

**TOWN COUNCIL
MINUTES**

CALL TO ORDER

Mayor Berger called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, January 19, 2005, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

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

PRESENT: EX OFFICIO: Town Manager McIntyre, Town Attorney Danforth,
Director of Community Development Anderson,
Director of Public Works/Town Engineer Echols,
Director of Administrative Services Bigall, Chief of
Police Odetto, Advance Planner Bryant, Town
Clerk Crane Iacopi

Prior to the start of the regular meeting, the Council met in closed session, beginning at 6:45 p.m., to discuss the following:

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Section 54956(a))

Fenster v. Town Council, Planning Commission & Library Agency

Siciliano v. Town of Tiburon

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

[Property Dispute regarding Easement over a portion of 160 Gilmartin)
Initiation of Litigation – Case name(s) withheld because disclosure would jeopardize existing
settlement negotiations

CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION
(Section 54956(b)(3)(C))

Name of Claimant: Kasey Boak, 1895 Mar West

NOTICE OF ACTION TAKEN IN CLOSED SESSION, IF ANY

Acting Mayor Smith said that no decisions were reached or action taken on the matters discussed in closed session.

ORAL COMMUNICATIONS

None.

CONSENT CALENDAR

1. **Approval of Town Council Minutes** – December 15, 2004
2. **Approval of Town Council Minutes** – January 5, 2005
3. **Recommendation by Director of Administrative Services** – Accept Monthly Investment Summary for December 2004
4. **Recommendation by Director of Administrative Services** – Pt. Tiburon Below Market Rate Units –
Authorize Town Manager to Sell 20 Marsh Road to Marin Housing Authority –
continued from December 15, 2004
5. **Recommendation by Director of Community Development** – Budget Amendment to Fund Continuation of Advance Planner Position through June 30, 2005

Motion: To adopt Consent Calendar Item Nos. 1 through 5, above.

Moved: Fredericks, seconded by Slavitz

Vote: AYES: Unanimous
ABSENT: Berger

APPOINTMENTS TO TOWN BOARDS, COMMISSIONS & COMMITTEES

6. **Recommendation by Town Clerk** – Appointments to Boards, Commissions and Committees
 - a) Announcement of Pending Vacancies on Town Boards & Commissions in 2005
 - b) 2005 Council Committee Liaison Appointments
- a) Acting Mayor Smith made announced the following announcement of pending vacancies as a result of term expirations in February 2005:

- Mike Figour, Design Review Board
- Michael McMullen, Parks & Open Space Commission
- Andrew Morgan, Heritage & Arts Commission

He also noted the current vacancy on the Hilarita-Tiburon Ecumenical Association Board of Directors.

Town Clerk Crane Iacopi said that current commissioners whose terms were expiring would be notified and asked whether they sought reappointment.

- b) Acting Mayor Smith asked for any changes to the Council liaison appointments.

Councilmember Fredericks noted that a temporary “alternate” was needed on the JPA Oversight Committee. Vice Mayor Smith volunteered for the position.

MOTION: To appoint Paul Smith as the Town’s “alternate” to the Joint Oversight JPA.
 Moved: Slavitz, Fredericks
 Vote: AYES: Unanimous
 ABSENT: Berger

Councilmember Fredericks suggested the creation of an ad hoc Council committee for Paradise Drive issues, noting that Supervisor McGlashan had expressed an interest in continuing the joint discussions with the Town and residents in this unincorporated area.

Ms. Fredericks also recommended Council subcommittees for two current development projects that had attracted a lot of public interest: St. Hilary School and Kol Shofar Synagogue. She said that the formation of these ad hoc committees would demonstrate the Council’s interest and commitment to the issues perceived by the public.

MOTION: To appoint Alice Fredericks and Jeff Slavitz to the Paradise Drive ad hoc Council committee
 Moved: Gram, Smith
 Vote: AYES: Unanimous
 ABSENT: Berger

MOTION: To appoint Tom Gram and Paul Smith to the St. Hilary and Kol Shofar ad hoc Council committees
 Moved: Fredericks, Slavitz
 Vote: AYES: Unanimous
 ABSENT: Berger

PUBLIC HEARING

7. **Recommendation by Planning Manager** – Ring Mountain Precise Plan Amendment (PD#10)

Property Address: 8 Mariposa Court
Owners: Jeff and Sheryl Ott
Applicant: Nick Noyes Architecture
Assessor Parcel No.: 038-440-08

Planning Manager Watrous gave a brief report for the application to amend the secondary building envelope to install a swimming pool at 8 Mariposa Court, and said that the Planning Commission recommended approval of the amendment.

Acting Mayor Smith opened the public hearing.

Nick Noyes, architect, said that he was available to answer any questions.

Acting Mayor Smith closed the public hearing.

MOTION: To adopt resolution approving the above precise plan amendment.
Moved: Slavitz, seconded by Fredericks
Vote: AYES: Unanimous
ABSENT: Berger

REGULAR AGENDA

8. **Recommendation by Advance Planner** – Amend Solar Panel Policy to Comply with New State Legislation

Advance Planner Bryant said that in September 2004 the Council had adopted a policy that would waive permit fees for the installation of solar panels and had created guidelines for installing same.

According to Bryant, the new policy reflected the Town's preference for roof-mounted versus ground-mounted panels, especially on hillside properties, and had established review procedures for both. Ground-mounted solar panels were to be reviewed by the Design Review Board and roof-mounted panels could be reviewed by Staff. However, Mr. Bryant said that on January 1, 2005, State law had changed so that local governments could no longer regulate design criteria of solar installations. He said that the Town's policy needed to be amended to reflect these changes.

The Advance Planner suggested that the Town could continue to encourage roof-mounted installations through a fee waiver while charging a fee for ground-mounted panels, but that design guidelines would be "voluntary."

Councilmember Gram asked how the Town could avoid view blockage issues if roof-mounted panels were installed at 45-degree angles, for instance.

Bryant said that under the new law the Town had no specific regulatory authority. However, Bryant said that the Town could craft guidelines that would be “ministerial” versus “discretionary.”

Councilmember Slavitz asked about encouraging “flat” versus “angled” installations that would be “flush” with the existing roofline.

Director of Community Development Anderson recommended adding a specific definition of “flush” to the guidelines, for example, six inches.

Councilmember Fredericks asked whether there were other ways to create an incentive for roof-mounted panels through an interpretation of health and safety codes or through the Town’s regulations pertaining to the creation of additional “impervious surface.”

Town Attorney Danforth said that it was not likely; however, she pointed out that the Town was not obliged to grant fee waivers at all and that while the Town could not regulate “aesthetics” under the new law, it did have a right to charge permit fees for solar panel installations.

The Advance Planner said that the Town’s current fee structure would charge \$215 (design review fee) for roof-mounted panels and \$425 for ground installations.

Vice Mayor Smith said that he had long been concerned about ground-mounted panels which impacted the greater community, especially on hillsides, but concluded that there was little the Town could do to discourage them (other than charge a permit fee) under the new law.

Councilmember Fredericks suggested some sort of staff “checklist” to follow when applications were submitted.

Council continued the matter for further revisions to the policy per the above discussion.

9. **Recommendation by Director of Public Works/Town Engineer – Trestle Glen Bike and Pedestrian Path Improvements**
 - a) Adopt Final Plans and Specifications and Authorize Bid Process
 - b) Adopt Resolution Authorizing Application for Matching CAL/TRANS Grant Funds
 - i) A Resolution of the Town Council of the Town of Tiburon Authorizing the Filing of an Application for Bicycle Transportation Authority Program Funding for the Trestle Glen Bikeway Project and Committing the Necessary Non-Federal Match for the Project and Stating the Assurance of the Town of Tiburon to Complete the Project

Town Engineer Echols said that conceptual plans had been prepared by Questa Engineering as a result of a Bay Trail planning grant that had been awarded to the Town by the Association of Bay Area Governments (ABAG), and that these plans had been presented to and accepted by the Council in 2003. Since that time, Staff had been successful in obtaining additional grant funding from ABAG for the pedestrian portion of the path, and plans had been drawn, but he noted that the conditions of the grant required that the project be completed by June 30, 2005. He also said that staff continued to seek funding for the Class II bicycle lane element of the project from CAL/TRANS (as stated in the proposed resolution).

Councilmember Smith asked what would happen if the final portion of the grant was not received; Engineer Echols said that the Town was actively pursuing two more grants as well. However, he noted that there was a good chance of receiving the CAL/TRANS funds this time around.

In describing the plans for Council's review, Mr. Echols said that a portion of the curb would be removed and replaced by a new path between Mercury and Juno, and a decomposed gravel path between Turtle Rock and Shepard Way. He said that the pedestrian path would be separated from the roadway.

Councilmember Slavitz made reference to a late mail item from a resident of Turtle Rock who was concerned about the impacts of the project on his existing landscape irrigation system.

Engineer Echols said that the project would not disrupt his system and that replacement landscaping, if needed, had been specified in the plans under review.

Acting Mayor Smith opened the public hearing.

Shaun Coughlin, 2 Turtle Rock Court, distributed photos of his current landscaping at the intersection of Trestle Glen and Turtle Rock Court. He said that he and his wife thought they might lose the landscaping which the Town had "demanded" they install when they erected a fence at that location. He said he thought that the [Questa] plans were not detailed enough to address his concerns and that he looked to the Town to commit to replacing the landscaping if lost and to allow enough money in the project budget for this contingency.

Town Engineer Echols said that while there were no plans to remove any of the landscaping, except for overhanging limbs, there was a provision for shrub replacement in the plans. He also said there were additional ways to address Mr. Coughlin's concerns: through specific wording in the contract and [by withholding of] the notice of completion of the project. Furthermore, he said that change orders could be made "in the field" to address any unforeseen issues concerning this issue.

Acting Mayor Smith closed the public hearing.

Councilmember Slavitz congratulated Staff on a “job well done,” and cited the history of the concept for the path at the BPAC (Bicycle Pedestrian Advisory Committee) level on up the ladder. He said that the project would be an improvement “on par” with the ferry plaza improvements which had also been made possible by the receipt of various State and Federal grants.

MOTION: To approve the above plans, authorize contractor bids and adopt the above resolution for BTA (bikeway) grant funding.

Moved: Fredericks, seconded by Slavitz

Vote: AYES: Unanimous

ABSENT: Berger

10. Recommendation by Director of Public Works/Town Engineer – Proposed 2004/05 Street Rehabilitation Program Streets List

Council waived the Staff report.

Acting Mayor Smith said that he was glad to see several of the streets listed in the report were scheduled for repair because there were in “terrible shape.”

Councilmember Slavitz asked whether the Town planned to spend [budget surplus] funds in addition to the \$500,000 Capital Improvement budget for the 2004-05 street rehabilitation program (funded by Gas Tax and Street Impact Funds).

Town Manager McIntyre said that the Town planned to spend additional money in the next fiscal year for street repairs resulting from the undergrounding assessment districts being formed in the Lyford Cove and Del Mar Valley areas. However, he said that a “policy issue” for Council to consider was whether to use monies from the Town’s operating budget for repair of “dead roads” or “live roads.” He said that this would be a topic for discussion at the February 7 Town Council/Staff retreat.

Acting Mayor Smith said that the Town could designate a supplemental allocation for street repairs, if necessary.

Councilmember Fredericks said that the lists of streets needing repairs were drawn up before the Town actually received funding and that there were other decisions that needed to be made as to whether the supplemental funds were to be appropriated for this year or as a general rule. She also suggested that the Council revisit its list of project priorities prior to dedicating any additional funds.

The Town Manager said that during the previous year’s budget hearing process, there was a recommendation by Councilmember Slavitz to use a portion of any budget surplus at year-end for streets and roads repair. McIntyre said that \$480,000 had been shifted at the end of the 2003-04 fiscal year into a fund for this purpose but that the question remained as to whether to the

amount should be increased each year, or, conversely, whether there would even be a budget surplus in any given year.

Town Manager McIntyre said that Councilmember Fredericks had requested a list of “dead streets” within the Town.

Town Engineer Echols said that this list would be presented and discussed at the Council/Staff retreat. However, he also noted that on the current year’s rehabilitation list, portions of Round Hill Road and Mt. Tiburon Court already qualified as “dead streets” under the Town’s pavement management system, and that 23 streets had been designated in this category in all, which carried with it an approximate \$3,000,000 price tag to fix.

With regard to the undergrounding districts, the Town Engineer said that the Town would spend \$100,000 on the Lyford Cove project if the cost was split with the participants of the district (resulting in a savings to the Town); and \$200-300,000 was estimated to be needed for repairs if the Del Mar district moved forward. He said that these two districts would take a “substantial bite” out of the additional \$480,000 being discussed as additional funds for the current fiscal year.

Councilmember Fredericks asked whether something could be done [short of reconstructing] “dead roads” to help the local residents. Town Engineer Echols said that the Public Works Department could do some patching and pothole fixes out of the department’s budget as it identified the worst problem areas.

Acting Mayor Smith opened the public hearing.

Paul Erickson, 14 Old Landing Road, said he lived on a “dead road” and would like to participate in the discussion about funding for same.

He said that since he moved there 21 years ago, the road had seen “no asphalt” at all except after the Town had done some drainage work, there had been some “patching.” He said that the road had been annexed to the Town five years ago and that in 2001 he had contacted the Town Engineer about making repairs and had been told that nothing could be done about the road because it was “too bad” and that there were no plans to do any work for at least five years.

Mr. Erickson said that there were drainage issues on the road, as well, and that the Town Engineer told him that they would be fixed “in a year or so.”

The drainage work had been completed by the Town in 2003-04, according to Erickson, after which he had another conversation with the Town Engineer and was again told that no road repairs were scheduled for the next five years.

Mr. Erickson said that he would like clarification of the entire road budgeting process.

Acting Mayor Smith said that the Town budgeted \$500,000 per year for road rehabilitation but that, in fact, actually more than a million dollars a year was needed “just to keep up.” This resulted in the Town “falling behind” on repairs over the last few years.

Councilmember Gram said that Tiburon was one of the few towns or cities in Marin County that did not have a municipal services tax for street repairs. For instance, he said Belvedere’s roads were in much better shape as a result of their municipal services tax. He suggested that it might be time to re-visit the idea of a parcel tax in Tiburon.

Mr. Erickson said that several lawyers in the Old Landing Road neighborhood had pointed out that it was dangerous to both walk and drive on the road due to the lack of lighting and potholes.

Councilmember Fredericks suggested that some of the potholes could be fixed by the Town.

Mr. Erickson said that the Town Engineer had told him the Old Landing Road needed to be reconstructed and that once it fell into this category, it became a “dead street” and was taken off the [current] fix list. He said that the residents did not want reconstruction but rather a “smooth surface.”

Francine Holberg, 24 Old Landing Road, echoed Mr. Erickson’s comments about potholes and safety, and said that there was a long rut along a long curve that posed a hazard.

Acting Mayor Smith closed the public hearing.

MOTION: To adopt 2004-05 streets rehabilitation list.

Moved: Gram, seconded by Slavitz

Vote: AYES: Unanimous

ABSENT: Berger

11. Recommendation by Director of Community Development – Annual Development Fee & Street Impact Fee Report

- a) Receive Annual Development Fee Report
- b) Adopt Resolution making Findings for Street Impact Fee
 - i) A Resolution of the Town Council of the Town of Tiburon Making Certain Findings Regarding Fees Collected for Street Impact Purposes

Council waived the Staff report.

Councilmember Smith asked why the Town would charge a street impact fee to persons living on private streets which were accessed by Tiburon Boulevard (which was also not a Town street).

Town Engineer Echols said that the policy had been developed prior to his tenure but that it pertained to the broad, global impact of construction vehicles on Town roads and streets, and that it would be difficult to come up with a unit cost per site.

However, the Town Engineer acknowledged that an exception had been created in the Stormwater Run-off impact fee program for persons living directly on the shoreline of Richardson Bay.

Acting Mayor Smith said that it was important to be able to answer the question of the “reasonable relationship” to the fee being charged if construction vehicles never crossed over a Town-maintained road.

Town Attorney Danforth said that the law did not require the Town to precisely tailor the precise fee paid to the impacts of individual projects. Because the fee is one of “general application,” the Town need only find that the fees imposed Town-wide were appropriate to the costs of the street damage throughout the Town. She said that, of course, the Council could make exceptions to the rule but stated that the fee itself was allowable and legally defensible.

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

MOTION: To receive the report and adopt the street impact fee resolution.
Moved: Gram, seconded by Fredericks
Vote: AYES: Unanimous
ABSENT: Berger

WRITTEN COMMUNICATIONS

Town Council Weekly Digest – December 17, 2004

Town Council Weekly Digest – December 22, 2004

Town Council Weekly Digest – January 7, 2005

Town Council Weekly Digest – January 14, 2005

Town Manager McIntyre said that Tom O’Neill had filed a permit application for a Classic Car Show along Shoreline Park which would be reviewed, consistent with the Town’s policy, by the Town Manager and Chief of Police. He said that he would bring the permit to the Council for a courtesy review, as well.

Councilmember Fredericks said that she was serving on the Transportation Authority of Marin’s (TAM’s) Executive Committee search team for the hiring of a strategy consultant. She said that the Town will not receive funds from Measure A until after April. In addition, road projects that

affect the Town will be delayed by the State's delayed in releasing STIP funds, and by the fact that the State hijacked Proposition 42 funds.

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Vice Mayor Smith adjourned the regular meeting at 8:35 p.m., to the next regular meeting scheduled for February 2, 2005.

PAUL SMITH, ACTING MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK