observed that approximately a third of the Town's operating budget was designated for police services and had suggested that the Town look for ways to integrate services with neighboring jurisdictions to reduce costs. He noted, however, that this matter was outside of the scope of the General Plan.

He did recommend that the scope of the Safety Element be expanded in support of police department crime prevention and in the area of emergency preparedness, which had become more sophisticated over the last 10 years. Specifically, he recommended that the Emergency Operations Center and Emergency Plan be kept up to date.

Mayor Fredericks opened the public hearing.

Roger McKee, resident of Bel Air, said that as newer, larger homes were built, resulting in less space between homes, new equipment (such as air conditioning or hot tubs) had not been anticipated by earlier Design Review Boards and that there were no provisions in the Town Code or DRB guidelines for review of these "noisy" elements.

Mr. McKee pointed out that there were ways to mitigate the effects of such installations, such as not placing them "right next to" a neighboring home, and he suggested that the Town address this issue in one way or another.

Mayor Fredericks said that pool and spa pumps might also be included in this category.

Jerry Riessen, 616 Ridge Road, suggested adding garden fountains to the list.

With regard to the Safety Element, and in particular, landslides, Riessen said that the recommendations put forth in the Issues Paper (on page 33) sounded liked the language was being "softened" and less specific. He said that slides were an important issue that the Town should be concerned about and that any softening of the language might lead to "stretching" by developers.

Mr. Riessen suggested that the Section SE-5 (above) not be modified per Staff' recommendation. Further, Mr. Riessen said that Staff's recommendation to delete SE-6 (concerning no building on slopes greater than 40%) because it was now covered in the Open Space Element, was a safety issue, as well, and should be included in both elements.

Betsy Little also expressed her concern about the importance of preventing slides. She said that she had found a statistic which showed that most slides occurred on slopes of 34-37% so that she concurred with Mr. Riessen that the reference be left in the Safety Element.

Ms. Little said that because she lived near a potential slide, it was a comfort to her, as a “layman,” to have specific language included in the General Plan.

Joanna Kemper, 1911 Straits View Drive, said language should be added to ensure that developers would be “guided away from” developments in unstable areas.

Andrew Thompson, 18 Southridge East, said that he thought the public in general did not know that the Town had banned gas-powered leaf blowers in residential neighborhoods and that it should be published in the Ark and Town’s newsletter. He also suggested that a card could be printed up that was in both Spanish and English.

Mayor Fredericks closed the public hearing.

Councilmember Smith asked if comments contained in a letter from Planning Commissioner Collins would be included in the final draft. Advance Planner Bryant said that they would.

Councilmember Smith agreed that any police department merger should not be included in the General Plan. He said that he also liked the broader language, recommended by Staff, concerning landslides. However, he said that he understood Ms. Little’s comments because he lived nearby.

Vice Mayor Berger said that while it made sense to limit development near unrepaired landslides, that in fact, as a result of the [Town’s] review process, unstable soils and landslides often were repaired. He cited the example of the old Strawbridge property in old Tiburon.

Councilmember Slavitz said that he agreed that some of the language contained in the current Plan was important for a number of reasons. He recommended that the specific language of SE-1 & SE-5 be left in because they seemed to be more informative and descriptive of the Town’s direction. In addition, he said that the specifics clearly “meant something” to people.

Vice Mayor Berger asked if the new language could be “re-crafted” somehow to include these comments.

Mayor Fredericks said that there were two differences between the old and new language [concerning slides].

- 1) She said the old policy specifically named “geological hazards,” while the new policy language included “everything.”
- 2) She said the phrase “to the maximum extent feasible” was in the rest of the General Plan and suggested that the element include “the whole range of hazards” to be mitigated “to the maximum extent feasible.”

Councilmember Smith commented that “our policies aren’t broken,” and agreed with the Vice

Mayor that experience had shown that development on unstable properties could actually make them more stable. He said that obviously, on larger properties, developers would be steered away from developing on unstable areas and he said that he liked the semantics proposed by Staff.

Councilmember Gram said that the new terms were consistent with the provisions of State law (CEQA) and that was helpful because “we know what they mean.” However, he suggested that the phrase “to the maximum extent feasible” might be added.

With regard to noise, Gram said he agreed with Mr. McKee that the Planning process did not take pools and spas into consideration and that somehow they should be.

Vice Mayor Berger said that the City of Belvedere had established a policy preventing the installation of [outdoor] A/C units over 65 decibels.

Councilmember Smith said he agreed with Councilmember Gram, as long as the review process did not require a permit (as a result).

Director of Community Development Anderson said that there was currently not much Staff could do regarding air conditioning units under The Town’s current architectural review and design guidelines. He noted that it could be looked into further if there was Council consensus to do so

Mayor Fredericks joked that perhaps the Town could just increase the setbacks between homes.

She also mentioned that she had been told that there was minimal fireflow (water pressure) in old Tiburon due to the slopes. Advance Planner Bryant said that the Fire Department was aware of the problem but said that they didn’t have an answer for it at the moment.

Council directed Staff to rework the Noise and Safety Element language as discussed and to look into a review process for “noisy elements” such as air conditioners, etc.

REGULAR AGENDA

9. Recommendation by Advance Planner - Adoption of Solar Panel Policy

Advance Planner Bryant said that the Town Council had expressed its support of adopting a solar panel policy for private projects and for the Town to improve energy efficiency and reduce resource consumption in Town-owned facilities. Staff was directed to develop a solar panel policy for adoption prior to the Town moving forward with any solar panel project for Town Hall.

The proposed policy, according to Bryant, had three objectives:

1. to provide an incentive to use solar technology ;

2. to provide design guidelines for the use of solar panels, and
3. to formalize the design review process for the installation of solar panels.

With regard to the first point, the Advance Planner said that Staff believed that waiving building permit fees would be the most effective way to encourage the installation of solar panels. He said that the cost to the Town would be minimal, as solar panels only represented about 1% of the total building permit revenue per year.

With regard to No. 2 above, Bryant said that solar panels should be integrated into the design of a building and, when possible, should be placed in areas less visible to public streets. Specifically, roof-mounted panels should match the roof pitch and be placed flush with the surface of the roof; ground-mounted panels should be screened from view through careful placement and/or the use of landscaping, fencing or walls.

Finally, Staff recommended that applications for ground-mounted panels should be reviewed by the Design Review Board (No. 3 above) with regard to the aesthetic impact of these panels, while roof-mounted panels could be reviewed (and approved) by Staff.

Council concurred with these recommendations with a few questions and comments.

Mayor Fredericks asked whether roof-mounted panels might result in a roofline being higher than 30 feet, which would require a variance.

Director of Community Development Anderson said that if a (roof-mounted) application resulted in controversy, or needed a variance, that would trigger an automatic review of the application by the DRB.

Vice Mayor Berger wondered if it would ever be possible for an applicant to install roof-mounted panels and then ask the Town to deny a theoretical building application (of a neighboring property) on the basis that it prevented his panels from receiving sunlight.

Director Anderson said that such an applicant might have some sort of recourse under the [State] Solar Rights Act, as well as civil remedies.

Mayor Fredericks opened the public hearing.

John Kern, Stewart Drive, said that he supported the installation of solar panels and that the Town should encourage and “push” the policy as much as possible. He said that the Romberg Center had installed them on their conference center and now had a power surplus. He said that being on the cutting edge would put the Town “on the map”.

Andrew Thompson, 18 Southridge East, said he was also a proponent of the solar panel policy and the Federal “1,000,000 roofs” program. He said that people were “tired of fees” and that it showed the Council’s leadership not to charge a fee.

Thompson said that while the Vice Mayor’s concerns were thoughtful, the chances were “small” of anything like that happening.

Mayor Fredericks closed the public hearing.

Councilmember Smith commented that the Solar Rights Act did indeed limit the authority of local governments to restrict the installation of solar panels.

Smith said that ground-mounted panels should be discouraged; that, in his opinion, they were “ugly,” and resulted in a defacto increase in house size and an actual increase of impervious surface. He said that this trend had “perturbed” him.

Councilmember Smith suggested that the policy should be amended to “encourage” roof-mounted panels, where feasible. Council concurred.

In response to a question from Councilmember Slavitz, Vice Mayor Berger commented that if solar panels followed the roofline of a house, they were “innocuous” and would not need a hearing for design review.

MOTION: To adopt policy, as amended.
Moved: Gram, seconded by Slavitz
Vote: AYES: Unanimous

COUNCIL, COMMITTEE AND COMMISSION REPORTS

NERA Siting Negotiations – Mayor Fredericks

Mayor Fredericks said that Councilmembers Gram and Slavitz, as members of the Council’s legal subcommittee, had represented the Council and had done a fine job. However, she said that it was now necessary to appoint an actual negotiating team in order to represent the Town in the current negotiations with MERA and the Mt. Tiburon neighbors.

Mayor Fredericks said that the action should be heard as an urgency item because the Town had only found out after the agenda was published that certain actions needed to be taken prior to the next MERA Board meeting (which would fall before the next Council meeting).

She recommended that she and Vice Mayor Berger be appointed as negotiators to “pinch hit” for Councilmembers Gram and Slavitz.

MOTION: To hear the item as an urgency item and to appoint Fredericks and Berger as the new negotiating team.
Moved: Slavitz, seconded by Gram
Vote: AYES: Unanimous

Mayor Fredericks said that the goal was to keep the MERA antenna out of residential neighborhoods, although she stated that the reality was that it might not be possible due to MERA Board actions or financial considerations. However, she asked the Council for authority for the team to move forward with the negotiations.

MOTION: To authorize the team to make the best financial decision possible in the negotiations.
Moved: Smith, seconded by Slavitz
Vote: AYES: Unanimous

On another matter, Councilmember Slavitz said that the Tiburon Peninsula Expansion Plan was moving forward and he suggested that Town Staff work with the TPC on a joint use proposal.

Councilmember Smith said that the Richardson Bay Regional Agency had been very successful in getting rid of derelict boats along the shoreline.

Mayor Fredericks said that she would be sworn in on September 17 as the North Bay Division President of the League of California Cities.

WRITTEN COMMUNICATIONS

Town Council Weekly Digest – August 20, 2004

Town Council Weekly Digest – August 27, 2004

Town Council Weekly Digest - September 3, 2004

Town Council Weekly Digest - September 10, 2004

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Fredericks adjourned the meeting at 9:13 p.m., to the next regular meeting scheduled for Wednesday, October 6, 2004.

ALICE FREDERICKS, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK