

**TOWN COUNCIL
MINUTES**

CALL TO ORDER

Mayor Berger called the special meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, March 16, 2005, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

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

ABSENT: COUNCILMEMBERS: None

PRESENT: EX OFFICIO: Town Manager McIntyre, Town Attorney Danforth, Director of Community Development Anderson, Director of Public Works/Town Engineer Echols, Chief of Police Odetto, Director of Administrative Services Bigal, Meeting Recorder Creekmore

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

Mayor Berger said no actions were taken in closes session.

ORAL COMMUNICATIONS

There were none.

CONSENT CALENDAR

1. **Approval of Town Council Minutes – March 2, 2005**
2. **Recommendation by Director of Administrative Services – Accept Monthly Investment Summary for February 2005**

MOTION: To approved Consent Calendar Items 1 and 2, above.
Moved: Gram, seconded by Berger
Vote: Unanimous

REGULAR AGENDA

3. **Request by Tiburon Peninsula Chamber of Commerce – Proposed "Friday Nights on Main" Program for 2005**

Town Manager McIntyre gave a brief report of the Chamber of Commerce's request to extend the 2005 program to consist of 22 consecutive Friday nights during the months of May through September. He invited Mr. Angelo Servino to speak on behalf of the Chamber of Commerce's request to extend the program.

Angelo Servino, President of the Chamber of Commerce, reported on the success of the "Friday Nights on Main" program in 2004. He said that the community welcomed and accepted the program and he requested that the Town Council approve the proposal to extend the program to 22 consecutive Friday nights for 2005.

Steve Sears, owner of Sam's Café and Event and Committee Chair for the Chamber of Commerce, noted the program's success in the past year and gave an overview of the Chamber of Commerce's proposal to extend the 2005 program. He described the proposal as a request to close Main Street for food and beverage service as well as for musical performances and entertainment. He said that he has received requests from both the Fire Department and Reed Union School district about incorporating some of their events, such as the Fireman's Ball, into the "Friday Nights on Main" program. He said that the Chamber has been working with the merchants on Ark Row to include them into the event and bring greater visibility of their services to the community. He said that the program will be successful despite the apprehension of Town Staff and the estimated cost of \$700 per night for police service should be paid by the Town. He noted that Tiburon's economic vitality has suffered over the past few years and the "Friday Nights on Main" program is a "step in the right direction" to revitalize its economy.

Mary Catherine Bach, co-chair of the "Friday Nights on Main" program said that she believes that the continuity of a 22-week program will bring the event into the community's consciousness and revitalize the life of downtown Tiburon. She noted that the Main Street business owners have "put up" capital for the event and that an overwhelming amount of support has been demonstrated by both business and property owners.

Connie Wiley, former mayor for the town of Belvedere and co-chair of the Friday Nights on Main program said that she was initially concerned with the proposed duration of the 2005 program but that she has since changed her mind due to the overwhelming support by business owners, property owners, and the community. She believes that the program will be a tremendous success and noted that most of Marin County's eleven cities have some form of entertainment for their community.

Councilmember Slavitz asked the Chamber of Commerce how Ark Row will be addressed and how traffic on Corinthian Island will be impacted. Mr. Sears replied that a Corinthian Island resident informed him that traffic was not a problem during the event. He added that the Chamber has been working with Laleh Zelinsky to incorporate Ark Row merchants into the program.

Councilmember Fredericks said that she contacted some of the towns listed in the Chamber's brochure. She questioned how the program will entice businesses to work with other businesses in Tiburon. Mr. Sears said that it partly depends on what merchants have to sell and how they manage their businesses. He believes that the closing of Main Street is good for everyone's business because it gets people used to coming into downtown. He added that merchants need to begin thinking long-term about their business goals.

Councilmember Gram asked Staff when construction on the fountain project will begin, its expected duration, and if it will conflict with the "Friday Nights on Main" event. Town Engineer/Director of Public Works Echols replied that plates and fencing could be placed around the project but that there would be several weeks where access around the project site would be restricted.

Mayor Berger said that he does not believe that there will be any conflict with the fountain project because it will not begin until the end of summer and that any potential overlap would be towards the end of the program.

Councilmember Gram asked Staff to speak to the difference in costs between Belvedere and Tiburon police enforcement. Police Chief Odetto replied that the difference is due to the cost recovery rate.

Mayor Berger opened the public hearing.

Richard Pearce, Tiburon Fire Department Chief, spoke in support of the proposed program and said that the Fire Department was completely satisfied with last year's program in terms of access and that there had been no emergency responses as a result of the event.

The public comment period was closed.

Councilmember Fredericks said that the program is a terrific community event and that she understands that the event needs to be held a certain number of times in order to be cost effective, but encouraged the program's committee to discuss the program duration a little more. She said that the committee should take into consideration that the cost to the Town is not only the hard cost of \$14,000 for providing police enforcement, but that there is also the cost of giving a free lease of a public thoroughfare to the Town's restaurants. She added that she supports the concept of the event and that while it may attract people, it may also deter others that are looking for a "quiet evening". She added that there are risks such as weather and conflicts with the construction of the fountain project that may put the event's reliability at risk. She suggested that the event not overlap with any scheduled construction. She further suggested that the committee consider a slower expansion of the event. She thinks that doubling the number of nights might be a good starting place for expansion.

Vice Mayor Smith agreed that the event has been very successful and enjoyable for the community, yet he expressed concerns of a potential overlap with construction of the fountain project and possible weather conflicts. He agreed that a 22 nights is too many and suggested that the event be expanded to 12 nights. He said that the Town should cap the amount of police costs that they are willing to spend on the event.

Councilmember Slavitz said that he enjoys the event and attended it regularly in 2004 but agreed that 22 nights is too many. He said that merchants should share the cost of police enforcement. He commented that the Town needs more fun, community events and liked the idea of a “local talents event” to get the children of the community involved and supports the overall idea of the program.

Councilmember Gram said that he supports the idea of the program as proposed and that he thinks the Chamber of Commerce has done a good job with the event.

Mayor Berger said that some of the logistics of traffic and pedestrian flow should be worked out. He also expressed concern over the number of days proposed in the 2005 program but agreed with Councilmember Gram’s comments that the program will be successful and endorsed the Chamber's proposal.

The Council discussed some funding concerns regarding police enforcement and agreed that they will return to work out a clear view of what amount the Town will contribute.

MOTION: To approve the proposed expansion with the proviso that funding for police services will be worked out at a later date.

Moved: Fredericks, seconded by Slavitz

VOTE: Unanimous

4. **Recommendation by Town Engineer/Director of Public Works – Del Mar Valley Utility Proposed Undergrounding Assessment District**

a) Resolution Adopting Preliminary Engineers Report & Action Related Thereto

Town Engineer/Director of Public Works Echols presented the Staff Report and said that Joan Cox, Harris and Associates, would provide details regarding the Engineer’s Report and assessment methodology. He said that the proposed district contains 221 parcels and is estimated to have a total cost of \$4.7 million. He informed the Council that two informational meetings were held at Town Hall on January 25 and March 7 of this year and based on feedback received at those meetings, minor revisions to the assessment distribution were considered by the assessment engineers. He concluded by giving an overview of the assessment process.

Mayor Berger asked if the elements of the Engineer's Report for the Lyford Cove Utility Undergrounding District are essentially the same for the Del Mar district. Town Engineer Echols confirmed that the elements of both reports are essentially the same.

Del Mar Neighborhood Organizers June Strunk and Hank Broderick gave the Council an overview of the undergrounding effort to form the undergrounding district beginning in March 2003. They presented conceptual photographs of what the proposed district might look like should the utility poles be underground. Mr. Broderick said that the organizers relied on the experience of past projects and noted that they have taken great efforts to educate the property owners of the details of the project. He encouraged the Council to support the project.

Joan Cox, District Engineer (Harris & Associates) described the project. She noted that the Del Mar Valley project differs from the Lyford Cove project namely in that it has three distinct areas: Del Mar Valley, West Hawthorne Drive, and Hacienda Drive. She mentioned the difficulties encountered when approaching the Hacienda Drive area and said that efforts were made to survey the property owners in that area to assess their concerns. She noted that due to issues with the adjacent convalescent hospital, the boundary of the district was drawn to exclude it.

Ms. Cox said that the overall cost of the project is \$4.72 million, which does not include private service connections (a cost to be borne by the individual property owners). The Del Mar Valley area's construction cost are approximately \$2.8 million, West Hawthorne approximately \$200 thousand, and Hacienda Drive approximately \$900 thousand. She then described the benefit assessment methodology and said that each parcel was evaluated to determine its benefit. She explained how construction costs were assessed to each of the three areas and that costs were apportioned to each parcel based on aesthetic, safety, and reliability benefit points. The only exception to how the costs were apportioned are Noche Vista Lane and Geldert Drive because the overhead lines adjacent to these areas have already been underground. They have been given half a point for both service reliability and safety. Some properties on Noche Vista and Geldert were also given half a point for aesthetic benefits due to the relation of the property to utility poles.

Vice Mayor Smith asked Ms. Cox to clarify why the assessment costs for Noche Vista Lane and Geldert Court properties differ from other parcels in the district. Ms. Cox replied that the Noche Vista Lane parcels are part of the Hacienda Drive system and Geldert Lane is part of that Del Mar Valley system that construction costs for Hacienda are higher than construction costs for Del Mar Valley. Ms. Cox also confirmed that no parcels with Tanfield Drive addresses have been included in the district.

Councilmember Fredericks said that properties owners on Noche Vista Lane expressed to her that it was important to note that they were a private drive and that their power lines came from Geldert Drive and Porto Marino. She asked Ms. Cox why this would make any difference in the number of benefit points. Ms. Cox replied that Noche Vista properties get their power from Hacienda Drive, not Geldert Drive and Porto Marino. Ms. Cox went on to explain that due to regulations outlined in Proposition 218, Noche Vista Lane parcels have to be initially included in

the assessment district but can be excluded if the Town makes a contribution for their benefit. She confirmed that they are not an integral part of the utility “grid”, but because they receive safety and reliability benefits, they must be initially included.

Ms. Cox said that the single family home assessment for the Del Mar Valley area properties is \$21,718; West Hawthorne Drive area properties is \$12,529; and Hacienda Drive area properties is \$31,147. The difference in assessments costs for each of the areas is due to the vast differences in construction costs. She said that if Council goes forward with the project and sets a public hearing date for May 18, ballots will be mailed out by March 30. She said that the yes and no votes are weighted by the assessment amounts, which means Hacienda Drive votes will weigh more than votes in the Del Mar and West Hawthorne areas. She said that a majority vote would be needed to form the district and that Council would have the final say.

Ms. Cox said that if the district is approved, a second notice will be sent to property owners in late May to inform them that the district was passed and that they have 30 days to pay off the assessment if they so desire. She said that the goal is to sell the bonds by early July so that the Town can minimize their financing costs by meeting the August 10 deadline to get on the property tax roll.

Councilmember Fredericks asked what the extra financing cost would be if they did not get on the tax roll. Ms. Cox replied that they would be in the range of \$200 -to \$400 thousand, which is approximately an additional \$1,000 to \$1,500 per parcel.

Councilmember Slavitz asked if the contingency is based on their experience with the Lyford Cove district and if voting could be performed by "subdistricts". Ms. Cox replied that a revised report would be required in order for voting to be performed by subdistricts. She further replied that the 12% contingency was not as high as the 15% contingency for the Lyford Cove district because this project does not have the same complexities as that project.

Councilmember Fredericks asked if preparing a report that allowed for independent voting districts would affect the May voting date. Ms. Cox replied that Council could direct the engineers to amend the report and still meet the May voting date.

Ms. Cox confirmed for Councilmember Slavitz that if they were to raise the contingency amount, any unspent contingency funds would be refunded to the property owners at the end of the project.

Mayor Berger opened the public hearing.

Michael Bass, Hacienda Drive, thanked Ms. Cox and Mr. Broderick for their efforts on organizing the districts and said that the project would benefit Tiburon's open space. He said that many of the people on upper Hacienda are in support of the residents' of lower Hacienda request to withdraw from the district.

Kathleen Bailey, Hawthorne Drive resident, said that she worked on soliciting support for Hawthorne Drive properties when the project first began and noted that more than 50% of Hawthorne Drive residents are in support of the project. She urged Council to take efforts to underground all of Tiburon to ensure complete safety, reliability, and aesthetic benefits.

Terrel Mason, representative for the property owners of 19, 17, 18, 20, 24, 30, and 34 Noche Vista Lane, stated that those residents feel that they were disenfranchised during the initial phases of the project. He noted Noche Vista Lane's status as a private street and said that because the utility poles on Noche Vista Lane were previously underground, residents do not feel that they benefit aesthetically from the proposed project. He cited regulations from Proposition 218 to support his argument and added that Noche Vista Lane residents feel that they would not receive safety benefits either. He said that there is a disproportionate recognition of which properties are receiving benefits and which are not. He requested that if the Council does include Noche Vista Lane properties in the assessment that they adjust the assessment so that it more accurately reflects the benefits that they would be receiving.

Councilmember Fredericks asked what the significance of Noche Vista Lane being a private street has on the district. Mr. Mason replied that his clients' interest in noting that it is a private street is to point out that the distinction that it is not an extension of Hacienda Drive and therefore not all of their utilities are connected with the parcels on Hacienda Drive.

Mr. Mason confirmed for Councilmember Slavitz that Noche Vista residents feel that the 1.5 benefit points assigned to their parcels is too much.

Councilmember Gram noted that Geldert Drive and Noche Vista Lane residents are assessed one-third of the standard assessment. Mr. Mason replied that the assessment should be reduced to half of the standard assessment.

Mayor Berger said that while the Council is in favor of undergrounding as a principle, they want to ensure that it is performed fairly.

John Trent, Tiburon resident, spoke in opposition to the methodology used to assess view enhancements. He said that the methodology did not take into account the vast topographical differences in the proposed district.

Roy Benvenuti, Hilary Drive, spoke in favor to the district as an overall beautification project and the whole community will benefit from the undergrounding of utility poles.

A Hacienda Drive resident said that he has been an active supporter of the project and that it is well worth the assessed costs.

Joe Bachelor, Hilary Drive, said that he lives on the "flat" end of Hilary and is in favor of the project.

Mike Hanley, Rowley Circle, said that he recognizes how the project will significantly enhance the value of everyone's home.

Kevin Mostyn, Noche Vista Lane, spoke in opposition to the project. He expressed concerns over the claim that Tanfield does not receive its power from Hacienda and questioned why Tanfield has been excluded from the district. He requested that the Hacienda Drive area be split into two separate areas and stated that the entire process has been unfair and unlawful.

Mike Cooper, District Engineer (Harris & Associates), confirmed for the Council that there is an existing pole at the corner of Hacienda and Tanfield that will remain. The pole, which in on Tanfield Drive serves the residents of Tanfield.

Frank Mulberg, Hacienda Drive and representative for 56, 66, 76, and 88 Hacienda Drive, stated that lower Hacienda derives their power from Trestle Glen and is independent from where upper Hacienda derives their power. He requested that lower Hacienda be excluded from the district because they are not getting any service, safety, or aesthetic benefits. He requested that Council continue their approval to allow time for the engineer to exclude lower Hacienda Drive from the district.

Mr. Cooper noted that he performed research in response to a request from Mr. Mulberg regarding his concerns. He noted correspondence received from a Pacific Gas and Electric official which confirmed that the utility system for lower Hacienda Drive is not separate from Upper Hacienda as Mr. Mulberg claims.

Town Manager McIntyre introduced Steve Casselegio, Bond Counsel (Jones Hall) to the Council.

Mr. Casselegio informed Council that if the item was continued, the Town would incur financing costs because it would delay them from getting the assessment on the 2005-06 tax roll. He said that if the tax roll is missed, they would have to wait until the next one. In order to pay the investors, the Town would have the option of increasing the assessment by the amount of interest that incurred, which would be typically be about 6%.

Mr. Casselegio said that Council can request a larger contingency if they so desired, but that it would be a very significant move since they have endeavored to keep the contingency as low as possible.

Priscilla Tripp, Howard Drive, said that the method of assessment needs further consideration. She said that everyone is interested in approving streetscape, but that view benefits have not been assessed fairly and should be adjusted. Councilmember Gram asked Ms. Tripp if she had a specific number that she thought was fair. Ms. Trip replied that she did not.

Troy Gordon, Avenida Miraflores, spoke in support of the project and agreed with previous comments.

Jahangir Sedaghatfar, Noche Vista resident since 1980, said that he is appalled at the previous comments claiming that the assessment is not a question of fairness. He stated that assessments should not be measured arbitrarily.

Kathy Keating, Hilary Drive, referenced page 2 of the Staff Report and asked for clarification regarding whether the assessment could be financed over 30 years or if it had to be paid upfront. The Council confirmed that the property owner has the option of paying the assessment either upfront or over a 30-year assessment period.

Barry Jones, resident of lower Hacienda Drive, spoke in favor of the project and urged the Council to allow lower Hacienda residents to be part of the district.

Brian Shields, resident of lower Hacienda Drive, spoke in favor of the project as a lower Hacienda Drive property owner, but that he would like to see people informing low and fixed income property owners of the assistance available to them.

Mr. Berger asked if he felt that people receive a greater benefit if poles are being removed from their front yards as opposed to their back yards. Mr. Shields replied that there are factors that weigh more heavily than whether you see poles from the front or back of your home.

Sue Morris, Rowley Circle, spoke in support of the project and agreed with previous comments.

Doris Eberts, Geldert Drive, gave a history of the introduction of utility poles in the area and said that the project will benefit the entire community.

Kay Smith, Wilkins Court, agreed with previous comments in support of the project.

Janet Drew, Howard Drive, spoke in favor of the project.

Frank Van Ligten, Hawthorne Drive, spoke in opposition to the project because of the disproportionate aesthetic assessments to Hawthorne Drive properties.

Ms. Cox confirmed for Mayor Beger that the parcels for lower Hacienda Drive receive the same amount of benefit points as the parcels on upper Hacienda Drive.

Jim Taggart, Felipa Court, spoke in favor of the project and said that the issue of fairness should not keep the project from moving forward as the engineers have done a thorough job of performing a fair assessment.

A resident of the proposed district said that while he is not opposed to the district, he is opposed to the unfair appropriation of assessments. He said that the assessment is not equitable and that uphill properties benefit from more "curb appeal" than downhill properties.

A Geldert Drive resident spoke in favor of the project and agreed with previous comments.

Mr. Daru, Howard Drive, said that view-based distribution would be nearly impossible to achieve and that residents should be more concerned about improving the ambient aesthetics of the area.

Brian Strunk, 20 Mark Terrace, spoke in favor of the project and said that many people have worked very hard on the project and that there would never be a "perfect" assessment district.

Sam Coffey, Rowley Circle, spoke in favor of the project and urged the Council to move forward with their approval.

Gary Runes, Porto Morino, urged the Council to vote in favor of the project and agreed that it would be impossible to have an entirely fair assessment district.

Spencer Hahn, Howard Drive, thanked those responsible for organizing the district and said that he believes that aesthetics should be given 2 benefit points and that the system should be tiered.

Mark Morris, Tiburon resident, thanked Ms. Strunk and Mr. Broderick for their efforts and urged the Council to approve the project.

Jim Doyle, Avenida Miraflores, spoke in support of the project for reasons pertaining to improving public safety.

Marianna Longstreth, Hawthorne Drive, spoke in favor of the project and said that the view factor should have been considered when determining assessments.

Tom Lloyd, Mark Terrace, agreed with previous comments supporting the project.

Marvin Breen, Noche Vista Lane, spoke in opposition to Noche Vista Lane being included in the district and said that the decision to include Hacienda was made without the input of the people that it would affect. He complained that those on Hacienda Drive that are in favor of the project did not include Noche Vista property owners on discussions of the project. He suggested that Hacienda Drive be separated from the rest of the district and that Tanfield and Acacia residents be consulted with for their opinions regarding the proposed district.

Jim Bonander, Hacienda Drive, said that Mr. Mulberg represented him and added that the cable and phone lines for lower Hacienda Drive come from Trestle Glen. He said that he has no view

or safety benefit from the proposed project. He presented Council with photographs of his property.

Ms. Strunk thanked the audience and said that residents of Hacienda Drive have wanted to be included in the district since the very beginning and that it was her recollection that Noche Vista residents were originally not going to be included in the district.

Jon Smith, Felipe Court, gave a brief history of other assessment districts and said that fairness is imperative when planning an assessment district. He asked Council if there had been any assessment districts made between the time that the Mountain View and Stewart Drive districts were formed. Mayor Berger advised Mr. Smith to contact Town Engineer/Director Echols regarding the question.

There being no further comments, the public hearing was closed.

In response to questions by Council, Town Manager McIntyre said that districts can be cut out and incidental costs can be increased but that the methodology in the Engineer's Report can not be changed.

Ms. Cox said that while the "blue, pink, and purple" areas (which is the Hacienda Drive area, as denoted in the district map) as well as end areas can be eliminated from the district, but that taking something out of the middle of the district would be very problematic. She added that an alternate Engineer's Report that did not include Hacienda Drive had been prepared and could be adopted by Council. In response questions by Council, she stated that the incidental contingency could be increased by either a dollar amount or percentage.

Vice Mayor Smith stated that while he is in favor of undergrounding, he does not feel comfortable with the practice of including properties that have already been underground into the district. He stated that he has developed an appreciation of the assessment methodology and believes that it is fair. He noted that Proposition 218 has introduced many restrictions into the assessment process and that there will always be those that are not happy with the assessment. He said that he believes that the assessment has been performed in a fair and reasonable manner and that alternative methods of assessment would delay the project and introduce major financing implications. He referenced the Town's general policy regarding undergrounding and stated that he supports the Engineer's Report as it is.

Councilmember Fredericks said that per Proposition 218, she has come to rely on the engineer's assessment. She said that eliminating the lower Hacienda Drive and Noche Vista Lane parcels would be problematic and that they should remain included in the district. She said that she supports the Engineer's Report as presented.

Councilmember Gram said that a perfect assessment will never be achieved and that the Engineer's Report is as good as they get. In regards to the comments about the Mountain View project, he said that that district did not prepare an engineer's report and had to negotiate a settlement. He said is in favor of the project.

Councilmember Slavitz agreed with the comments of his fellow council members and that the Engineer's Report addresses the issues as fairly as possible. He would like the contingency amount increased as a prudent measure if it is feasible to do so.

Mayor Berger said that he does not like the time pressure that Council has been put under and hopes that time restraints are given further consideration when planning future projects. He said that the attempts to fairly assess the district are reasonable and if the project is unfair that it will be evident in the vote. He added that the total aesthetics of the Town's views are enhanced by the project and concluded by stating that he is in favor of the project with reservations.

MOTION: To adopt the resolution preliminarily approving the Engineer's Report and directing related actions thereto.
Moved: Fredericks, seconded by Slavitz
Vote: Unanimous

WRITTEN COMMUNICATIONS

Town Council Weekly Digest – March 4, 2005

Town Council Weekly Digest – March 11, 2005

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Berger adjourned the meeting at 11:06 p.m., to the next regular meeting of the Town Council.

MILES BERGER, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK