

TOWN COUNCIL MINUTES

CALL TO ORDER

Mayor Berger called a regular meeting of the Tiburon Town Council to order at 5:30 p.m. on Wednesday, November 2, 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,
Associate Planner Krasnove

ORAL COMMUNICATIONS

Mayor Berger said that staff had been informed that the public wished to address the Council on an issue concerning 28 Meadowhill Drive. The Mayor pointed out that while the Council could not respond to the comments, they would be discussing the matter further in closed session.

William Howell addressed the Council first. He said that he had been trying to get resolution of his issues for 15 months; that the “conduit problem” at 28 Meadowhill Drive had been fixed but there were still six other “noisy or ugly” components that needed to be addressed.

Mr. Howell said that the remodel project at 28 Meadowhill Drive had been a “serial problem from day one.” He said that he had been finally able to review design review records dating back to 1998, which had only been produced today even though he had been requesting them for 60 days. He also said that the 2002 “as-built” review did not address all of the issues; that the applicant had requested a variance on the height of a wall but had made no mention of the [installation of] a commercial grade ventilation system. He said that the five Carrier-brand residential [A/C] units had been replaced with two larger, commercial units; in addition, a concrete wall had been built next to the pool which protected the Shenkman’s residence but not his own, from equipment noise. Mr. Howell said that there were problems with the roof-mounted equipment and that sound emanated from it.

Howell said that a noise study stated that the equipment was “no louder than ambient sound” in the area; however, he said that there were two construction projects going on right next to the residence, with rebar being set, trucks and 10 workmen, which contributed to the noise level.

He also stated there seemed to be a problem with the design review process in that there was no mention in the staff report of the equipment to be installed.

Another frustration, according to Howell, was that “no one seems to want to take responsibility for this;” that he was told [by staff] that “we’ve asked them to do things but they haven’t delivered back to us,” and the like. Mr. Howell said that it seemed to him that this matter should be enforceable under the Town Code and that the Town should be the one making the decisions, not the applicant.

Finally, Mr. Howell said that all he was asking the Town to do was to enforce its requirements and that a measurable plan be put into place with a timeline. He said that the building permit for the house remained open; that the process was not working as it should and that the Town would, in his estimation, like it to.

In summary, Mr. Howell asked that the Town put together a list of all the issues and review it with the affected neighbors so that there was an agreement as to an appropriate resolution for each one.

William Coomber, a neighbor living directly above and beside 28 Meadowhill, said that from his vantage point, “all we see is the roof;” that while the house was being renovated, he and his wife were concerned about their view but did not think that noise would be a problem, which it had become.

Mr. Coomber said that his home was 70 feet from two periscope-shaped pipes that protrude from the flat second story roof of 28 Meadowhill and that, at frequent intervals, a loud, rushing sound of blowing air came from the pipes. He said that this noise was accompanied by a low-level background hum which he surmised might be from a fan or turbine, and that this and the constant droning of equipment located near the swimming pool area bothered he and his wife, especially when they slept with windows open on warm nights.

Mr. Coomber said that he had spoken with the Shenkmans who had always assured him that they were doing all they could to fix the problem; he also said that they had assured him that they would install chimney caps and had not done so. He said these problems, along with light emanating from large and protruding skylights, had persisted for many years.

Mr. Coomber said that he would like answers to the following questions, which he read from a letter submitted to the Council:

1. “What, exactly, are these noises producing items?”
2. Did anyone realize that they might become so intrusive?”
3. Are such noise producing items normal for residential neighborhoods such as ours?”
4. Were these particular devices approved by the town?”
5. Can they be made to operate more quietly?”
6. Must they be operated so often?”

Mr. Howell noted for the record that the noise Mr. Coomber was describing was related to the roof equipment which was not the same noise he was talking about.

Phillip Banta, architect for the Shenkmans, said that he was still involved with the project and that he had just learned about the some of the issues this morning from Town staff. Banta said that he had submitted two reports: one, a request from Building Official Bloomquist to prepare a list of work that had been done without permits; and two, a copy of the acoustics report which he had asked the engineer to send to the Town today.

Mr. Banta said that he objected to being characterized as “uncooperative.” He said that when he had been asked to address the issues, some of which had been beyond his control, he immediately submitted applications to address as many of the concerns as possible. The sound report had been at the request of the Building Official as a result of complaints by Mr. Howell. He noted that there was a lot of other construction activity in that valley but that the engineer addressed that in his report; also that separate readings were taking at similar angles down the road at 4:30 p.m. on a previous date which Mr. Banta thought “accurately describes” the sound; nevertheless, “we continue to be cooperative and we understand that there are a number of problems to solve here and that’s what we intend to do.”

Mr. Howell added that part of his complaint was the process itself and that the applicant [Banta] had not been uncooperative.

Mayor Berger closed oral communications and stated that if something was decided on the matter to be discussed in closed session, he would report it.

ADJOURNMENT

Mayor Berger adjourned the meeting at 5:45 p.m. and the Council convened to closed session.

CLOSED SESSION

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

Bonander and Mulberg v. Town of Tiburon

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

Threatened Litigation by County of Marin

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

[Code Violations at 28 Meadowhill Drive]
Initiation of Litigation

CONFERENCE WITH LABOR NEGOTIATOR

(Section 54957.6)

Bargaining Unit: SEIU 949

Negotiator: Town Manager and Director of Administrative Services

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

(Section 54957)

Title: Town Manager

Town Attorney

CALL TO ORDER

Mayor Berger reconvened the regular Council meeting at 7:42 p.m. and waived roll call for the Council. Other ex officio members present were Chief of Police Odetto, Director of Administrative Services Bigall, Planning Manager Watrous, and Town Clerk Crane Iacopi.

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

Mayor Berger said that the Council had discussed several matters and had given pertinent direction to Council and Staff regarding timing, schedules, and specific timeframes pertaining to resolution of the issues between the neighbors at 28 Meadowhill Drive (Shenkman residence/neighbors Howell and Coomber).

ORAL COMMUNICATIONS

Mayor Berger announced with regret the resignation of Planning Commissioner Wayne Snow. He said that Wayne had contributed greatly to the community over the years and that, regrettably, the Council would have to fill the vacancy created by his departure.

Julie Jacobs, nine-year resident who described herself as a “dear friend” of Wayne’s, said that he and his family were the first persons to show kindness and welcome them to the community. She requested Council’s consideration of declaring a “Wayne Snow Day” or some other appropriate method of recognizing him for his many years of service.

CONSENT CALENDAR

1. **Approval of Town Council Minutes** – October 19, 2005
2. **Recommendation by Councilmember Fredericks** – Support Local Schools in Opposition of Proposition 76

- a) A Resolution of the Town Council of the Town of Tiburon in Support of Local Schools and in Opposition to the California Live Within Our Means Act - (Proposition 76)
- 3. **Recommendation by Director of Administrative Services** – Accept First Quarter Financial Report for FY 2005-06
- 4. **Recommendation by Town Manager** – Appoint Tiburon Representative (to Replace Public Works Director/Town Engineer Echols) to MarinMap Steering Committee as required by MarinMap Joint Exercise of Powers Agreement
- 5. **Recommendation by Director of Administrative Services** – Approval of Memorandum of Understanding between Town and Service Employees International Union (SEIU 949)
- 6. **Recommendation by Interim Director of Public Works/Town Engineer** – South of Knoll Park Tot Lot Renovation Contract

MOTION: To adopt Consent Calendar Item Nos. 1 through 6, above.

Moved: Slavitz, seconded by Gram

Vote: AYES: Unanimous

PUBLIC HEARING

- 7. **Report by Planning Manager** – Appeal of Design Review Board Approval of Site Plan and Architectural Review to Construct new Single Family Dwelling at 77 Round Hill Rd.

Applicant: Carl Weissensee
 Appellant: Charles and Dale Sofnas, 75 Round Hill Road
 Address: 77 Round Hill Road
 Assessor Parcel No. 58-301-36

Planning Manager Watrous gave the report, stating that the Design Review Board had voted 4-0 to approve a new single-family dwelling on a vacant lot located at 77 Round Hill Road, with a variance for reduced front yard setback. He said that the owners of the neighboring property at 75 Round Hill Road had appealed the decision to the Council on the following grounds:

- 1) The house design was contrary to direction given by the Town in its approval of a lot line adjustment for this property in 2002;
- 2) The house design would create unwanted view impacts on the appellants’ house;
- 3) The house design would create unwanted privacy impacts on the appellants’ house.

Mr. Watrous said that at its May 19 meeting, the Board said the design as presented was too massive and bulky for the site; on August 4 the applicant submitted revised plans which reduced the footprint of the house and pulled it much further uphill to minimize view blockage and

privacy concerns. On September 19, the Board approved a third version of the design, with a setback variance.

In further addressing the three grounds of the appeal, Mr. Watrous said that the Board had reviewed the conditions of the lot line adjustment and noted that the appellants' request would leave 75% of the lot unusable; the Board also rejected the expectation for additional or "borrowed views" for the appellants across the site. The Board concluded that the proposed design of 77 Round Hill Road would not create view blockage of "important objects" as defined by the Town's Hillside Guidelines; that the windows on the east elevation were 65-75 feet from the appellant's house which, with additional screening, would mitigate their privacy concerns, according to Watrous.

Finally, Mr. Watrous said that the Board had pointed out that this site was in an urbanized area and that the setback was appropriate to address the appellant's privacy issues. He recommended that based on the findings of the Board, the Council should vote to deny the appeal.

Mayor Berger opened the public hearing.

Design Review Board Chairman Emmett O'Donnell said that the Planning Manager had summarized the issues well. He said that the Board had reviewed the application on three separate occasions, and took the direction from the lot line adjustment to find a "suitable site or location" on the lot that would minimize privacy and view impacts.

The Board asked the applicants to redesign the house and, at the third hearing, asked them to reduce its size. O'Donnell further noted that the Board granted a variance to keep the house close to the road and as far away from the Sofnas' house as possible.

Mayor Berger asked when the trees referenced in the prior appeal would be trimmed [to maintain the Sofnas' view]. Mr. Weissensee, applicant, replied that the conditions of that appeal (79 Round Hill Road) required the tree trimming upon activation of the building permit (which had not yet taken place).

Mr. O'Donnell said that the Board tried to leave the tree issue out of its review so that it could concentrate on where to best locate the house on the site. He said that this resulted in an "extraordinary variance," within one foot of the roadway, in order to accommodate the Sofnas' concerns.

Councilmember Slavitz asked about the location of the proposed garage. Mr. O'Donnell said that it had been relocated three times during design review; that the final placement was to accommodate the Sofnas' objections to the second location.

Slavitz asked Staff about the findings of 79 Round Hill appeal and whether or not it protected the Sofnas' views that were part of the discussion tonight.

Planning Manager Watrous showed on the drawings where 79 Round Hill would be located and noted that Council had paid attention to that particular view, not the views now being contested by the Sofnas'.

Mayor Berger clarified that the trees on the left of the photograph were the ones that would be trimmed as a result of the 79 Round Hill appeal; that they would not affect the views resulting from the construction of either 77 or 79 Round Hill Road.

The Planning Manager concurred with this statement.

Charles Sofnas spoke on behalf of he and his wife, who had resided in their home for 25 years. He said that the Board was confused; that it had made decisions and then countermanded them. He handed out a two-colored drawing showing an overlay of the first and second home designs. He said that the line of sight from his living room went right to the same oak trees that would be blocked by the placement of 77 Round Hill on the lot.

Mr. Sofnas read statements from Design Review Board members from minutes which he claimed were contradictory to the final decision by the Board; he also claimed that the house shown in his overlay was the same area and the same size as the one rejected by the Board. He stated that it went from 4,000 square feet to the second design of 3,900 square feet plus garage.

Mr. Sofnas asked the Council to require a re-design and if the applicant could not do so, to reduce the house size. He also rejected the notion that all parties had agreed to the lot line adjustment.

Mr. Sofnas went on to state that the house should be located further north on the lot; that the garage should be located further west on the property line; that a young oak tree should be removed and that the utility lines should be moved and reinstalled; that the house should be reduced in size or made two-story and sunk into the hillside.

Councilmember Gram asked Staff about the height of the proposed house and whether it could be sunk further into the hill. Planning Manager Watrous showed on the drawings how changes were made from the first plans submitted to those approved by the Design Review Board. He said that the Board had asked the applicants to dig in the house and flatten the roofs. He said that the lower level bedrooms were now buried and that the side yard setback had doubled, as a result.

Councilmember Slavitz asked about the sightline and the dispute about how it was shown on Sofnas' drawing. Mr. Watrous said that the sightline bounded by the approved house design was did not intrude on the sightline previously approved by the Town Council.

Applicant Carl Weissensee spoke and briefly described to the Council the various iterations and reasoning of the design process. He said that the tree trimming referenced by Council would open up a [Marin] headlands view for the Sofnas'; that the Sofnas' were asking that another tree be removed that would open up another "slot view."

Mr. Weissensee described conversations with the Sofnas' and his efforts to accommodate their concerns. He said he thought that all the impacts the Sofnas' had expressed concerns about had been mitigated.

Vice Mayor Smith asked the applicant to point out the story poles for 77 and 79 Round Hill Road. He asked if there was "anything about his house that would makes it worse [for the Sofnas'] than 79 Round Hill Road. The Vice Mayor said it appeared that it [79 Round Hill] might take away a "sliver" of the Sofnas' view.

The Vice Mayor said that the Council had tried to preserve the view that was downhill of the two trees that would be trimmed. He asked Mr. Weissensee which house would be built first. The applicant stated that 79 would be built first, in theory.

Councilmember Slavitz asked the applicant whether 77 Round Hill could be pushed any farther away from the Sofnas' house, for example, 15 feet. Mr. Weissensee said that it would be difficult because they had tried to stay away from an existing tree on the property and also away from the downhill house.

Mayor Berger asked some questions about the height of the proposed garage versus the height of the Sofnas' living room. He said that it appeared that the garage would be six feet higher than the Sofnas' living room. He asked what kind of screening and landscaping would be used to shield car lights from shining into the Sofnas' house.

Mr. Weissensee said that the garage would actually be 4-5 feet higher than the Sofnas' patio; he described the proposed plant screening but said that the car lights would actually point toward the Doyle home. He also said that he could put a block wall with plants behind it that would screen another three feet of the proposed garage.

Frank Doyle, neighbor, said that the oak tree that the Sofnas' wanted to remove broke up the mass of the proposed house at 77 Round Hill road from their view perspective; he said that his family would have preferred some other aspects in previous designs but that they had agreed to work with the applicant and the Sofnas' to come up with a compromise.

During his rebuttal, Mr. Sofnas stated that three Councilmembers who had been to his home had agreed that the house at 77 Round Hill would create "an encroachment of the view that you gave me." He said that he did not want a view from his patio but rather from his living room; that the Council had "given him a choice" about which trees to remove and were now changing its decision.

Mr. Sofnas said that he still objected to the location of the garage and asked why the bedrooms could not be moved so that he couldn't see them. He contested the developer's statements about the restrictions of building on the lot at 77 Round Hill Road.

Mayor Berger closed the public hearing.

Vice Mayor Smith said that the statements quoted by Mr. Sofnas from the Design Review Board minutes were from a previous meeting, not the meeting in which the site plan was approved. The Vice Mayor quoted from that meeting, in which the Board noted the compromises made and that the applicant had “jumped through hoops” to reach this point; Smith said that these, too, were part of the record.

Vice Mayor Smith said that although he did not vote to grant the previous appeal, his recollection was that the Council had tried to preserve a downhill view which would be opened up when certain trees were trimmed. He said that while he did not agree with the decision, it was a good compromise and accommodation for the appellants. He said that in this instance the Design Review Board had done its job and that he would vote to deny the appeal.

Mayor Berger said that he concurred with most of Smith’s statements. He said that there was a question as to [the starting point of] where the downhill line was drawn. He said that his impression was that the story pole shown in the photo was slightly to the left of where was actually located. He asked if there was a way to move the bedrooms around to the other side of the house in order to open up more of a view for the Sofnas’.

Councilmember Fredericks questioned this approach because the house at 79 Round Hill Road would still block this view. Vice Mayor Smith also pointed out that when the two trees were trimmed, the other tree would grow into this view.

In responding to the Mayor’s question about the bedrooms, Mr. Weissense said that looked at this design but that it would result in the bedrooms being “seriously buried,” and that they would be almost underground. Mayor Berger withdrew his suggestion because it was not a “quick and easy fix.”

Councilmember Slavitz said that he continued to endorse the view and the line of sight agreed to in the resolution of the appeal of 79 Round Hill Road. He said that he did not agree with the one proposed by the Sofnas’ at this hearing. He maintained the prior agreement [resolution of findings] would open up the Sofnas’ view.

Slavitz also complimented the “hammerhead” placement of the garage on the lot which would prevent car lights from shining into the Sofnas’ home.

Councilmember Fredericks said that she understood the Sofnas’ feeling of a “sense of place,” but she said that she agreed with the Design Review Board that it was a “borrowed view.” She said that it was difficult to preserve a lateral view over a vacant lot.

Ms. Fredericks also pointed out that the appellants needed to read the final resolution adopted in a matter and not rely solely on the deliberation of the board and council. She agreed that during deliberation, contradictory ideas could be expressed.

Finally, Councilmember Fredericks said that the Town Council only meant to create an opportunity for a view for the Sofnas' under the trees in the left of the photo; she said that it was "a gift" and not an entitlement.

Councilmember Gram said that through its deliberations, the Design Review Board universally rejected the first house design and had endorsed the third one. He said that it had been moved downhill away from the Sofnas' home and had been dug in; he said that he would vote to deny the appeal for all the reasons previously stated by the Council.

MOTION: To deny the appeal and direct Staff to return with a resolution denying the appeal.
Moved: Smith, seconded by Fredericks
Vote: AYES: Unanimous

8. **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**

Second reading and adoption 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
- b) A Resolution of the Town Council of the Town of Tiburon Adopting Revised Standards for Wireless Communication Facilities (WCFS)

Director Anderson said that Council had made some changes to the revised standards for WCFs at its October 19 meeting and had also passed first reading of the ordinance.

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

MOTION: To read Ordinance by title only.
Moved: Fredericks, seconded by Slavitz
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 Communications Facilities."

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

MOTION: To adopt resolution of amended standards for WCFs.
Moved: Smith, seconded by Fredericks
Vote: AYES: Unanimous

COUNCIL AND COMMITTEE REPORTS

Councilmember Fredericks reported that she had received communication from the Golden Gate Highway and Bridge District that there was talk of cutting two of the commuter [bus] runs to the Tiburon Ferry.

Town Manager McIntyre said that he had met with Ron Duckhorn of Blue & Gold Fleet who had said that ferry ridership was down 40% over the last four years. He also noted that Blue & Gold had lost the bid to continue providing service to Alcatraz and was appealing that decision. He said that the Town should be mindful of the potential of a loss of ferry service to Tiburon.

Mayor Berger said that he and some other ferry commuters had discussed a letter-writing campaign in support of Blue & Gold's application for the Alcatraz service. Councilmember Fredericks noted that Blue & Gold could not continue its commuter service without the Alcatraz run.

On another matter, Town Manager McIntyre said that Republic Electric had put a new prototype light fixture on a pole at the corner of Tiburon Boulevard and Main Street, but that a second prototype had proved too heavy for the existing pole.

Councilmember Fredericks asked if the fixture was a "dark sky light." Staff did not know.

Finally, Mayor Berger asked Staff to look into a request from the members of the Raccoon Lane Undergrounding District about whether the town's paving policy would be applicable in their district.

WRITTEN COMMUNICATIONS

Town Council Weekly Digest – October 21, 2005

Town Council Weekly Digest – October 28, 2005

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Berger adjourned the meeting at 9:15 p.m., to the next regular meeting of November 16, 2005.

MILES BERGER, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK