

**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, February 16, 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, Director of Administrative Services Bigall, Chief of Police Odetto, Director of Public Works/Town Engineer Echols, Town Clerk Crane Iacopi

CLOSED SESSION

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

Fenster v. Town Council, Planning Commission & Library Agency

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

The Mayor said that no action had been taken in closed session.

ORAL COMMUNICATIONS

Gus Strotz, Spanish Trail, said that he was building an addition to his home for his children and complained of the small size allowed by the Town for second units (400 square feet). He mentioned several other communities that allowed larger units—750 square feet in Mill Valley and 1,000 square feet in San Rafael.

The Mayor suggested that he talk to Town Staff further and noted that there was something called an “accessory structure” [in the Town Code] which could be up to 1,000 square feet.

Steve Wanat, Mar West Street, complained of the profusion of pollen this time of year being produced by *acacia* trees and suggested that the Town consider banning the planting of these “noxious” trees in the Town’s General Plan.

INTRODUCTION OF NEW TOWN EMPLOYEE

- Lynn Skillings, Public Works Aide

Director of Public Works/Town Engineer Echols introduced Ms. Skillings. He said that she had a bachelor’s degree from the University of Connecticut and had most recently worked as the Office Manager of the Marin Historical Society.

Ms. Skillings said that she was happy to be working for the Town and said that she had been impressed with the professionalism and sense of humor of the members of Town Staff.

ANNUAL REPORTS FROM BOARDS, COMMISSIONS & COMMITTEES

- Marin-Sonoma Mosquito & Vector Abatement District - Tiburon Representative Roger Smith

Roger Smith, former President of the District, said that he had recently returned from a conference in Monterey with the latest information and statistics on the spread of West Nile virus. He said that there had been 28 [human] deaths in Southern California but none in Marin County to date.

With regard to the District, Mr. Smith said that it had completed annexation of several unincorporated areas which increased the size from 1,000 square miles to 2,500 square miles of service area. He said that the District had a budget of \$3 million this year; \$1 million to pay off the loan of the recently built new headquarters building in Sonoma; and \$.7 million to serve the new district area.

In response to a question from Councilmember Slavitz concerning spaying, Smith said that the District had not sprayed anything toxic for 15 years; that the controversy covered by the press in Fairfax had been in response to complaints from residents about swarms of mosquitoes which the District had “fogged” for 20 minutes with pyrethrum, a chrysanthemum extract.

In addition, Mr. Smith said that “alticid”, a hormonal extract, was sprayed by the District into catch basins in the County in order to stop the reproductive cycle of mosquitoes, and that they also used oil on horse ponds.

Mayor Berger asked for a definition of “vector.” Mr. Smith said that word meant anything that carries a disease to humans.

Mayor Berger thanked Mr. Smith for his work and for his report to the Council.

CONSENT CALENDAR

1. **Approval of Town Council Minutes** – February 2, 2005
2. **Approval of Town Council Minutes** – February 7, 2005
3. **Recommendation by Director of Administrative Services** – Adopt Monthly Investment Summary for January 2005
4. **Recommendation by Director of Administrative Services** – Adoption of FY 2003-04 Audit Report
5. **Recommendation by Town Manager** – Council-Staff Retreat Draft Goals for 2005
6. **Recommendation by Administrative & Financial Analyst** – Amend Hourly Rate Schedule for Town Staff Cost Recovery
 - a) A Resolution of the Town Council of the Town of Tiburon Adopting a Revised Hourly Rate Schedule for Town of Tiburon Personnel
7. **Recommendation by Town Engineer/Director of Public Works** – Application for Grant Funding for South Knoll Playground Renovation
 - a) A Resolution of the Town Council of the Town of Tiburon Authorizing the Filing of an Application for the California Integrated Waste Management Board Funding for The South of the Knoll Playground Renovation

Town Manager McIntyre said that one goal had been admitted in No. 5 and asked that it be added: “To develop a strategy to revitalize Tiburon’s downtown.”

MOTION: To approve Consent Calendar Item Nos. 1 through 7, as amended.

Moved: Fredericks, seconded by Slavitz

Vote: AYES: Unanimous

REGULAR AGENDA

8. **Recommendation by Director of Community Development** – Request for Waiver of Processing/ Annexation – SODA LLC

Director Anderson gave the report. He described the property location as the uphill side of Paradise Drive and said that SODA LLC had applied to the County to build eight single family homes in that location.

Mr. Anderson said that the Marin Countywide Plan provided for a “right of first review” by the Town in applications within its sphere of influence, and that the Town had a lengthy history of this type of review. Moreover, Anderson described the Town’s consistent policy and practice of pursuing annexation in development applications larger than a two-lot split since 1992 whenever LAFCO’s dual annexation policy applies.

Anderson suggested that if the Council chose not to pursue annexation in this instance, future developers would likely all choose to bypass the annexation process and file directly their applications directly with the County. This could result in a situation similar to the Cypress Hollow Development, according to Anderson, in which homes were built according to allowable County standards at the time, and the residents applied for annexation to the Town after the fact.

In his report, Director Anderson outlined the criteria used by the Town to analyze applications and discussed the implications of the project in question: 1) Land use implications, including density and location and pattern of development, as well as impacts on properties already within Tiburon; 2) Economic implications, including cost/revenue balance and extension of Town services to property; and 3) Property owner and resident sentiment.

In particular, Anderson discussed the financial implications, already well known to the Town, of annexing property in the Paradise Drive area and assuming control of the public street. He said that members of the Council and Town staff had been working over the past few years with County of Marin officials to agree upon a cost-sharing system for maintenance of Paradise Drive that would allow the Town to proceed with annexation of the Paradise Drive areas without absorbing the full maintenance costs of the street. He noted that these discussions were on-going at the present time.

Mr. Anderson also said that Town staff had met with County Public Works personnel and the LAFCO executive director in 2004 to discuss the same issue. In that meeting, the County painted a “very grim picture,” according to Anderson, of the ongoing deterioration and lack of maintenance of Paradise Drive, stating that sufficient funds had not existed for many years for maintenance and that there was currently no plan or anticipated revenue source at the County level for reversing this situation.

Some ideas that were discussed for ameliorating this situation were: a) the formation of an assessment district for the Paradise Drive area, possibly a community services district, that might encompass public utility improvements and services such as water, sewer and fire suppression; and b) passage of a bond measure or parcel tax involving street maintenance.

Finally, Director Anderson outlined three possible responses for Council's consideration of the applicant's request for waiver of annexation:

- 1) Deny the applicant's request and send a letter to the County urging that it enforce its Countywide Plan policy and offer the Town the right of first review of the development applications; this would set the Town on a course of firmly pursuing annexation of the property and the Paradise Drive frontage;
- 2) Indicate to the County that the Town would agree to the County processing the development applications while entering into a memorandum of understanding, or similar document, which would provide the Town a meaningful role in the project review and approval;
- 3) Grant the applicant's request for waiver of application processing in favor of the County; made conditional upon, among other things, the property owner entering into an agreement, running with the land, that would provide for future annexation by the Town, at an appropriate time, without opposition from the property owner(s).

Vice Mayor Smith asked some questions about the Sorokko property development application, located directly across from the SODA property.

Director Anderson said that Mr. Sorokko had withdrawn his development application with the Town during the EIR process and that the application was now being processed by the County of Marin. He noted that the application called for a septic system rather than sewer, therefore LAFCO's dual annexation policy was not triggered.

Mayor Berger asked whether the Town was in a better position to find funding for the infrastructure problems if the property was annexed. Director Anderson replied that annexation would surely increase the Town's "stake" in the matter.

Councilmember Slavitz pointed out that the costs for sewer (Sanitary District No. 5) and water (Marin Municipal Water District) were not costs borne by the Town, just the roadway.

Mayor Berger asked for comments from the applicant.

Scott Hochstrasser, Planning consultant representing the owners of the property (SODA LLC), challenged some of the analysis presented in the staff report concerning precedent-setting (if annexation is deferred) and density (if the application is approved by the County).

Mr. Hochstrasser said that there was another option, if annexation was deferred by the Council, of collaborating with the property owners to create a funding package that would address some of the issues of street maintenance.

With regard to density issues, Hochstrasser said that the County-wide Plan allowed for up to 20 units on the property while the application called for eight, and possibly fewer, which would

include two units of affordable housing. He also stated that 50% of the open space could be maintained and that the County's processes for public review, including hearings on the EIR, were very similar to the Town's.

The difference to the property owner, according to Hochstrasser, was that the County is able to process the Precise Plan and a vested tentative map all in one step, while the Town's review process takes much longer. He explained that a bank would not lend money to a developer if there was no vested map.

Mr. Hochstrasser said that the property owners wanted to work with the Town and suggested that the Council consider Option No. 3 but agree to a deferral, rather than a waiver, of annexation, to allow the owners of the property to proceed with their application on file with the County.

Moreover, he requested that the Council continue the item and form a committee to work with the property owners on a funding mechanism for the street frontage, including the possible development of a bike lane, prior to taking action.

Vice Mayor Smith asked what the difference between a waiver and deferral of annexation. Mr. Anderson said that really was no difference but that it was just a way of "buying time." He clarified that LAFCO did not really waive annexation, only deferred it.

Smith asked about the BRC property where the Town agreed to allow the County to process the application several years ago. Anderson responded that this property was never subject to the dual annexation policy and that the Town felt "aced out" of being able to process the applications. The Town ended up entering into a separate agreement with the property owners instead.

Councilmember Fredericks asked why the property owners were just now coming forward with a funding proposal since the development of the property had been under consideration since 1996.

Mr. Hochstrasser replied that it was a "market-timing" question and that the time was right due to a shortage of land in the County, and especially this size of parcel, to develop it. He pointed out that the Town had been talking about the Paradise Drive maintenance question for an equal amount of time with no resolution and asked why it would not consider such an offer.

Councilmember Slavitz said that the resolution of the street's problems was not contingent upon development of the parcel and continued to ask why the owners wanted to process their application through the County, rather than through the Town.

Mr. Hochstrasser said a longer the application process would "whittle down" the revenue available to the owners, as well as funds for the road, and that the applicants could not wait for "five, 10, or 20 more years" for the Town to decide how to maintain the area.

Mayor Berger said that there were "political and logistical" problems with residents attending EIR hearings at the County; that some residents preferred to drive to town Hall.

He also asked whether Mr. Sorokko might change his application from septic to sewer at some point in the [County] process. Director Anderson said that was a definite possibility.

Councilmember Fredericks asked whether there was a downside to the Council continuing the item, per the applicant's request, until a "package" for services was in place.

Director Anderson said that the County was holding the application "incomplete" pending a hearing by the Town Council and that at some point they would move ahead.

Mayor Berger opened the hearing to members of the public.

The following people spoke in favor of the Town annexation of the property:

- Jack Sholl, 13 Acacia, said that the perception of he and his neighbors, who had submitted a petition against the waiver, was that Town's review process was more "rigorous" and its attention to detail in planning process and public review was far superior to the County;
- Diane McEwen, Old Landing Road, said that if the application was processed by the Town, it would afford residents an opportunity to talk in more detail about the application and avoid the construction of "hulking houses";
- Dave Coury, Paradise Drive, who had worked on the Paradise Drive visioning plan, said that paid a "ransom" to get sewer; said that the Town should not succumb to "bribery," said that a concern for the commonwealth outweighed the convenience to a single developer;
- Larry Gelb, 15 Seafirth Place, Homeowner's Association President speaking on behalf of 30 homes, urged the Council to follow the goals and guidelines of the 1989 General Plan, and that a waiver of annexation would "diminish" the ability to influence the development;
- Jerry Riessen, Ridge Road, warned of the "domino theory" taking place if this property was not annexed;
- John Kunzweiler, 16 Norman Way, said that the residents in his area viewed the development of the Paradise Drive area as "critical" and that it was important to "get it right" by "keeping the process local;" [Planning Commission Kunzweiler lives in excess of 500 feet from the SODA property in response to a question from the Mayor];
- Robert Swanson, 2 Seafirth, since 1977, said that the Town's Engineer's great attention to detail during the development of the homes on Acacia Drive (uphill) had resulted in a lack of adverse conditions for the downhill neighbors; said that when Mr. Sorokko did unpermitted grading and tree removal, it took the County two weeks to respond and that it would be a "comfort" to have the application processed by the Town;
- Barbara Kautz, 4131 Paradise Drive, 27 years, agreed that the County seemed to have less attention to detail than the Town and that annexation would help create a "sense of community" on the Paradise Drive side;

- Randy Greenberg, Norman Way, County Planning Commissioner, commenting on the annexation issue rather than the application, said that the Town had greater local knowledge and closer oversight; that the property was a “logical extension” of the town’s boundaries; and that the mutual concerns of existing neighbors in Seafirth and Norman Way were social and political reasons for annexation; added that a bike path “would not happen” because of the “substandard” road width and would also require the agreement of more than one abutting property owner; said that the property owner’s “hurry” bespoke of desperation, noting that the application on file with the County was, in fact, incomplete; said that the Town “could do it” with regard to assuming maintenance of Paradise Drive.

Other members of the public spoke:

- Ken Marks, 3680 Paradise Drive, over 30 years on “both sides” of the Peninsula, said that the County did an “extremely good job” and was “constantly involved” when he developed his property; said that the Town would be “more lax” if the area was not annexed; said that his portion of the road was over 40 feet wide, more than adequate for the creation of a bike path; said that some of the neighbors, while friendly, were opposed to annexation.
- Becky Pringle, Comstock Drive and Paradise Drive property owner, said that the majority of residents in the area had been opposed to annexation since before the incorporation of the town which had led to the incorporation of the Paradise Drive Property Owner’s Association; said that during the visioning process 80% of the respondents still opposed annexation; said that the County was “viable” and did its best to defer to the town; suggested that the Council look “at all sides” of the argument and that there were those who did not like being “overbearingly processed.”

Mr. Irving Rabin, co-owner of SODA property along with his children, addressed the Council. He said that they had filed their application with the County two years ago after learning about the Town’s concerns regarding possible future maintenance of Paradise Drive.

Mr. Rabin said that the County’s feedback about the application had been favorable; he said that they were told that they had “an exceptionally environmentally friendly development” application. He warned against “hysteria” in the room and said that his family’s goal was to work with the city [sic] on issues but that it was more expedient to process the application with the County.

Rabin requested that the Council defer annexation and look into ways to work with he and his family on issues such as safety (adding a bike lane at their cost) and affordable housing issues.

Councilmember Slavitz asked whether a bike lane and road development couldn’t also be looked

into if the Town processed the application. Councilmember Fredericks agreed.

Mr. Rabin referred the question to Mr. Hochstrasser who again stated that there was a timing question and that they owners wanted to move forward. He reiterated Mr. Rabin's comments that it was a "fabulous" development and that homes had low FAR's with basements dug into the hillside. He said that the County already had "green building" standards in place and that they recognized the efforts made by the developer.

Mr. Hochstrasser said that annexation alone could take six months and that it took three years to process an application through the Town, while the County's process took one year plus 90 days.

Councilmember Fredericks asked for clarification of the action sought by the applicant.

Mr. Hochstrasser said that they requested a deferral of the decision [or continuance of the matter] in order to allow the applicants and the Town to "work out a deal" in which the Town could derive benefit while allowing the applicants to process their development application through the County.

Mayor Berger closed the public hearing.

Councilmember Slavitz said that it was important to annex the property now for the reasons of sensible planning and precedent. He said the property in question was fronted by a parcel that was under the County's jurisdiction but that on all other sides, it was surrounded by the Town of Tiburon.

Furthermore, Slavitz said that the Town did not want another Cypress Hollow development, whereby "we digested something that we didn't cook."

Councilmember Slavitz added that it was important for the Town to continue its policy of having right of review over applications for dividable property and to defer annexation on smaller parcels. He said that the Town should continue to work with the County on finding a funding mechanism for Paradise Drive but admitted that it might be a long-term process. However, he said that by deferring annexation now it would only encourage the County to proceed with the processing of the [SODA] application.

Councilmember Fredericks concurred. She said that she still hoped that the Rabin family would take the opportunity to work "hand in glove" with the Town on funding issues for Paradise Drive and to work on developing a project that was consistent with Tiburon neighborhoods. She said that the Town could provide better oversight and had a better "overall picture" of the area, both socially and geographically, because it was within the Town's sphere of influence which, in the long run, she contended would be the most efficient way to get services and planned development.

Councilmember Gram said that Paradise Drive had made for "lousy planning" and that the Town

had “run away from it” in the past. He said that if the Council voted to annex the [SODA] property, it would start a process on all the undeveloped parcels in the area. He said that he would vote in favor of annexation but only “if we are serious” about addressing not only the road maintenance but other issues, such as drainage, as well.

Gram said that he understood that there had been recent progress on these issues but asked whether we were “really around the corner.” He said that he hoped that there would be a confluence of parties, including Sanitary District 5 who wanted to extend their [sewer] pipeline, MMWD, and the property owners, who would also be willing to participate in the (funding) solutions.

Councilmember Fredericks pointed out that LAFCO staff indicated that there were solutions to be found based on the examples of other inter-jurisdictional roads throughout the state.

Finally, Councilmember Gram said it was important to realize that “we have one of the better developers here and we should appreciate” [his] efforts and that he should be “treated with sensitivity.”

Vice Mayor Smith said that the Town faced complex issues over the long term in dealing with these large (undeveloped) parcels. He said that the real question was the future of Paradise Drive which, he predicted, would ultimately be part of the Town. He said that the Town had “dodged and weaved” around some of the issues in the past and that he was uncomfortable with the annexation issue “if we’re not proactive” in addressing the issue of finding funding for Paradise Drive.

However, Smith said that if the Town believed that the parcels would eventually become part of the Town, then it was incumbent upon the Town to have input into the planning process now. He said that his experience with working with County staff was different than working with Town Staff; however, he stated that if Mr. Rabin’s plan was as good as they say it is, then it should be well received by the Town.

Mayor Berger said that he too would support annexation. He concurred with the Vice Mayor’s comments about working with the County staff but said that the County had an excellent Planning Commission. He said that the input from Town residents and the competence of the Town Staff would make it even a better project.

The Mayor acknowledged that the road conditions would continue to worsen if nothing was done; he said that during a Measure A [transportation sales tax] hearing, the County had even said that there would be no funding for Paradise Drive because “the Town will take care of it.” This underscored in his mind the importance of finding funding solutions.

MOTION: To deny the request for waiver of annexation and direct Staff to inform the County of the Town’s intention to exercise its right of first review of the project application.

Moved: Fredericks, seconded by Slavitz
Vote: AYES: Unanimous

PUBLIC HEARING

9. **Recommendation by Town Manager** – Amendment to Town Code Pertaining to Taxicabs

Second Reading and Adoption of Ordinance

- a) An Ordinance of the Town Council of the Town of Tiburon Repealing Chapter 11 of Title III of the Tiburon Municipal Code and Adopting a New Chapter 11 Regulating Taxicab Operation
- b) A Resolution of the Town Council of the Town of Tiburon Authorizing the Marin Streetlight Joint Powers Authority to Assume Responsibility to Administer a Taxicab Regulation Program

Council waived the Staff report.

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

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

Mayor Berger read, “An Ordinance of the Town Council of the Town of Tiburon repealing Chapter 11 of Title III of the Tiburon Municipal Code and adopting a new Chapter 11 Regulating Taxicab Operation.”

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

MOTION: To adopt resolution authorizing JPA to administer.
Moved: Fredericks, seconded by Smith
Vote: AYES: Unanimous

WRITTEN COMMUNICATIONS

Town Council Weekly Digest – February 4, 2005

Town Council Weekly Digest – February 11, 2005

ADJOURNMENT

To a meeting of the Tiburon Redevelopment Agency.

**TIBURON REDEVELOPMENT AGENCY
AGENDA**

CALL TO ORDER AND ROLL CALL

Boardmember Fredericks, Boardmember Gram, Boardmember Slavitz, Vice Chair Smith, Chair Berger

APPROVAL OF MINUTES

1. December 1, 2004

MOTION: To adopt minutes.
Moved: Gram, seconded by Smith
Vote: AYES: Unanimous

BUSINESS MEETING

2. Adoption of Audit Report for Fiscal Year Ending June 30, 2004

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

ADJOURNMENT

There being no further business before the Redevelopment Agency of the Town of Tiburon, Mayor Berger adjourned the meeting at 9:35 p.m. The next regular Town Council meeting is scheduled for March 2, 2005.

MILES BERGER, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK