

**TOWN COUNCIL
MINUTES**

CALL TO ORDER

Mayor Berger called the adjourned meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, June 29, 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 Public Works/Town Engineer Echols, Chief of Police Odetto, Director of Administrative Services Bigall, Planning Manager Watrous, Administrative & Financial Analyst Stott, Town Clerk Crane Iacopi

Prior to the beginning of the Council meeting, beginning at 6:15 p.m., the Council met in closed session to discuss the following items:

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Section 54956.9(a))

Zimmerman v. Morphew et al
Bonander & Mulberg v. Town of Tiburon

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

(Section 54956.9(b))

Threat of litigation received from Reed Union School District

CONFERENCE WITH LABOR NEGOTIATOR

(Section 54957.6)

Bargaining Unit: MAPE
Negotiator: Town Manager and Administrative Services Director

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

Mayor Berger said that no specific action was taken by Council on the litigation matters; he said that direction was given to the labor negotiators.

ORAL COMMUNICATIONS

Mayor Berger announced that the Economic Exception Ordinance (Item No. 11) would be continued to a future meeting. The Mayor also said that adoption of the Municipal Budget (Item No. 7) would be taken out of order and would be heard at the end of the agenda.

CONSENT CALENDAR

1. **Approval of Town Council Minutes** – June 15, 2005
2. **Recommendation by Director of Administrative Service** – Accept Investment Summary – May 2005
3. **Recommendation by Director of Administrative Services** – Authorize Town Manager to Negotiate Sale of Town-Owned Real Estate at 32 Marsh Road
 - a) A Resolution of the Town Council of the Town of Tiburon Authorizing the Town Manager to Execute Documents Related to the Sale of 32 Marsh Road, Tiburon, California and the Conveyance of the Property
4. **Recommendation by Director of Public Works/Town Engineer** – Authorize Execution of Cooperative Funding Agreement with Cal/TRANS and County of Marin for Highway 101-East Blithedale/Tiburon Boulevard Interchange Safety Improvements
 - a) A Resolution of the Town Council of the Town of Tiburon Authorizing the Town Manager to Execute a Contribution Agreement with the State of California Department of Transportation To Initiate Construction of, and Cost Sharing Agreement for, Safety Improvements to the U.S. Highway 101 Southbound Offramp to East Blithedale Avenue/Tiburon Boulevard, and Appropriating Funds Therefor
5. **Recommendation by Assistant Planner** – Application for Irrigation Well Permit
Address: 35 Old Landing Road
Applicant: Kurcher
Assessor Parcel No. 038-162-44

6. **Recommendation by Town Clerk** – Reappointment of Allan Bortel to Marin Commission on Aging

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

Moved: Fredericks, seconded by Slavitz

Vote: AYES: Unanimous

ABSTAIN: Smith, June 15, 2005 Minutes

REGULAR AGENDA

7. **Recommendation by Town Manager** – Adoption of FY 2005-06 Municipal Budget and Related Resolutions

- a) A Resolution of the Town Council of the Town of Tiburon Adopting a Municipal Budget for the Town of Tiburon and the Tiburon Redevelopment Agency for the Fiscal Year Ending June 30, 2006
- b) A Resolution of the Town Council of the Town of Tiburon Repealing Resolution No. **24-2003** and Adopting an Amended Management Recognition and Incentive Compensation Program
- c) A Resolution of the Town Council of the Town of Tiburon Repealing Resolution No. **25-2003** and Adopting an Amended Mid-Management, Professional & Confidential Employees Recognition and Incentive Compensation Program
- d) A Resolution of the Town Council of the Town of Tiburon Establishing an Appropriations Limit for the Fiscal Year 2005-2006 Pursuant to Article XIII B of the Constitution of the State of California (Gann Limit)

[Item heard at end of agenda]

8. **Recommendation by Town Manager** – Authorize Sale of Bonds – Del Mar Valley Underground Utilities Assessment District

- a) A Resolution of the Town Council of the Town of Tiburon Authorizing Issuance of Limited Obligation Improvement Bonds

Town Manager McIntyre said that pursuant to discussion in closed session, the Council would defer taking action on the issuance of the bonds this evening for two reasons:

- 1) the need to raise funds for the defense of a lawsuit filed against the district (by the Mulbergs and the Bonanders);
- 2) the desire to reach a successful conclusion to negotiations with the Reed Union School District to avoid creating an adverse impact on the district, as well as additional litigation.

Bond Counsel Steve Casaleggio explained the latter. He said that the [Del Mar] school property, along with 22 other parcels of private land, formed the entryway to the district, and were served by one set of power lines. According to the laws governing the formation of such districts, Mr. Casaleggio said that the benefits conferred by removal of the lines pertained to both sides of the street and that if the school property were excluded from the district, the 22 other property owners would also have to be excluded.

Councilmember Gram said that, in other words, there was “no way” to take down the power lines, leave in the 22 property owners and exclude the school?

Mr. Casaleggio said that his statement was correct.

Mayor Berger opened the public hearing.

June Strunk, Hacienda Drive, district proponent, said that she did not think it was “fair” for the Council to delay the bond sale by “giving in” to someone who decided to sue. She also said that although she was certain that some money could be raised to defend the lawsuit, it amounted to “extortion” from the rest of the homeowners. She suggested that the Town borrow against its Rule 20A funds that would be used to place the lines under Tiburon Boulevard, rather than risk delaying the issuance of the bonds.

A second resident agreed with Ms. Strunk. He stated that the homeowners had gone through an “elaborate procedure” to form the district and that 71% had voted in favor of its formation. He said that the vote was an “unequivocal” statement that Del Mar wanted undergrounding of its utilities. He said that it seemed that the Town was now “being held hostage” by the threat of a lawsuit and asked that the Council to not let a minority “hold the rest hostage.”

Dave Brody, Hacienda Drive, said that the Town’s legal counsel had prevailed in court on Monday and that the temporary restraining order [filed by the Mulberg’s] had been denied, with the proviso that the two properties (that were the subject of the litigation) be excluded from the bonding. He said that the only issue now was one of who would pay [for the legal defense]. He said that there were contingency funds built into the district and other “adequate ways” to defend the lawsuit. He said that the proponents who had each paid \$1,000 up front would “not cry” if they did not get their money back. He said that the Town should proceed [with the bond sale] and expeditiously “get rid of the lawsuit.”

Jeff Appleman, Hacienda Drive, said that delaying the bond sale was, in essence, “succumbing to the lawsuit,” and would ultimately increase the cost of the project. He strongly urged the Council to move forward with the district.

Roy Benvenuti, Hilary Drive, said that he was disturbed by the Council's delay. He said that at the last meeting, in which the 71% vote in favor was tallied, the Council had congratulated the district and had expressed its unanimous support of the undergrounding district. Mr. Benvenuti asked what had happened to "majority rule" and said that if compromise were not possible with the litigants, the Town should "fight it."

Mayor Berger said that the Council could still act upon the bond sale within a certain timeframe. Town Attorney Danforth concurred; she said that the Council could defer a decision until July 13 without harm to the district.

Michael Bass, Hacienda Drive, agreed with his neighbors who had previously spoken. He said that there was a compromise solution which would be to "cut out" lower Hacienda; however, this would not give the neighbors in favor of the district [on lower Hacienda] what they wanted.

Mayor Berger closed the public hearing.

Councilmember Fredericks said that there appeared to be a misperception about the role of the Town in this matter; she stated that undergrounding of utilities was not "a service" offered by the Town, although the Town encouraged it. She said that the delay was merely "contemplative time" to identify resources in order to proceed.

Councilmember Slavitz agreed. He said that the last meeting regarding the Del Mar district had been a "happy one" but that the Council now needed to address the [two] lawsuits and resolve some issues before the Town could proceed. He said that the Town did not know at the time of the [May 18] vote that the school district would threaten to sue. He said that there would be no increase to the assessments if the Town took action within the next two weeks, in order to resolve these issues.

Vice Mayor Smith said that the Council was "not just lying down" in the face of litigation. He stressed that the Town had stopped the temporary restraining order in court and that it was "paying the freight" on the lawsuit for now. However, Smith said that the Council needed more time to resolve the issues and to carve out the best options. He said that two weeks would be helpful to the Town and would not be a detriment to the district.

Mayor Berger said that the Town did indeed encourage the undergrounding of utilities and spent considerable time working towards this goal. But he also stressed that district formation was something that "neighbors did themselves and paid for."

The Mayor told the proponents that the Council appreciated their efforts to "line up" funds and said that the "bigger the war chest, the better the defense would be." He agreed with his colleagues that there was no harm in a two-week delay [on the bond sale] and recommended that the matter be continued to a date as yet to be determined.

The Mayor also said he wanted to make clear that the school district had demonstrated a lot of “good will” in attempting to resolve the issues at hand.

Someone from the public asked for a specific date of the next meeting.

The Town Manager said that as soon as the issues were resolved, the Council would reconvene.

In response to a question from Councilmember Gram, the Town Manager said that the district proponents would be notified of the date of the Council meeting.

Proponent Strunk asked who would pay for the notification [mailing]. The Town Attorney said that a mailing was not required.

Another resident asked precisely what would happen within the next two weeks.

Vice Mayor Smith said that the issues to be resolved were: a) how the litigation costs with the Mulbergs et al. would be paid for; and b) how the threat of litigation with Reed Union School District would be resolved.

Proponent Strunk said that the Mulberg issue could be resolved “right now;” that a proposal to stop the district boundaries at Porto Marino had been “in hand” at the last meeting [which would have excluded lower Hacienda Drive]. She also said that the two property owners affected by the decision knew about the meeting and had not “cared enough” to attend.

Vice Mayor Smith said that action on this issue would not resolve the issue with the school district. He added that the school district issue was actually a greater problem in that it affected 22 other parcels; however, he said that he had “every reason in the world” to believe that the district would go forward as formed.

Chris Carter, Superintendent, Reed Union School District, asked to comment, stating that she came with “good will.”

Ms. Carter said that the district had been discussing this issue “since the end of March” and that “one of our options has not been to carve out a portion of the district and exclude others.” However, she said that the Board continued to maintain that the \$125,000 [assessment] “belongs to the students.”

The Mayor thanked everyone for their comments. Item continued.

PUBLIC HEARINGS

- 9. Recommendation by Town Manager –Mill Valley Refuse 18th Amendment to Franchise Agreement**

Vice Mayor Smith stated that his firm represented the franchisee, Mill Valley Refuse Service. He recused himself and left the Council Chambers.

Town Manager McIntyre said that Mill Valley Refuse Service (MVRS) had submitted its request for an annual rate increase, which totaled 7.75%. The Town Manager said that of this amount, only 2.2% represented a cost-of living rate adjustment guaranteed by the franchise agreement; the other totals were one-time increases for household hazardous waste collection (1.5%), and a 1.8% increase which resulted from the Town Council's adoption of a refuse vehicle impact fee earlier in the year.

The Town Manager sought Council's authorization to join with the three other cities and county unincorporated areas (which are serviced by MVRS) to retain the services of a consultant (Environmental Planning Consultants) to analyze the rate system and operation, mid-term. He recommended adoption of the new rate structure.

Councilmember Slavitz asked if the 10-year clock had "started ticking" on the franchise agreement. Town Manager McIntyre said that the Town was still negotiating with MVRS on the issue of the term of the agreement.

Councilmember Fredericks expressed an interest in a new agreement that was not for such a long duration; the Town Manager replied that a 10-year term was not uncommon, for a number of reasons.

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

MOTION: To accept the MVRS rate application and approve the 18th Amendment to the Franchise Agreement.
Moved: Fredericks, Slavitz
Vote: AYES: Unanimous
RECUSED: Smith

10. **Report by Planning Manager** – Appeal of Design Review Board Approval of addition of Second Story at 689 Hilary Drive

Assessor Parcel Number: 055-211-07
Applicant: Ignatius Tsang
Appellants: Jocelyn McDonnell, Andy Garde & Joe Keller

Planning Manager Watrous gave the staff report. He said that the original application was reviewed by the Design Review Board on April 21, 2005. The original application consisted of a much larger upper story, four bedrooms and the addition of a family room.

After reviewing the application and taking testimony from the neighbors, the Board recommended that the plans be revised to address issues of overall mass and bulk and continued the item. According to Watrous, the subsequent plans submitted by the applicant showed the movement of the bedrooms to the ground floor, resulting in a reduced second story which contained a family room, bath and deck.

At its May 19 meeting, after hearing testimony from the neighbors concerning privacy impacts from the upper deck and concerns about the addition of a second story in this predominantly single-story neighborhood, the Board asked the applicant to eliminate the deck but noted that the applicant had greatly reduced the mass and bulk of the project. The Board voted unanimously to approve the plans, as amended.

The Planning Manager said that a timely appeal had been filed by three neighbors, which included three issues: 1) view and sunlight blockage; 2) neighborhood character and precedent of a second-story addition; and 3) landscaping and lighting issues.

The Planning Manager said that the Board had addressed the first issue. With regard to second-story additions, Mr. Watrous said that in considering the issue in the Bel Aire neighborhood, the Council had concluded that second stories could be permitted under certain conditions, as long as a good relationship was maintained to surrounding properties. He said that the Board considered this in their review of the project.

With regard to the third issue, Watrous said that landscape and lighting plans were not required to be submitted with site plan and architectural review applications for additions to existing homes.

The Planning Manager said that the Board had followed the Town's Hillside Guidelines and guidelines for site plan and architectural review in this matter; he stated that the Boardmembers had visited the affected properties and had made its findings in the record. He therefore recommended that Council deny the appeal.

Mayor Berger opened the public hearing to the appellants and applicant.

Appellant Joe Keller, 699 Hilary Drive, 50-year resident, attempted to read a letter into the record from a Harriett Winblad, former resident of 689 Hilary Drive. Since the letter pertained to an application to add a second story to a home [at 685 Hilary Drive] that was 16 years old, the Mayor questioned whether the letter was relevant to the matter at hand. Mr. Keller replied that the sentiments expressed in the letter were still valid today.

Mr. Keller said that the topography of Hawthorne Terrace was much different than other neighborhoods where second story additions had been considered--Bel Aire and Belveron Gardens.

Keller said that the homes in Hawthorne Terrace “sat on steps” with views of Richardson Bay; he questioned why the Town would support undergrounding of utilities in his neighborhood in order to preserve views and then allow a second-story addition that would block views.

Mr. Keller said that “letting the two-story camel under the tent would cause irreparable damage to the neighborhood.”

Appellant Jocelyn McDonnell agreed that the neighbors did not want to see a [two-story] precedent set. She noted that a petition opposing the application had been submitted with 33 signatures, with more neighbors calling in to voice their opposition after the fact.

Ms. McDonnell described the [Hawthorne Terrace] development of one-story homes that was “stepped so that we each have a view;” she said that she had already lost views from her home through “incremental changes” to the neighborhood. She said that the applicant, Mr. Tsang, had been unresponsive to the neighbor’s concerns and that he was a “speculator” who had no intention of living in the home he was designing.

In particular, Ms. McDonnell said that the design of the home at 689 Hilary Drive would cause her to lose a view from her master bedroom, where she spent a great deal of time.

Vice Mayor Smith asked her what she saw out of those windows. Ms. McDonnell replied that she saw “trees, sun, and a view toward the Golden Gate Bridge.”

Ms. McDonnell said that the proposed new home was “out of proportion to the neighborhood,” and that the approval of a second story would “start the battle of second stories in our neighborhood.”

Appellant Andy Garde said that from his perspective, the approval of a second story at 689 Hilary would result in the addition of a second story on another nearby house on Hilary Drive which had an identical site layout. He said that he understood the review of applications on a “case by case” basis by the Town, but said that he feared that he would find himself in the same situation as Ms. McDonnell in future.

Mr. Garde urged the Council to keep the character of the neighborhood intact, along with the harmonious spirit of the community, by denying the appeal.

During his presentation, applicant Ignatius Tsang asked that Council to deny the appeal for several reasons--that as a property owner he had the right to develop his property; that the grounds of the appeal were unreasonable; that the Town Staff and Design Review Board had done their job.

Mr. Tsang elaborated that his proposed home was smaller than the floor area allowed by the Town; was lower in height; and contained greater set-backs.

Tsang said that the original CC&R's [of Hawthorne Terrace] said that homes "should not exceed two stories in height."

Mr. Tsang said that he met extensively with Staff prior to designing the home, as well as the neighbors, who had originally expressed their support. He said that the neighbors "changed their minds" at the first Design Review Board meeting which, along with the Board's advice, caused him to redesign and resubmit plans, which were then approved.

In summary, Mr. Tsang said that he appreciated the beauty of the Town; that the improvements to the home meet all the zoning requirements and design guidelines of the Town. He said that if the Town did not in fact want second-story additions, then the zoning regulations should be changed to reflect that, and to avoid the loss of effort, time and money, as well as development opportunities.

The applicant told that Council that he had "faithfully followed" the direction of the Town and asked for "fairness and justice" in denying the appeal.

Vice Mayor Smith asked Mr. Tsang to read the aforementioned section of the CC&R's. He read that all plots in the tract were to be residential, single--family homes "not to exceed two stories and with two-car garages."

Joe Keller objected, stating that those CC&R's expired in the first 10 years [following the development of Hawthorne Terrace]. Mr. Smith asked why he said that. Mr. Keller did not reply directly to the question.

Councilmember Slavitz asked Mr. Tsang about the hallway on the second floor that led to the former deck [that had been removed from the plans]. Mr. Tsang said that the hallway remained in the plans for "architectural integrity" which "allowed the whole dome to be symmetrical." He also said that it was a source of fresh air and that the small walkway could prove useful for washing windows.

Councilmember Slavitz also asked about roof slope (4:12) and plate height (eight feet) and total elevation (22'10"); also how high the front yard fence was that appeared in the model, presented by Mr. Tsang as a Council exhibit.

Mr. Tsang said the fence was six feet high. Planning Manager Watrous clarified that the fence was four feet solid plus two feet of lattice at the top.

Councilmember Fredericks asked whether there were any other street side fences in the neighborhood and how high they were.

Ms. Fredericks also asked what the "bump out" was on the side of the house [nearest McDonnell]; Mr. Tsang said that it was a storage shed (off the garage).

Mayor Berger asked Mr. Tsang to summarize how the house as placed on the lot. Mr. Tsang described the setbacks and stated that the house was “pushed back on all three sides and up against the hill.”

Mayor Berger opened the hearing to the public.

Noel Isaac, 20 Del Mar Drive, said that the two-story home at 30 Del Mar Drive was an “eyesore” which affected the whole neighborhood. He further noted that one Design Review Boardmember had described it as an “abomination.”

Mr. Isaac said that he had developed his own property five years ago and had kept it as a single-story home. He reiterated the concerns of the neighborhood and said that “mistakes could be made” even in the face of a staff recommendation of approval.

Emmett O’Donnell, Vice Chair of the Design Review Board, said that the Board tried to create a sense of community and to make things work for all of the parties. He stated that Mr. Tsang made a lot of dramatic changes to the plans, after he was told to scale down the plans and that a second story needed to be “stealthfully done, set in the middle of the property.”

Mr. O’Donnell said that Mr. Tsang had dealt with all the issues presented, including privacy. He added that privacy could not be fully expected in a suburban setting and that a larger, one-story home would also have privacy impacts on the neighborhood.

Mr. O’Donnell said that he did not subscribe to Mr. Keller’s theory that the addition of a second story was a “slippery slope,” stating that the DRB would “not approve a series of two stories” in the neighborhood.

The Vice Chair concluded that Mr. Tsang’s application represented a “respectful re-design that would fit well in the neighborhood.”

Margaret DiMare, 44-year Hawthorne Terrace resident, said that she told the applicant that she would reserve the right to see the story poles before commenting on his design. She said that once seen, she was concerned that the second story would look down on her yard, in which she and her husband spent a great deal of time. She complained that the DRB “has not represented our feelings,” adding that “no one in our neighborhood has supported this project.”

Jude Agajan, 694 Hilary Drive, suggested that Mr. Tsang could improve his property another way, possibly by digging out the garage underneath the house. She added that the other two story additions mentioned in previous testimony were part of another subdivision, not Hawthorne Terrace.

Mrs. Agajan supported Ms. McDonnell’s position that a second story next door would “affect her greatly” by reducing sunlight and obstructing her views.

During the appellants' rebuttal period, Mr. Garde said that while Mr. Tsang had indeed talked to the neighbors during the process, "he was not listening."

Ms. McDonnell said that "we also have property rights" and shouldn't have to suffer. She said that all she would see when she looked out her windows (if the application was approved) was walls.

Councilmember Gram asked for a suggestion. Ms. McDonnell suggested raising the house at the back, parallel to the hillside. Also, she said the lighting plan needed review.

Mr. Gram sought clarification. He asked whether Ms. McDonnell would not object to a two-story addition, if it was done properly. She said yes, and that "properly" was the operative word.

Mayor Berger closed the public hearing.

Vice Mayor Smith said that he was a member of the Design Review Board when the application to rebuild 30 Del Mar Drive (after it burned down) came before the Board. He said that he could not at the time conceptualize how that home would look from Tiburon Boulevard, and that it was "one of three serious mistakes" he felt that the Board made during his tenure.

The Vice Mayor also stated that during his tenure, no second story additions were approved in Hawthorne Terrace because of the terrain. He noted how a slight increase in height could have an impact on the house in front of it. However, in this instance, Smith said it was his sense that "this property was one of the few that had potential for this type of house."

Vice Mayor Smith said that the DRB had done its job in reviewing the application and providing guidance to the applicant.

Smith stated that the design was "reasonably compatible with the neighborhood and consistent with the predominant pattern of development and changes" in the area. He said that the DRB did everything properly and ended up with a good design. He concluded that he would vote to deny the appeal.

Councilmember Fredericks agreed that change was inevitable but that the "best we can do is look at the impacts" on the neighborhood. She said that her concerns were those of privacy. She acknowledged that the design called for high windows (six-foot sills) on the side of the second story which would prevent people from looking into the neighbors' backyards; however, she said that Ms. McDonnell was in her bedroom a lot, for a number of reasons, and suggested that the garage be pulled back so that she could retain the view from one of her windows.

Ms. Fredericks also questioned the need for floor-to-ceiling windows at the front of the second story. All in all, she said that Mr. Tsang "did what he could" and that she would vote to partially deny/partially uphold the appeal.

Councilmember Slavitz said that no mistakes had been made in the process but that there were just differing points of view. Conceptually, he said he had “no problem with second stories;” but he said in this instance it was out of character with the neighborhood and blocked [some] people’s views.

Slavitz questioned the vaulted ceilings and height of the family room and suggested that the second floor could remain while reducing the width and/or height. He also expressed concern about the remaining walkway to the former deck.

Mr. Slavitz reiterated that the front yard fence was too high; he asked that this fence be lowered to three feet.

Councilmember Gram said that that Council had been “emphatic” in not prohibiting second stories; that the Council had turned down applications for second stories while leaving the concept “open.” He acknowledged that it was an “uphill battle” to make a second story work in this neighborhood. He concurred with Ms. Fredericks that there were adverse impacts on Ms. McDonnell’s bedroom and thought that the garage might be pulled back to mitigate this impact.

Gram also expressed concern about the bulk and mass of the project but said that the DRB had asked for a complete redesign and got it so that, except for minor changes, he would “let it stand.”

Mayor Berger apologized to Mr. Keller and said that he just wanted to make sure that the letter he read was “relevant” to the project at hand.

The Mayor said that “change would come” but said that five other two-story applications had previously been turned down in the neighborhood. He said that the Council had put some “controls in place” and that the architect had been responsive and had pulled back the house on the lot.

Berger said that the walkway on the second story was “not conducive” to looking down on the DiMare’s front yard because a person would have to look through the “entire house” in order to see it.

Mayor Berger said that in his opinion this application was “the kind of precedent we want to set” because it was “pulled way back,” had high windows and a simple color palette. He said that he could even demonstrate to Ms. McDonnell how she would still be able to look down the street with the existing design.

The Mayor said that the DRB “got it right” for this kind of project “to be done right.” He said he would vote to uphold the DRB approval.

Vice Mayor Smith asked whether the consensus was to send the application back to the DRB or amend it. Planning Manager Watrous said that he could take Council's direction and return with a resolution incorporating any changes.

Councilmember Fredericks added her comments and suggestions. She said that she questioned the floor-to-ceiling windows on the second floor. She agreed with Councilmember Slavitz that the hallway and alcove were a "deck waiting to happen."

In addressing the concerns of the neighbors, Fredericks said that although Ms. McDonnell's bedroom view was not a "primary view" it was important because she did not have a view from the front of her house and that the job of the Council, in interpreting the Hillside Design Guidelines, was also a "balancing act." She said this issue could be addressed by pulling back the garage.

Councilmember Slavitz said that if the second story were removed it would be a "beautiful house." However, he said the design might be improved if the second-story hallway was "brought back to the vault" and the high windows were replaced; possibly the plate heights or roof pitch could be lowered; or the vaulted open space could be lowered; or the family room moved forward. He also recommended lowering the front yard fence.

Councilmember Gram expressed his concern that approval of the application not set in motion the need to "protect" views of this second story area from future second stories across the street. The Planning Manager commented that there were other homes that would be more impacted than the ones across the street (in future applications).

Gram said that he would not "fiddle" with anything other than the "corner of the garage."

Mayor Berger cautioned the Council that the plate height might not be able to be lowered but agreed that "pivoting the garage back" might be looked at.

Applicant Tsang said that the garage was a minimal size now with "no play."

MOTION: To remand the application to the DRB to consider Council's comments.

Moved: Fredericks, seconded by Slavitz

Vote: AYES: Fredericks, Gram, Slavitz

NOES: Berger, Smith

Council then returned to Item No. 7 for discussion.

7) **Recommendation by Town Manager** – Adoption of FY 2005-06 Municipal Budget and Related Resolutions

- a) A Resolution of the Town Council of the Town of Tiburon Adopting a Municipal Budget for the Town of Tiburon and the Tiburon Redevelopment Agency for the Fiscal Year Ending June 30, 2006
- b) A Resolution of the Town Council of the Town of Tiburon Repealing Resolution No. **24-2003** and Adopting an Amended Management Recognition and Incentive Compensation Program
- c) A Resolution of the Town Council of the Town of Tiburon Repealing Resolution No. **25-2003** and Adopting an Amended Mid-Management, Professional & Confidential Employees Recognition and Incentive Compensation Program
- d) A Resolution of the Town Council of the Town of Tiburon Establishing an Appropriations Limit for the Fiscal Year 2005-2006 Pursuant to Article XIII B of the Constitution of the State of California (Gann Limit)

Staff gave a brief report and responded to Council’s comments and questions.

With regard to the \$925,000 earmarked for street rehabilitation in the coming year, Vice Mayor Smith commented that the Town seemed to “understate” projected revenues and wondered whether future projected surpluses could be applied to the streets program in coming years.

Director of Public Works/Town Engineer Echols said that it would represent a change in policy if projected revenues were earmarked in this way.

The Vice Mayor asked whether the \$925,000 would have a significant impact on the [Pavement Management] streets index. The Town Engineer said that this was a “blip” but that over a period of five years, if approximately one million dollars were budgeted each year, the streets would rise to a “70” on the index.

Councilmember Slavitz suggested that this would be a good goal to achieve.

Town Manager McIntyre said that two subcommittees had worked on this issue and had concluded that a) it would be difficult to sustain this amount; and b) there were other priorities within the Town.

Vice Mayor Smith commented that streets were a “big priority.”

Councilmember Fredericks suggested that the council develop a “sustainable policy” for this purpose.

Vice Mayor Smith said that he was also concerned about the long-range policy of tying employee compensation to an “average salary range” within the County. He said that the net result was an “escalation” which is what seemed to be a problem at the local, county and state levels. He suggested exploring additional ways to compensate employees.

MOTION: To adopt the four budget resolutions, as written.
Moved: Fredericks, seconded by Slavitz
Vote: AYES: Unanimous

11. Recommendation by Town Attorney & Director of Community Development – Economic Exception Ordinance (*continued from June 15, 2005*)

Introduction & First Reading of Ordinance

- a) An Ordinance of the Town Council of the Town of Tiburon Adding a new Article VII to Title IV, Chapter 16 of the Tiburon Municipal Code regarding Economic Exceptions

Item continued without hearing.

COUNCIL AND COMMITTEE REPORTS

Town Manager McIntyre asked for feedback on the customer service questionnaire. Council said that they “liked it” and would also like to see and be able gauge the results.

WRITTEN COMMUNICATIONS

Town Council Weekly Digest – June 17, 2005

Town Council Weekly Digest – June 24, 2005

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Berger adjourned the meeting at 10:20 p.m.

MILES BERGER, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK