

**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, October 19, 2005, 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, Interim Director of Public Works/Town Engineer Bernardi, Chief of Police Odetto, Director of Administrative Services Bigall, Planning Manager Watrous, Town Clerk Crane Iacopi

Prior to the regular meeting, beginning at 6:30 p.m., the Council met in closed session to discuss the following items:

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

*Town of Tiburon v. Sylvia*

**CONFERENCE WITH LEGAL COUNSEL – THREATENED LITIGATION**  
(Section 54956.9(b))

Threatened Litigation by County of Marin

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION**  
(Section 54957)

Title: Town Manager  
Town Attorney

Mayor Berger convened the Council as the Tiburon Redevelopment Agency. Town Clerk Crane Iacopi called the roll and noted that all of the Boardmembers were present.

## **TIBURON REDEVELOPMENT AGENCY**

### **CONSENT CALENDAR**

1. **Approval of Minutes** – December 1, 2004
2. **Approval of Minutes** – June 29, 2005

MOTION: To adopt the minutes, as written.  
Moved: Slavitz, seconded by Smith  
Vote: AYES: Unanimous

### **ANNUAL MEETING**

3. **Report by Director of Administrative Services** – Redevelopment Agency Annual Report

MOTION: To adopt the annual report.  
Moved: Fredericks, seconded by Slavitz  
Vote: AYES: Unanimous

### **ADJOURNMENT**

Chair Berger adjourned the meeting at 7:35 p.m. and reconvened the meeting as the Tiburon Town Council. Town Clerk Crane Iacopi noted that all of the Councilmembers were present.

## **TIBURON TOWN COUNCIL**

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

Mayor Berger said that matters were discussed in closed session but no action was taken.

### **ORAL COMMUNICATIONS**

None.

### **CONSENT CALENDAR**

1. **Approval of Town Council Minutes** – October 5, 2005
2. **Recommendation by Town Manager** – Authorize Budget Amendment for Interim Director of Public Works/Town Engineer Hourly Services
3. **Recommendation by Chief of Police** – Approve Proposed Utilization for Supplemental Law Enforcement Services(COPS) Fund for FY 2005-06

- a) A Resolution of the Town Council of the Town of Tiburon Approving an Expenditure Plan for the Utilization of Supplemental Law Enforcement Funds (“COPS”) Monies Received in Fiscal Year 2005-2006

4. **Recommendation by Interim Director of Public Works/Town Engineer – Award of Contract for Railroad Marsh Cattail Removal**

MOTION: To adopt Consent Calendar Item Nos. 1 through 4, above.  
Moved: Fredericks, seconded by Gram  
Vote: AYES: Unanimous  
ABSTAIN: Smith, October 5, 2005 Minutes

**PUBLIC HEARING**

5. **Report by Planning Manager – Appeal of Planning Commission Denial of Conditional Use Permit Application for 2<sup>nd</sup> Story Banquet Facility Expansion Plan for Caprice Restaurant – *Continued from August 3, 2005***

Applicant/Appellant: Pt. Tiburon Plaza, Inc.  
Address: 2000 Paradise Drive  
Assessor Parcel No. 059-172-46

Planning Manager Watrous gave the report and outlined the grounds of the appeal. He said that the owners of the Caprice Restaurant had submitted an application for an upgrade and expansion which consisted of the addition of a third floor in the amount of 1,380 square feet for use as a banquet facility.

Mr. Watrous said that during its review, the Planning Commission heard testimony from neighbors about potential noise and view impacts on the adjacent homes and continued the matter so that the applicant could address those issues.

During the second hearing, according to the Planning Manager, the applicant submitted a noise and traffic study and proposed that the public parking lot across the street from the restaurant be used as a pick-up and drop-off spot for the valet service in order to ameliorate traffic and safety issues in front of the restaurant. This caused the neighbors to express concerns about the drop-offs being even closer to their residences, according to Watrous.

Mr. Watrous said that the Planning Commission voted to deny the application on the grounds that the expansion would be incompatible with the surrounding neighborhood; that it was not deemed a minor alteration and was therefore inconsistent with the downtown element of the General Plan.

Mr. Watrous said that that the applicant had filed a timely appeal on the following grounds:

- The proposed expansion would not significantly change the operation of the restaurant and would add only 10-12 more seats; however, Watrous said that the Planning Commission noted that the number of banquets would increase with the proposed expansion; also, that the neighbors provided substantial testimony regarding parking, traffic and noise impacts at peak capacity;
- The proposed expansion would result in the removal of unsightly rooftop equipment which would result in a reduction of noise rather than an increase; the Planning Commission noted that the open windows would result in more noise from banquets on the third floor;
- The proposed upgrades to the restaurant would result in upgrades to safety and ADA access; the Planning Commission concluded that the benefits would not outweigh the increased impacts on parking, traffic and noise.

Planning Manager Watrous recommended that the Council uphold the Planning Commission decision and vote to deny the appeal.

Vice Mayor Smith asked about a statement in a letter from an attorney for neighbor Sissy Davis that **stated that the Town could not allow the Caprice to expand, because it was a non-conforming use.**

Planning Manager Watrous said that the existing restaurant was a non-conforming structure rather than a non-conforming use. The current zoning allows the restaurant use with a conditional use permit, which the Caprice has; the letter's complaint is that the Caprice has not complied with its existing permit; Town Attorney Danforth said that that applicant had applied for an amendment to its conditional use permit; if the Town granted the appeal, the new conditional use permit would allow a larger number of seats, eliminating the alleged conflict with the current conditional use permit.

The Vice Mayor concluded that the Town's zoning ordinance would not preclude the Council from approving the expansion. The Town Attorney concurred with this statement.

Mayor Berger asked Staff to describe the conditions of a conditional use permit (CUP). Planning Manager Watrous said that the zoning ordinance outlined a number of requirements for CUP's, which included everything from neighborhood character to health and safety and public welfare. He added that even if a location was reasonably compatible (within an application), conditions could be imposed to require further compliance with the Town's zoning ordinance.

Planning Manager Watrous said that the while the [Caprice] property itself was zoned commercial, it was surrounded by a residential zone.

Mayor Berger noted that the Caprice Restaurant had been in that location for 40 years and predated the construction of the nearby residences.

Councilmember Slavitz asked how the Caprice could apply for a minor floor addition if it was already over its maximum floor area ratio (FAR). Mr. Watrous described the procedure whereby the applicant could transfer its excess floor area from Pt. Tiburon Plaza to the Caprice.

Councilmember Fredericks asked why a CUP was needed if the area was already zoned commercial. Planning Manager Watrous said that the proposed expansion triggered the need for a new application for a CUP. He cited the example of the expansion of St. Hilary as a similar CUP for an expansion.

In response to a question from Vice Mayor Smith, the Planning Manager confirmed that the Planning Commission could not make the findings to approve the application on the basis of neighborhood compatibility, traffic, safety and parking.

Council asked Mogens Bach, applicant, to review the drawings. Bach said that the remodel would utilize the existing architecture and that the top floor would be set back 13 feet on one side to minimize the impact on the neighbor's property (Ms. Davis). He said that the upstairs banquet room would contain a maximum of 60 seats, two bathrooms, a serving area, an elevator and a dumb waiter.

Mr. Bach said that the roof equipment would be moved inside and that the fan would be encapsulated. He said that existing downstairs room would be turned into an office, employee lounge, wine cellar and storage.

Mr. Bach said that the addition was within the Town's height limits, adding that it was 2-1/2 inches over the limit but could easily be brought into conformance, and met BCDC requirements.

Councilmember Fredericks noted a discrepancy in the staff report and Planning Commission minutes regarding a height of 30 or 36 feet. Mr. Watrous said that there had been a difference of opinion as to height but that the 30 foot height was correct.

Ms. Fredericks asked what the value of adding a deck to the top floor would be if it created the opportunity for additional noise.

Mr. Bach said that it was an architectural feature as well as for occupants to have fresh air for the banquet room. Mayor Berger commented that that feature could be changed and still retain architectural interest for the building.

Mayor Berger asked whether it would be possible to relocate the fan away from the adjacent property. Mr. Bach said that it was not easy to move because it was in a logical place, close to the [stove] hood. He pointed out that having it encapsulated would result in less noise than the existing fan and would be an improvement.

Councilmember Gram addressed the issue of frequency of use and the impacts on traffic and other issues. He said that the traffic study showed no more than 1-2 cars per hour but he said that banquets would generate higher usage.

In discussing the issue of number of banquets per month, Mr. Bach said that he had been told that 4-5 banquets per month were needed for the continued viability of the restaurant; said that they currently averaged 1-1/2 banquets per month; also, that other restaurants in the area (Corinthian Yacht Club, Servino's, Sam's and Guaymas) averaged 3-4 per month.

Councilmember Gram asked whether the applicant would agree to a restriction on the number of banquets; Mr. Bach replied affirmatively. He added that the likelihood of getting around such a restriction by "just moving guests upstairs" was not feasible, given that restaurants must plan for banquets through staffing, amount of food purchased, etc. Mr. Bach also stated that all of the banquets would not be at full capacity, i.e. 60 people.

Councilmember Fredericks said that in her notes it said that the Caprice had hosted 80 banquets in 2004. Mr. Bach said this was not the case; however, he said that they had closed the restaurant for private events, such as weddings. He said that this was not good business practice, however, because regular customers could not be served.

Ms. Fredericks said that even those kinds of events were, in fact, an increased usage. Mr. Bach said that they were not the same thing.

Councilmember Slavitz asked whether the three or four banquets per month would be on weekends. Mr. Bach said that they hoped for usage on Mondays and Fridays, as well.

Mr. Slavitz asked how the parking would be orchestrated on busy weekends in the public lot.

Mr. Bach said that they proposed utilizing a shuttle service between Pt. Tiburon and the restaurant so that there would be no banquet parking in the neighborhood. He said that regular dinner patrons would still use the on-site valet service.

Councilmember Slavitz asked how people would know not to park in the neighborhood. Mr. Bach explained that there would be about 26 marked spaces in the Pt. Tiburon parking lot for Caprice Restaurant patron parking, closest to Mar West Street.

Mayor Berger asked if this proposal had been presented to the Planning Commission. Mr. Watrous said that it had not.

Mr. Bach further explained that the valet [shuttle] service would meet the patrons at the Pt. Tiburon lot and take them to the Caprice.

Vice Mayor Smith asked how many shuttles would be utilized; Mr. Bach said that aspect had not been decided yet but suggested that they would use two, if necessary.

Councilmember Slavitz asked if that meant the shuttles would make U-turns in front of the Caprice. Mr. Bach said that the shuttle would drop patrons in the public parking lot, not directly in front of the restaurant.

Peter Brekhus, attorney representing the Caprice owner, Pt. Tiburon Plaza, Inc., said that the findings [of the Planning Commission] must support the facts and not vice versa.

Mr. Brekhus said that many of the contentions/claims with regard to noise and parking were not based in fact. He pointed out that the valet manager said that he had never had a problem with [lack of] parking even during the recent construction at Sanitary District No. 5.

Furthermore, Mr. Brekhus said that no one had ever complained to the restaurant, prior to the recent application, about noise, so that the Planning Commission statement that the expansion “would result in unwanted noise” was not substantiated.

Mr. Brekhus said that the letter from Ms. Davis’ attorney concerning noise from open windows was also unsubstantiated because no windows opened onto the street and that all the windows were opposite of Pt. Tiburon [Bayside], rather than Ms. Davis’ side.

He also stated that amplified music emanating from banquets would no greater than that from the microphones in the Council Chambers.

Brekhus said that the owner hired an acoustical engineer to measure the noise from the restaurant on Saturday night, which was the busiest night. The engineer found that the highest level never exceeded 65 decibels. He said that Section 9 of the Noise Element of the General Plan said that restaurant noises are “normally acceptable.”

Councilmember Gram asked whether the study had extrapolated for future noise measurement, and stated that “no one is complaining about the existing noise.”

Mr. Brekhus replied that the new acoustical features of the construction would baffle and control noise.

Councilmember Fredericks asked when the measurements were made and whether the decibels levels stated were averages.

Mr. Bach said they were made between 5:00 and 11:30 p.m. He said that at 11:30 p.m. the decibel level was 49 dBA.

Bach said that they averaged the ambient noise and that the “blips” were, for example, a car door slamming. Mr. Brekhus noted that it did not necessarily reflect noise from the restaurant. He further stated that the measurements were consistent with the General Plan.

Mayor Berger asked whether the acoustical engineer was present to answer questions. He was told that he was not.

With regard to complaints about parking, Mr. Brekhus said that they were all contrary to the testimony of the valets. He said that the original staff report said that parking would not have adverse impacts on the neighborhood. He also said that in the Pt. Tiburon residents had one covered parking space and two additional guest parking spaces per unit and showed photos [taken during daylight hours] of empty spaces at Pt. Tiburon.

Mr. Brekhus said that the claim questioning the legality of using a public lot for valet parking and the claim that it would somehow make the Town responsible was “far fetched and lacks logic.” He said that the public parking lot was not intended for long-term, resident parking nor was it improper for patrons of the Caprice to use it.

Finally, Mr. Brekhus said that the traffic studies commissioned by the owner concluded that estimated additional two trips per hour would be “imperceptible.”

Michael Imfeld, attorney for Sissy Davis, said that complaints against noise at the Caprice were indeed documented and said that his client had filed an injunction in the past against the restaurant.

Mr. Imfeld said that the original 1962 CUP allowed for a 50-person capacity and pointed out that the Caprice’s website said it could accommodate 120 guests. This was the source of the “non-conforming use” statement and he disagreed with the Town Attorney’s remark that the use could be legally expanded, citing the *Edmonds* case.

Mr. Imfeld said that “no one is trying to shut down the Caprice” but he said that the opposition was to the addition of a third floor.

Councilmember Gram asked Mr. Imfeld whether he (or his client) would have a problem with the Council restricting the use [frequency].

Mr. Imfeld said that it would only make a bad situation worse. He further stated that the restaurant was in a “dangerous location” and that the accident statistics in the area were significant.

Mayor Berger asked Mr. Imfeld to summarize his client’s main concerns. Mr. Imfeld said that the issues were noise (including the breaking of bottles in the restaurant for recycling); view impact (the third story would block his client’s view of downtown and the yacht club); and parking (his client cannot get out of her driveway if the traffic is backed up).

Finally, Mr. Imfeld noted the widespread opposition (by 15 neighbors, Pt. Tiburon Bayside HOA Board, and the Lyford Cove/Old Tiburon HOA Board) to the expansion.

The following members of the public testified:

- Bill Teiser, Vice President of Tiburon Bayside Homeowner's Association Board of Directors, opposed, on the grounds of adverse impacts to traffic, safety and noise.
- Angelo Servino, President of the Chamber of Commerce, in favor of remodeling the Caprice; consistent with the Chamber's goal to build a strong business community and because of its unique view, location and history; the only "elegant" restaurant in town;
- Ron Glantz, opposed due to increased noise, parking, perceived loss of safety and property values; must retire early for business reasons and is awakened easily by noise which would emanate from music and DJ's at banquets and increased foot traffic and noise of revelers;
- Branwell Fanning, patron of the Caprice since 1960, opposed to proposed application, which had not been "thought through completely," especially parking plan at Pt. Tiburon which would encourage guests to walk through the development;
- Steve Sears, in favor, spoke of the difficulties restaurants in small towns and other areas face staying in business due to increased costs of insurance, etc.; said that banquets are a way to stay in business due to volume; said economic viability of downtown is enhanced by the Caprice and that it is a landmark;
- Susan Wolfe, living directly "over" the parking lot adjacent to the Caprice; asked that the small town character of Tiburon be preserved and to leave the Caprice as it is, as an "elegant, small, intimate restaurant;" complained of the "startling" sound of bottles breaking at night when the restaurant closes; said the residents' observations should be believed, and that she has seen instances of double-parking;
- Mark Dickinson, agreed with opposition on all counts; commented that even with a shuttle from the parking lot, people would still walk through Pt. Tiburon to get to the restaurant;
- Dellie Woodring, Pt. Tiburon Bayside, said that people bought their units "with a reasonable expectation" of living with the Caprice as it currently exists; urged the Council to not support the "over commercialization" on the east end of town;
- Terry Koenig, representing the Chamber of Commerce and Main Street Properties, said both supported the expansion of the Caprice; said that the Tiburon Lodge renovation would target "upscale" clientele and that upscale restaurants were needed to accommodate them; listed examples of other Bay Area restaurants that had undergone renovation in order to stay current and remain competitive (Lark Creek Inn, Cliff House, Spenger's); said that the shuttle system used by Landmark Society to sites without on-site parking was an example of a system that worked very well in town;
- Lynn Olsen, three doors down from Caprice, said that she had not experienced any problems with noise or parking, stated that it was 10 times more dangerous to cross at that intersection during the day than at night;
- Shawna Dickinson, speaking for Diane Liu, said that the crosswalk was "dangerous passage" in the light of day and would be worse at night; said that "we all bought into" Pt. Tiburon for its safety and quietness;
- Orra Hyde, said that noise [from the restaurant] was annoying but that parking was the

real problem; said that “every single spot” of the 30 + parking spaces along Mar West Street in the neighborhood was taken by 6:45 in the evening and that they never had enough parking for guests; that this “inequitable situation” would only be exacerbated by the expansion of the Caprice;

- Patrick Augi, manager of the valet service for Caprice (stated that he had worked there since age 18), said that he had never had a parking problem, accident or ticket; said that the expansion would result in fewer cars in the vicinity [if the shuttle service was implemented]; said that he had experience with this kind of service in Sausalito and other locations; said that his employees were well-trained and actually added “security” to the area; said he had not worked the shuttle service for the at Landmark Society, in response to Mayor Berger’s query;
- Connie Wiley, for Belvedere mayor, residing next to the San Francisco Yacht Club, where the parking “is terrible,” said that she thought the issue of parking was being “exaggerated” in this case; urged the Council not to lose the Caprice in addition to the other businesses lost over the years, including two gas stations, the five & dime store, pharmacy etc.;
- Bob Wolfe, ”in real estate,” said that the Councilmembers would also be opposed to the Caprice expansion if they lived in Pt. Tiburon; warned that the Caprice might be sold to a new owner along with approved plans; said that the Town would not enforce the [proposed] limitation on number of banquets or noise complaints;
- Jim Hermann, ex-Planning Commissioner, cited the recent community survey results that stated that 60% of residents went downtown for a “dining/eating experience;” and that “better stores, and more and better restaurants” would motivate them to come more often; encouraged the parties to “put their heads together” to collectively solve the problem; (Councilmember Fredericks clarified that the 60% statistic stated was of those who participated in the survey);
- Herbert Charles, thought a 20-foot bus [shuttle] would also prove dangerous if it had to turn around in front of the Caprice;
- Larry Smith, 30 years of involvement with town affairs, said the opposition was a classic case of NIMBY; said the “huge expansion” would result in a net increase of just 12 seats; said that no noise complaints were received until this application was filed; said that most problems are “solvable;” suggested that all parties seek a “win-win” solution;
- Sam Parke, seconded the concerns stated against expansion;
- Gary Lucas, Tiburon native, said that the smell from Sanitary District No. 5 plant had to be worse than the noise from Caprice which could be ameliorated by closing windows; supported the expansion of Caprice;
- Larry Livingston, 50 years experience as a regional and city planner, said the basic conflict was one of a residential community that also wanted a viable commercial area; said there was no “pat formula” or solution; commented that an additional story seemed “out of character” but that the situation needed “a lot of thought and study;”
- Sissy Davis, property owner adjacent to the Caprice, said that the current restaurant was not in compliance with its conditional use permit; that this application was not a “minor addition,” as stated; said that expansion would result in increased intensity of use with

adverse impacts on traffic, safety and noise pollution; also said that the Town Code contained provisions against blocking sunlight;

- Larry Sylvester, said that traffic in the area was a result of the “build out” in the Paradise Drive area; said that “you can get hit every day” (in that location) and that someone should try to address the safety issue of the [Paradise Drive] intersection.

Vice Mayor Smith asked the applicant what the chances were of closing the restaurant if they were not able to expand.

Mr. Bach said that the Caprice was unofficially for sale at one time and stated that “no chefs would touch it” with its high rent. Bach said that it might be viable under “mom and pop” ownership.

Vice Mayor Smith asked whether the restaurant might be converted back into a residence. Mr. Bach said that if it were, it would need a two-car garage (under current town guidelines) and that an applicant would almost certainly request an upper story.

During his rebuttal, Mr. Bach said that the parking lot across from the Caprice was a public parking lot in a commercial zone and therefore open to the public for parking; also stated that Mar West was a public street. However, Mr. Bach said that the restaurant had an “unspoken agreement” with Sanitary District No. 5 which allowed them to use certain parking spaces at that facility as long as the valets parked vehicles there which could be moved.

In addressing the “bottle breaking” issue, Mr. Bach said that application contained provisions for a room in which used bottles would be bagged up and stored, away from the side facing Mrs. Davis.

Mr. Bach said that the “minor addition” issue was a “legal swap” for square footage at the Pt. Tiburon Plaza (owned by applicant).

Finally, Mr. Bach said that the shuttle service utilized by Landmark Society had worked very well. He invited the neighbors to “work with us” on its success.

Wearing “another hat,” Mogens Bach, Tiburon resident, said he lived above the Audubon Society property and that when they had started allowing weddings with amplified music on weekends, he and some of his neighbors went to the Society to worked out their issues on noise. He said that the result was a successful compromise of allowing occasional weddings and no amplified music. He said that a solution could be found by the neighbors in the case of the Caprice, as well.

Councilmember Gram said that he heard “one side” wanted to worked things out but asked whether there was sufficient interest (on the other side) to try to mediate the situation.

Mr. Gram said that he and former Mayor Harry Matthews had spent 70 hours apiece on a successful mediation between St. Hilary and the neighbors who were opposed to that expansion.

Bill Teiser said that he was not authorized by the Pt. Tiburon Board to speak to the question but stated that the Caprice owners could develop other ideas and present them, if they liked.

Councilmember Fredericks said that the Council had heard new ideas presented tonight [shuttle] which had not been included in the application or Council materials. She agreed that there should be a forum to discuss these ideas.

Mr. Teiser replied that the Pt. Tiburon residents had spoken against the use of a shuttle this evening and pointed out that the Landmark Society did not have events every weekend, and that their sites were not [all] in residential neighborhoods and were not all at night.

Mayor Berger contradicted that statement and said that there were sometimes two weddings per weekend at Old St. Hilary church, which was located in his neighborhood.

Vice Mayor Smith said that he was not prepared to decide the issue tonight. He stated that the Planning Commission had made the right decision and that they could not make the findings to approve the application. However, he said that the Council was hearing a slightly modified version of what the Planning Commission had heard and that there seemed to be an effort on the part of the applicant to address the issues.

The Vice Mayor said that the statements made by Mr. Hermann and Larry Livingston had “resonated” with him and that if there was a way to save the Caprice, without having significant negative impacts on the neighbors, then it was worthwhile to look at all the options.

Vice Mayor Smith said that the applicant was entitled to decision (based on the appeal) and asked if they wanted a decision tonight. The applicant demurred.

Mayor Berger agreed that it would be important to “find a balance” in this situation.

Councilmember Slavitz stated that nobody wants to see the Caprice close, but that its expansion should not be at the expense of quiet enjoyment of the neighborhood. He was unsure whether all of the problems could be overcome. He said that the Caprice could strive to be a better neighbor; that parking in the area was a premium and that there still would be problems with parking one way or another; said that the noise issues could be addressed by eliminating the deck [in the application] and by eliminating windows facing Paradise Drive; said he was opposed to staging the valet parking in the public lot because it gave the impression that the lot “belonged” to the Caprice, and also because of the noise factor.

Mr. Slavitz said that he did not know what the solution was for the dangerous crosswalk on Paradise Drive at the intersection with Mar West Street. He said that there was an opportunity to work things out and to find a compromise that works for everybody.

Councilmember Gram said that he was a “big supporter” of neighborhood character, but also of the revitalization of downtown; said that he was “not willing to let this go” and that it should be mediated.

Councilmember Fredericks said that the Pt. Tiburon Bayside was not just at the edge of the commercial area of town but that it was at the “quiet part” of the commercial area; said that the question was whether the neighbors could live there, along with the restaurant, and that the question had not yet been answered; said that the neighbors were right about some people not taking the shuttle; suggested that the shuttle be staged farther away from Pt. Tiburon, for example, in the Bank of America parking lot; said the issue of amplified music needed to be addressed.

Mayor Berger said that the way the application was presented to the Planning Commission resulted in a denial which was the “correct thing to do” because they could not make the findings.

He said the Council’s job was to “get creative” and to deal with the bigger picture issues and address the “overlapping” perceptions of where downtown was; stated that Pt. Tiburon was not in a “bucolic” location and that the area was used by many people which would result in it never being as quiet or peaceful as some might hope; said that Pt. Tiburon residents “lived in the mix.”

Mayor Berger said that he did not want to “lose” the Caprice but that its success should not be “on the backs” of the residents.

In addition to his previous remarks, Mayor Berger said that noise could also be ameliorated by installing air conditioning and sealing the banquet room; that blowers could be specified well below the 60 decibel level; and that the bottle breaking question should never come up again.

With regard to the shuttle question, Berger said that the Landmarks Society example has indicated that it can work, but needed to be done with an iron hand. He suggested that the Caprice try implementing the system now with the existing restaurant to see if it would reduce the number of cars and to see how it worked.

Councilmember Gram acknowledged that the neighbors wanted to know if the Caprice would abide by any limitations placed on its application with regard to number of banquets, etc. He said that the Council placed a periodic review clause on St. Hilary’s conditional use permit which kept them “thinking about” the issues with the neighbors and that they had done a “wonderful job.”

Planning Manager Watrous suggested that the Council form an ad hoc committee to study the issue, similar to the process described by Councilmember Gram (with the St. Hilary appeal). He recommended that the appeal be continued to a date uncertain.

Mayor Berger and Councilmember Fredericks volunteered to serve on the committee.

As to the composition of the neighborhood representation, Mr. Teiser said that he would have to take the question to the Pt. Tiburon Board; Councilmember Fredericks said that the Lyford Cove/Old Tiburon HOA Board should also be approached; Vice Mayor Smith said that Ms. Davis might want to be a party to the discussions, as well.

MOTION: To continue the appeal in order to attempt mediation of the issues.  
Moved: Smith, seconded by Gram  
Vote: AYES: Unanimous

**6. Recommendation by Town Attorney and Interim Director of Public Works/Town Engineer – Town Ordinance pertaining to Encroachments in Public Right-of-Way**

*Second Reading of and Adoption of Ordinance*

- a) An Ordinance of the Town Council of the Town of Tiburon Repealing existing Chapter 19 (Encroachments) of the Tiburon Municipal Code and replacement with a new Chapter 19 (Encroachments, General) and adding a new Chapter 19A (Use of Public Right-of-Way) to the Tiburon Municipal Code

Council waived reading of the staff report.

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

MOTION: To read ordinance by title only.  
Moved: Fredericks, seconded by Gram  
Vote: AYES: Unanimous

Mayor Berger read, “An Ordinance of the Town Council of the Town of Tiburon repealing existing Chapter 19 (Encroachments) of the Tiburon Municipal Code and replacement with a new Chapter 19 (Encroachments, General) and adding a new Chapter 19A (Use of Public Right-of-Way) to the Tiburon Municipal Code.”

MOTION: To adopt Ordinance, as written.  
Moved: Fredericks, seconded by Gram  
Vote: AYES: Berger, Fredericks, Gram, Slavitz, Smith

**7. Recommendation by Director of Community Development and Planning Manager – Zoning Ordinance Amendment to add a Section Regulating Antennas and Wireless Communication Facilities; Consideration of Wireless Communication Facilities Standards**

*Introduction and First Reading of Ordinance*

- a) An Ordinance of the Town Council of the Town of Tiburon Amending Provisions of Chapter 16 (Zoning) of the Tiburon Municipal Code regarding Wireless Communication Facilities

Planning Manager Watrous gave the staff report.

Mayor Berger opened the public hearing.

Gunnar Wetlesen, Mt. Tiburon Road, said that the biggest improvement to the ordinance was the increased noticing requirement for installation of wireless facilities. He told the Council that he still felt strongly about requiring that such facilities be located outside of certain areas and noted that the 300 foot setback requirement for residential areas had been suggested but not included in the draft ordinance.

Mr. Wetlesen said that the Town should not have to accommodate every provider of wireless services and that its ordinance should provide reasonable limit and balance for the affected parties.

Wetlesen cited the City of Danville's ordinance as a model and said that the Town's ordinance would "perpetuate a less optimal format" which would result in "less control of land use and sites."

Vice Mayor Smith asked a question concerning the language contained in one of the standards that stated the location "shall not be" within residential areas, but also "should not be" within or near dwellings.

Planning Manager Watrous said that there had been a lot of discussion in the Planning Commission deliberation about "how near is near?" and that one of the Commissioners came up with the idea of a 300 foot setback from residential areas. However, after all of the potential locations were reviewed for wireless sites, it became obvious that there would be hardly any potential sites for these facilities that would not be within 300 feet of a residential neighborhood in Tiburon, according to Watrous.

He said that the result was to leave the specific distance out of the standard and to leave the matter to the Commission's discretion.

Councilmember Fredericks asked why child care centers were not in the "shall not" category. Mr. Watrous said that hospitals and schools were not prohibited sites, either, under the ordinance.

Councilmember Slavitz said that the chosen language, "very close proximity" sounded a lot less than 300 feet to him.

Planning Manager Watrous said that theoretically a potential antenna could be placed within 300 feet of a residence, under the proposed standards. He gave an example that several antennas have been placed on the roofs of businesses on Ark Row that are within 300 feet of houses on Corinthian Island but due to the vertical separation of the topography and tree screening, have been found to be appropriate.

Planning Manager Watrous said that the Danville example worked there because that city had a much larger land area, including industrial sites.

Councilmember Gram said that state law said that the highest voltage overhead power line could be within 150 feet of a school. He asked why a wireless facility needed to be located at an even greater distance.

Mr. Wetlesen commented that the high voltage lines might be a lower electrical density than cell towers. He said that it was a question of whether you were looking straight at it or not. He said that he still recommended a fixed distance and an exemption clause.

Councilmember Fredericks said that she had heard that many wireless companies were consolidating; she asked whether anyone else had information on the subject.

Planning Manager Watrous said that he had noticed a similar trend, noting that the Town had approved a total of nine permit applications in 11 years.

Vice Mayor Smith said that he was not in favor of using a specific [distance] number; also that the adjective “very” be deleted from the language for locations “within or near” certain uses. Council concurred.

Mayor Berger closed the public hearing.

MOTION: To read ordinance by title only.

Moved: Fredericks, seconded by Smith

Vote: AYES: Unanimous

Mayor Berger read, “An Ordinance of the Town Council of the Town of Tiburon Amending Provisions of Chapter 16 (Zoning) of the Tiburon Municipal Code regarding Wireless Communication Facilities.”

MOTION: To pass first reading of Ordinance, as amended.

Moved: Fredericks, seconded by Smith

Vote: AYES: Berger, Fredericks, Gram, Slavitz, Smith

## **COUNCIL AND COMMITTEE REPORTS**

Town Manager McIntyre said that progress was being made in the resolution of a neighborhood dispute in the vicinity of 28 Meadowhill Drive.

The Town Manager also asked whether the Council wished to discuss the disposition of trees in the fountain plaza area, per the Town Engineer's memo. He was given direction to agendize the matter.

## **WRITTEN COMMUNICATIONS**

**Town Council Weekly Digest – October 7, 2005**

**Town Council Weekly Digest – October 14, 2005**

## **ADJOURNMENT**

There being no further business before the Town Council of the Town of Tiburon, Mayor Berger adjourned the meeting at 11:10 p.m., to the next regular meeting on November 2, 2005.

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MILES BERGER, MAYOR

ATTEST:

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DIANE CRANE IACOPI, TOWN CLERK