

**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, August 17, 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 Public Works/Town Engineer Echols, Chief of Police Odetto, Director of Administrative Services Bigall, Town Clerk Crane Iacopi

Prior to the regular meeting, beginning at 7:00 p.m., Council met in closed session on the following matters:

CLOSED SESSION

CONFERENCE WITH LABOR NEGOTIATOR

(Section 54957.6)

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

CONFERENCE WITH LEGAL COUNSEL – THREATENED LITIGATION

(Section 54956.9(b))

Threatened litigation by County of Marin

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

Mayor Berger said that no action was taken in closed session.

ORAL COMMUNICATIONS

None.

CONSENT CALENDAR

Chester Judah, 166 Avenida Miraflores, asked that Item No. 4 [well permit] be removed from Consent Calendar. Council agreed to discuss the matter further at the end of the meeting.

August Strotz, 2077 Centro East, complimented the Staff and Harris & Associates for their thoroughness in preparing the report for Item No. 3 [Lyford Cove Undergrounding project]. Because the bids came in almost two times over the estimate, Mr. Strotz suggested that the each individual homeowner be allowed to contract the private (lateral) connection for himself; also, that the timing of the bids during high summer season was unfortunate and that the project should be re-bid at a later time.

Town Manager McIntyre commented that Staff was already taking steps to implement some of Mr. Strotz's suggestions.

1. **Approval of Town Council Minutes** – August 3, 2005
2. **Recommendation by Director of Administrative Services** – Accept Town Monthly Investment Summary – July 2005
3. **Report by Director of Public Works/Town Engineer** – Lyford Cove Undergrounding of Utilities Assessment District Construction Bids
4. **Recommendation by Associate Planner** – Approve Application for Irrigation Well Permit

Property Owner: Sharam Tajback
Address: 3 Francisco Vista
Assessor Parcel No. 039-111-11

5. **Recommendation by Town Manager** – Response to Marin County Grand Jury Report
6. **Recommendation by Town Manager** – Resolution in Support of *Community United*
 - a) A Resolution of the Town Council of the Town of Tiburon Opposing the 2005-06 State Education Budget and Calling Upon Governor Schwarzenegger to Honor his Promise to Uphold Proposition 98 Funding for Schools
7. **Recommendation by Director of Community Development** – Parcel Map and Notification Agreement for 41 Main Street

- a) A Resolution of the Town Council of the Town of Tiburon Approving a Parcel Map for the Condominiumization of a Mixed Use Commercial/Resident Project Located at 41 Main Street And authorizing the Town Manager to Execute an Agreement With Respect to the Parking Leases Associated with the Property (Assessor Parcel No. 059-151-04)

MOTION: To approve Consent Calendar Item Nos. 1, 2, 3, 5, 6, 7 above.

Moved: Slavitz, seconded by Smith

Vote: AYES: Unanimous

REGULAR AGENDA

8. **Recommendation by Director of Public Works/Town Engineer** – Request by Landmark’s Society to Relocate Gallows Frame Wheels to Shoreline Park Near the Donahue Building

Mayor Berger said that because noticing of the item was not timely and because Council wanted to “do the right thing” in order to receive public input, he recommended a continuance. He asked for comments.

Delli Woodring, Pt. Tiburon resident, said that none of the 67 [Bayside] neighbors were noticed but that they would be willing to move forward with the hearing.

Councilmember Slavitz said that he was under the impression that some people had not received word of the hearing and it would not be fair to them if the Council moved forward with the item.

While Ms. Woodring said she was bothered by the “lack of adequate procedure,” she stated that “we notified everyone in Bayside on our own.” She also said that some of the Pt. Tiburon residents were new and had not attended the hearings two years ago; but she reiterated that “our group” was willing to go ahead.

Town Attorney Danforth said that she was a bit concerned about the mixed message. She said that while she appreciated Council’s willingness to overlook Staff’s noticing error, she had also heard from the public testimony that it was unfair to hold a hearing because some residents were new and had not attended previous hearings.

Mayor Berger asked Ms. Woodring when the Bayside residents had been notified of the meeting. She replied that “we put notices in each mailbox” on Friday or Saturday.

Councilmember Slavitz asked Staff exactly who would have received a notice. Director of Public Works/Town Engineer said no legal notice was required for this type of public hearing; also, that the Homeowner’s Association would normally receive a courtesy notice rather than all of the

residents [of Pt. Tiburon]. Mr. Echols said that he believed this is what took place for the hearings two years ago.

Ms. Woodring said that “after all we’ve been through” she hoped that the Town would provide notice.

Councilmember Fredericks commented that while the notice in question was a “courtesy notice,” she was reluctant to move forward if some might still say it was unfair to have not received such a notice.

Town Attorney Danforth said that the Council could move forward if they were comfortable with the assurances given [by Ms. Woodring].

Mayor Berger said that while the notice was not a legal requirement, he wanted to make sure that the public did not think that the decision the Council might reach on the matter was prejudiced for this reason.

Councilmember Slavitz said that he would be more comfortable continuing the item pending further notice.

Councilmember Fredericks asked whether it would be appropriate to hear testimony and then continue the item.

Councilmember Slavitz said that would mean hearing the matter twice (in order to take more public testimony).

Mayor Berger concurred with Slavitz; Vice Mayor Smith and Councilmember Gram both said that felt bad about the noticing glitch on top of the continuance of another item (affecting Pt. Tiburon) two weeks ago; they said, however, that they would be willing to hear the item.

Janice Anderson-Gram, representing the Landmark’s Society, said that their group was ready to move forward but would prefer to wait if the result of the hearing was that no final decision was reached; Ms. Woodring concurred with this comment.

Mayor Berger said that his wife worked for the Landmark’s Society and therefore he would recuse himself and turn the meeting over to Vice Mayor Smith.

Mayor Berger left the dais.

Director of Public Works/Town Engineer Echols gave the staff report which summarized the Council hearings on May 21 and July 16, 2003. He said that the Council had endorsed the concept of relocating the gallows wheels to the vicinity of the Donahue Building and had asked for further study and design concepts.

Mr. Echols said that the Landmark's Society had met with interested residents of Pt. Tiburon and now recommended the placement and location shown in Exhibit 5. He said this was similar to the 2003 plan but that the wheels would be in a tighter cluster at the corner of the building. He said that a scale model was provided by the Society and that a scale mock-up was placed at the site on August 11, 2005.

Echols said that the existing grassy berm would be lowered and leveled in order to use the berm as screening for the wheels. In addition, he said that the applicant had offered to add flax plants which grew to a height of 12 inches, for additional screening. He noted that the applicant (Landmark's Society) would do all of the ground preparation for the project, including soil compaction, the addition of rock, and relocation costs (renting a crane for moving and placement of the wheels). In addition, he said that they would provide for re-landscaping of the area adjacent to the library and noted that the library said they would like to have some input into this part of the project. He also said that applicants said that they would paint the wheels black.

Mr. Echols said that two other lay-outs had been considered and that Staff had not supported the one which called for vertical placement of the wheels in the rip rap on the shore (Exhibit 9).

Councilmember Gram asked whether cost estimates had been obtained to install the wheels on the rip rap. Director Echols said it could easily cost \$20,000 or \$30,000 because the rip rap would have to be removed and piers drilled in order to support the weight of the wheels. He added that the unknown soil conditions and seismic issues might make the costs exorbitant.

Janice Anderson-Gram, 8 Venado Drive, representing the Landmark's Society, asked for final approval to relocate the six iron pulley (gallows) wheels to the site adjacent to the railroad museum.

Ms. Anderson-Gram provided historical background and said that the wheels were "an important reminder of our heritage as a railroad town."

She outlined the steps taken by Landmarks to fulfill the direction given by Council at its July 16, 2003 meeting to provide the following information and criteria (excerpt from page 9 of minutes/Exhibit 4):

- Plans drawn to scale [with a definitive lay-out of the wheels]
- List species of plants
- List type of rock, size and material
- Have a sample board
- Discuss whether or not the project would be lit
- Describe the placement process (grading, etc.)
- Further discussion with Pt. Tiburon homeowners

Anderson-Gram said that she and Landmark's Society President Phil Cassou met "numerous

times” with interested Bayside residents and had walked the site and discussed alternate locations with them. She said that Bayside representatives had expressed a preference for two alternate locations: a) on the rip rap either lying flat or in an upright position; or b) in the grassy area behind the Donahue Building.

She said that the Parks and Open Space Commission had opposed both of these options due to high engineering costs (to install on the rip rap) or because they would be hidden from public view (option “b”).

Anderson-Gram commented on the other Council criteria:

- Scale drawings. The Society did not have a scale drawing but had submitted photo mock-ups and that the Department of Public Works had placed plywood replicas at the site;
- Plant species. Anderson-Gram said that the plant commonly known as “tiny tiger” would be installed on top of the berm; she also asked for Council’s direction as to whether plants should be placed around the wheels to keep people off the display;
- List type of rock, size and material. She said that concrete and river rock similar to the rock used at the turnaround on Paradise Drive, would be used.
- Have a sample board. No sample board but she again cited the example of the aforementioned turnaround.
- Discuss whether or not the project would be lit. At Council’s discretion.
- Describe the placement process (grading, etc.) Anderson-Gram said the process was more fully described in a hand-out which she had distributed and that Ms. Woodring had received a copy.

In addition to the wheels, Ms. Anderson-Gram said that Landmarks’ Society wanted to install a plaque adjacent to the site that would be similar to the historical plaques along the multi-use path. She said the plaque would provide information and “place the wheels in historical perspective for the 4,000 households of the Peninsula and thousands of visitors” each year.

Councilmember Fredericks asked what “adjacent” meant and how high off the ground the plaque would be. Ms. Anderson-Gram it would be fairly low to the ground so as to be accessible by wheel chair and at the back of the building.

Councilmember Fredericks and Slavitz both wanted clarification as the height of the plants (tiny tigers) and whether they would be at the top or below the top of the berm.

Phil Cassou said that they would be at the highest edge of the berm; and in response to the question from Councilmember Gram, he said that the berm was 18 inches high.

Fredericks restated the question to determine whether, after planting, they [plants] would be no higher than the existing berm. Ms. Anderson-Gram answered affirmatively but noted that the intent of the plants was to signal anyone who was walking of the location of the wheels, as well

as to provide screening. She said they would take direction on the matter.

Anderson-Gram said that they proposed to flatten the berm by 12 inches, and to place the wheel axles into the ground in order to secure them.

Mr. Cassou said that the long side of the axle would be in the ground and that the short end would be up. He described the process thus: cut down the back half of the berm; remove the soil; lay down rock; install the wheels; plant around the berm and add the plaque.

Anderson-Gram said that the wheels would not be visible from the street side and noted that cars were much higher.

Vice Mayor Smith wanted to know whether the plaque would be flat or angled. Ms. Anderson-Gram said they were researching the design further with the Tiburon Peninsula Foundation.

Councilmember Gram asked if there was more than one plaque. Ms. Anderson-Gram said that some people had talked about a memorial plaque, as well, but that she had been advised by the Town to handle the “signage issues” through the design review process.

Councilmember Fredericks asked whether not having the memorial plaque would limit the Society’s plan to move the gallows wheels. Ms. Anderson-Gram said that it would not because they had “other options” to thank donors to the project.

Vice Mayor Smith opened the public hearing.

Shana Dickinson, 306 Paradise Drive, said she was opposed to the relocation because it was not a “complementary facility” under the [subdivision improvement] agreement.

Sam Parke, 314 Paradise Drive, said he was concerned about the safety of the wheels and distributed photographs showing his son and grandson standing in the wheels. He said they would be an “attractive nuisance” for children and were dangerous. He recommended leaving the wheels in their current location.

Vice Mayor Smith clarified that the long side of the axle would be buried in the ground.

Susan Wolfe, 412 Paradise Drive, agreed that it was important to honor the past but that it was equally important to balance it with present day and future realities. She said that this included the “treasure” of Shoreline Park, a “pristine greenbelt,” a portion of which would be destroyed by the installation. She questioned who would benefit by this and expressed concern that every year a new suggestion would be made to change the park. She urged the Council to preserve the park for current and future generations.

Diane Lee, 408 Paradise Drive, said that she walked in the park on August 11 and found the replicas to be “deceptive” because they lacked the dimensions [depth] of the actual wheels. She said that her daughter commented that they would be mistaken for a climbing structure and that “someone will get hurt.”

E.C. Grayson, President of the Bayside Homeowner’s Association, read a list of quotations from previous meetings, including Mayor Berger’s comment that it was important to “maintain the green look of the park; to keep it clean and free of landscape;” Bill Ziegler’s comment that the “park was not an outright gift,” and that the wheels were “complementary to the building but not Shoreline Park;” Delli Woodring’s comment on the “sweeping blend of grass and water without obstruction,” along with the Mayor Berger’s comment that the “placement needs aesthetic meaning;” Mr. Cassou’s comment that the wheels should be in a “suitable place safe for children;” and Councilmember [then Mayor] Slavitz’ direction to “continue to explore alternate sites.”

Mr. Grayson asked the Council to consider the “unintended consequences” of relocation and said that a decision approving it would “end up in court.” He said that the six or seven million dollar value of their properties was worth defending in court but asked whether it was worth \$100,000 to the Council to test the language of the contract [agreement].

Grayson added that the agreement stated that the land would revert to the homeowners if the contract was voided, although they were “not anxious” to take over the land. But he said that there was “no way for us to recover these rights in the future if they are lost.”

Mr. Grayson said that two years ago the Bayside property owners thought the issue was resolved when the Council directed both sides to “get together and resolve the issues.”

Grayson reiterated his statement that if the Council did not “abide by the contract, we’ll defend it.”

Delli Woodring, 1912 Mar West, said that she did not receive notice of the meeting and that “we’ve never seen elevations.” She said that she and others thought that the wheels mock-up would “go up on August 11 and stay up.”

Ms. Woodring pleaded with the Council, as trustees, to help preserve the “uninterrupted sweeping blend of grass and water that is Shoreline Park.”

Fred Cantor, 2120 Mar East, said he was in agreement with everything previously stated; he asked why the Landmark’s Society couldn’t just use one wheel as an historical replica that could be placed inside the museum or in the back [of the Donahue Building].

Phil Cassou, 49 Upper North Terrace, President of the Landmark’s Society, said that through the discussions with Bayside residents, the application had been changed to move the wheels toward the water, into a compressed footprint of 500-600 square feet. He said that the wheels would be

stacked in a tangential fashion and would be placed totally below the berm. He said that the highest point of the wheels would be only nine inches above the ground.

As for safety, Mr. Cassou said that planting was a way to identify the location; he noted that children already played on the nearby rip rap [at Shoreline Park].

Mr. Cassou said the Society had tried to reach a solution which would put an artifact in place and minimize the impact.

An unidentified resident, 305 Paradise Drive, said that from a “dog’s point of view, it [the wheels] would become the “most popular doggie latrine in town.”

Mimi Clark, 20 Geldert Drive, Landmark’s Society Board, gave a national and historical perspective to the application. She said that the wheels were important artifacts that were “not at home” at the library because they had no relevance there. She said that their relocation would aid those visitors to the railroad museum who could not only see a model [of the gallows frame] inside, but could then go outside and see an actual scale artifact [of the wheels].

Ms. Clark asked the Council to consider the Landmark’s Society “record of stewardship” in marking their decision on the matter and urged them to vote yes. She said that the Town was “more than just houses and views,” and that the wheels represented the “heart, soul and history” of the town.

Delli Woodring, 1912 Mar West, said that she too appreciated the contributions of the Landmark’s Society but asked the Council to remember the legal agreement, as well.

Vice Mayor Smith closed the public hearing.

The Vice-Mayor commented on the issue of the agreement that was raised by some of the speakers. He said their concern that the proposed relocation of the gallows wheels would be a violation of this [Shoreline Park] agreement was one the Council took seriously.

The Vice Mayor said that regardless of the outcome, the Council had looked at the agreement and it was his opinion that it was “overstating the circumstances” to call it a) a violation of the agreement; and b) that Pt. Tiburon residents would forever lose the right to control views in the area.

Vice Mayor Smith said two crucial sentences [in the agreement] were under discussion: 1) that “no additional structures other than ‘complementary’ structures shall be constructed by the Town in the Park;” 2) “nor shall any obstruction to view corridors [be allowed] unless mutually agreed upon.”

Smith said that he had looked at other parks in order to evaluate the meaning of complementary structures. He said he found the following, which were in his opinion, examples: restrooms, fountains, trash cans, art and sculpture. All of these could also block views but Smith asked whether they did, in fact, block views. If they did not, Smith said, they were not in violation of the agreement.

Councilmember Slavitz said that the issue was difficult to address because of the differing perspectives: Bayside residents expressing their preference to leave the park the way it was, without railroad memorabilia spread around the area, even if there was no view obstruction, and the desire of the Landmark's Society to place memorabilia in that location.

Slavitz said that he was pleased that the Landmark's Society had amended their application to make the area for placement of the wheels smaller. He said that the proposed placement would now not obstruct any views and would not be visible from the street; he said that the wheels were unique to that particular location but that there was no need to add any more memorabilia.

Slavitz asked that the plants be placed around the entire installation but not exceed the height of the berm. He noted that kids would play in the area and said that he expected them to, as it would be an "interactive thing."

Finally, he said that he would support the placement of a plaque as long as it was behind the [Donahue] building and not visible from Pt. Tiburon units.

Councilmember Fredericks said that Councilmember Slavitz had addressed the issues in detail and said that her comments were of a more general nature.

Ms. Fredericks said that the "greenbelt experience" was important; that the previous application took too much of that away; now only 500 square feet of grass would be impacted, plus an "artful" arrangement with historic significance, and this made the difference in her mind. She said that this particular placement, with its small footprint, no view obstruction, and significant historical relevance, was appropriate, but that the town should limit "decorative appurtenances."

Councilmember Gram said he concurred with the Town Attorney's and Vice Mayor's interpretation of the provisions of the agreement and that he liked the "compactness" of the new lay-out.

With regard to the agreement, Gram clarified that the [Shoreline] park had *not* been gifted to the Town; rather it was *quid pro quo* for approval of the development agreement. He said that the Pt. Tiburon residents had rights as residents of the town but that they did not own the Shoreline Park. He said that the Council had listened to their concerns in the past and continued to listen. He said the Council had heard their concerns about the proposed trees in front of Guaymas restaurant and had not gone forward with that proposal as a result.

Councilmember Gram also said that he had looked at the site of the proposed gallows wheels

from all the [affected] units at Pt. Tiburon and that there was no view obstruction. He said he would vote to approve the application. He also stated that approval of this application in no way affected the validity of the agreement.

Vice Mayor Smith said that it was important to respect the history of the town, as well as legal agreements, both of which were being honored in this instance. He said he had considered the possibility of fewer wheels at the site, but felt that the current configuration should not be “tinkered with.”

Smith said the wheels should be below the height of the berm and that he wanted a condition of approval to reflect that “the highest point should be no higher than the highest point of the berm.” Also, he said that plants should go all the way around the configuration but not on top of the berm at the high point. In other words, the tops of the plants should be no higher than the top of the berm. He noted that even if the wheels were placed in the rip rap they would be visible.

Smith concluded that the area could be used in a manner that was consistent with the historical purpose of the Donahue Building, as well as consistent with the [subdivision improvement] agreement.

MOTION: To approve the installation as presented, subject to the applicant coming back to DRB for approval of the design and placement of the plaques; that plants surround the entire installation; that the plants on the berm be placed below the top of the berm so that they don’t exceed the height of the berm;

Add/Smith:

That at no point should the wheels exceed the height of the berm;

Add/Fredericks:

That the size of footprint not be expanded.

Moved: Gram, seconded by Slavitz

Vote: AYES: Unanimous

RECUSED: Berger

At this point in the meeting, Council returned to Consent Calendar Item No. 4:

Recommendation by Associate Planner – Approve Application for Irrigation Well Permit

Property Owner: Sharam Tajback

Address: 3 Francisco Vista

Assessor Parcel No. 039-111-11

Vice Mayor Smith asked Mr. Judah to clarify his issues with the application. Mr. Judah said that pursuant to the Town Code, he would like someone to sign off on the application as having met the criteria to “not be detrimental to other properties in the area;” in particular the property above the site.

Director of Public Works/Town Engineer Echols said that he had prior experience as a geological engineer and that in almost all cases; landslides are usually caused by excess water. He said that a well represented removal rather than addition of water from the site, and that “de-watering does not cause instability.”

Mr. Judah disagreed, stating that water from the well would get “sucked up and reintroduced in another place.” However, he really said that he was here to discuss the procedural issue of compliance with provisions of the Town code.

Vice Mayor Smith suggested a continuance of the item.

Director Echols said that it might be appropriate for the applicant’s engineer to address the question of water impacts or any other questions regarding instability.

Council unanimously agreed to continue the item pending receipt of further information from the applicant.

Kathleen Gallagher, 166 Avenida Miraflores, also asked where the pump for the well would be located.

Town Manager McIntyre said that this issue would be decided by the Design Review Board.

9. **Recommendation by Director of Community Development** – Review of Martha Company Property Development Applications

- a) A Resolution of the Town Council of the Town of Tiburon Asserting its Right of First Review for Development Applications Associated with the Martha Company Property (Assessor Parcel No. 059-251-05)
- b) Appoint Town Council Ad Hoc Subcommittee to Review Applications

Director of Community Development Anderson said that at the Marin County Planning Commission meeting, the Town had been asked to state its intentions regarding the processing of Martha Property applications per the provisions of the County-wide General Plan. He said that he had prepared a resolution for Council’s adoption.

Mayor Berger asked what constituted “urban services.” Mr. Anderson said that the term was used in the context of the County-wide Plan and examples were sanitary sewer, utilities and other services necessary for urban development.

Mayor Berger opened the matter to the public. There was no public comment.

MOTION: To adopt resolution as presented.
Moved: Smith, seconded by Fredericks
Vote: AYES: Unanimous

9b) Mayor Berger said that Vice Mayor Smith was a land use attorney and that Councilmember Fredericks was “up to speed” on open space issues.

MOTION: To appoint Vice Mayor Smith and Councilmember Fredericks to form an ad hoc subcommittee to address [Martha Property] issues.
Moved: Berger, seconded by Gram
Vote: AYES: Unanimous

PUBLIC HEARING

10. **Recommendation by Planning Manager** – Application to Amend Building Envelope; Round Hill Oaks Precise Development Plan

Property Owners: Stephanie Cyr and Richard Donick
Applicant: Weir/Andrewson Associates, Inc.
Address: 10 Round Hill Terrace
Assessor Parcel No. 058-301-42

- a) A Resolution of the Town Council of the Town of Tiburon Approving an Amendment to the Round Hill Oaks Precise Development Plan (PD#36) for Property Located at 10 Round Hill Terrace (Assessor Parcel No. 058-301-42)

Council waived the staff report.

Mayor Berger opened the public hearing.

Applicant Richard Donick said that the application comprised raising the steps for access to the back of the house and was a “small and reasonable request,” according to Planning Commissioner Snow.

Mayor Berger closed the public hearing.

MOTION: To adopt resolution as presented.
Moved: Slavitz, seconded by Fredericks
Vote: AYES: Unanimous

11. **Report by Director of Public Works/Town Engineer – Appeal of Encroachment Permit Conditions for Installation of Fence and Gate at 696 Hilary Drive**

Owner/Appellant: Marc Gineris
Address: 696 Hilary Drive
Assessor Parcel No. 055-212-04

In his staff report, Director of Public Works/Town Engineer Echols said that the appeal arose from a fence at 696 Hilary Drive that had been constructed without Town design review approval, building permit or encroachment permit. All three are required for this type of project, according to Echols.

Mr. Echols said that staff had worked with the applicants/appellants to bring the project into conformity for almost a year. On September 23, 2004, the Building Official issued a stop work order for the fence construction. The applicants maintained that the fence was a “replacement fence,” according to Echols and subsequently applied for a fence permit on that basis. However, Community Development Department staff denied the permit because the fence was not in compliance with Town Administrative Policy 03-01, which requires entry gates to be set back at least 15 feet from the street curb.

Staff also observed that the applicants had constructed a non-conforming concrete driveway approach/apron without Town permits. The Town has requirements in place to ensure proper drainage and ADA compliance, according to Echols.

Mr. Echols said that a neighbor had complained about the project and had brought it to the Town’s attention. He also said that the applicants maintained that there were examples of other non-conforming fences in the neighborhood.

Councilmember Slavitz asked if there were any “grandfather clauses” for existing structures. Echols said that applications for new construction must conform to current codes; that the intent of the Town’s codes and policies was to improve conditions in the neighborhood and the town.

With regard to the application for an encroachment permit, Mr. Echols said that he had tried to allow discretion for a tree on applicant’s property and had suggested an alternate (condition to the permit) that would include building the fence around the existing tree. Echols said that Town policy dictated a three-foot setback from the street for fences in order to allow refuse pick-up and street-sweeping equipment to safely pass, to allow room for passenger doors to open, and to avoid the “tunnel effect” that can be caused by fences being too close to a street.

Mayor Berger asked about the requirements for the gate set-back. Mr. Echols said that a 2003 Town policy said that, depending upon the type of gate, a vehicle must be able to pull into a driveway and not block traffic.

Mayor Berger commented that this type of regulation was “typical everywhere in the County and elsewhere.”

Mayor Berger opened the public hearing.

Marc Gineris, 10-year resident along with his wife Janine, said he understood the disparities presented but had provided a basis for their appeal.

He explained how he and his wife had planned to expand their home in 1999, and had received Design Review Board approval for their plans, which included a fence. Even though they did not move forward with these plans due to economic conditions, they did not intend to “circumvent” the process when they installed the new fence in 2004. Gineris said they had made “good faith attempts” to address the issues raised by Staff.

He said the existing fence had been inadequate for security concerns (because they resided part of the time in New York). Gineris said that they wanted to leave the existing tree because they had been advised that if they tampered with the root system, they might lose the tree.

With regard to the gate set-back, Gineris said that the gate was “always open” unless they were out of town, so that cars pulling into the driveway would not block traffic. He also pointed out the Hilary Drive was three times wider (at 31 feet) than most streets and that a 15-foot setback would be “an impossibility” in a 26-foot driveway.

Mr. Gineris showed photographs of fences in the neighborhood that cars had run into and said that the new fence and gate was constructed to protect the house from this happening, as well.

Vice Mayor Smith asked him whether he had received design review approval for the fence. Mr. Gineris said that they did not apply because “it was rejected up front” by staff. But he said that 11 neighbors had signed a petition stating that they were in favor of the new fence. He added that there are “31 properties that violated” Town policies in the area that were brand new and said that they could not understand these exceptions.

Councilmember Fredericks asked Mr. Gineris what his idea for a reasonable compromise would be. Mr. Gineris said that it was a tough question but said the fence might be moved back “as close to the tree as possible.”

Vice Mayor Smith said it might create a security issue if there were gaps in the fence on either side of the tree but said that they could also use a “box approach” around the tree.

Mrs. Gineris said that the gate would not be able to retract if there was a gap. Councilmember Fredericks commented that if the fence was moved behind the tree, the gate would work.

Mrs. Gineris handed out photos of houses in the 600 and 700 blocks of Hilary Drive that also had fences and gates that were not in compliance with Town policy.

She also stated she had been informed that the Fire Department needed only twelve feet of street to stage trucks for two home fires; she pointed out that Hilary Drive was 31 feet wide.

Mrs. Gineris said that they had suffered two vandalism attempts in 2000 and one attempted vehicle robbery in 2003, which necessitated greater security.

Councilmember Gram asked about availability of street parking with the existence of the new fence. Mrs. Gineris said that the original fence was also only five feet back from the street.

Vice Mayor Smith acknowledged the existing, non-conforming uses of property in the neighborhood but reiterated the Town's desire to bring new construction into conformity.

Mr. Gineris said that the Town Engineer's presentation had been fair; he said that they desired a quick solution and that [the fence and driveway] "is what it is."

Jude Agajan, 694 Hilary Drive, said that she wanted to put up a new fence too and wanted to connect it with her neighbor's [Gineris] fence. She said that she had asked the Planning Department about the Gineris' new fence and was told that if it was built higher than three feet, it would have to be "knocked down." Mrs. Agajan said she did some research at Town Hall and found that the Gineris' had not paid a fee (for a building permit). She said she also asked a town planner for a 15-foot variance for her new fence and was told that she would not be able to get one; she said that she would still like to get this variance.

Mrs. Agajan said that she went ahead and installed a new fence per Town regulations but wanted to put up a higher one to keep deer out. She said she had concluded that "these people had an 'in' with someone in the Town.

Jim Knapp, 3 Rock Hill Drive, said that for aesthetic reasons (pleasing) and primarily for security reasons, he hoped the Council would reach a compromise in favor of the Gineris'.

Jocelyn McDonnell, 687 Hilary Drive, said that it was not uncommon for people to replace fences in good faith without a building permit. She said that the Gineris' fence was beautiful, and that it was important to them to retain their privacy; she said that she believed there was no malice of forethought but that they had "wound up in a kettle of mud."

Mayor Berger closed the public hearing.

Councilmember Slavitz asked if fines had been accumulating as a result of the stop work order. Director of Community Development Anderson said that he believed a pre-citation notice was issued and that the next step would be fines.

Vice Mayor Smith asked if this fence required design review and approval; Director Anderson answered affirmatively and added that it would also require a building permit and an encroachment permit since it was on the public right-of-way.

Councilmember Fredericks clarified that it would require staff level design review and approval.

Councilmember Slavitz commented that it was “easier to ask forgiveness than permission” and that nothing about the fence was permissible.

Slavitz said that he was on the Design Review Board for four years and appreciated the explanation of how the applicants “got here” but also that it would be difficult if the Council approved the fence to say no to any other [non-conforming] applicants. He recommended that the applicants go back for design review approval and that the fence be removed until approved.

Vice Mayor Smith agreed that “we might as well throw away the book” if this fence was approved. He said that there were no unusual circumstances with the lot that would require some sort of variance. He said that we would vote to deny the appeal of the encroachment permit.

Councilmember Gram said that the Gineris’ had made an improvement to the neighborhood by upgrading their home but that the “fence doesn’t work” because it was “non-conforming in so many ways.” He said that enforcement [of the Town code] should continue.

Councilmember Fredericks concurred; she said she was also sympathetic to the privacy and security concerns of the Gineris’ but that they should not be allowed to encroach into a public right-of-way. She said that the Council was responsible for “enforcing these rules.”

Mayor Berger agreed. He said that he was surprised that the contractor did not get a building permit before starting the project. Mayor Berger said that it was a “well crafted fence” but that the yard was “made large at the expense of the street” which was not acceptable. He said to better the fence for the interim, they might leave it where it was and then move it after DRB redesign. The gate just “did not work” in its current location, according to Berger. He said that the applicants “could find a way to go around the tree.”

He suggested that a three-month grace period be extended to the appellants to seek and secure appropriate approvals.

Town Attorney Danforth said that enforcement could be deferred during the grace period.

Councilmember Slavitz said that if a grace period was granted, and the matter was remanded to staff, he wanted to ensure that it was not construed in any way as tacit [Council] approval.

Councilmember Gram said that if approvals were not received and a building permit issued in 90 days, the fence must come down.

Councilmember Gram asked if the driveway apron would also be remanded; Mayor Berger said that “everything” must receive approval.

MOTION: To deny the appeal and direct Staff to come back with a resolution of findings and provide applicants with a 90-day grace period in order to comply.

Moved: Slavitz, seconded by Smith

Vote: AYES: Unanimous

COUNCIL AND COMMITTEE REPORTS

Vice Mayor Smith said that the Richardson Bay Regional Agency was about to consider establishment of a mooring fee and that all affected agencies, including the Town, would be asked for money to fund an EIR. He said that the Town might be affected in many ways by this proposal.

Councilmember Fredericks said that Measure A money had become available for crossing guards and that Reed Union School District had applied for funds to place guards at Trestle Glen. Town Engineer said that the Transportation Advisory Committee would be meeting on that very issue the following day.

WRITTEN COMMUNICATIONS

Town Council Weekly Digest – August 5, 2005

Town Council Weekly Digest – August 12, 2005

ADJOURNMENT

There being no further business before the Town Council, Mayor Berger adjourned the meeting at 10:35 p.m., to the next regular meeting scheduled for September 7, 2005.

MILES BERGER, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK