

**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, September 21, 2005, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

PRESENT: COUNCILMEMBERS: Berger, Fredericks, Slavitz, Smith

ABSENT: COUNCILMEMBERS: Gram

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, Project Coordinator Bassett, Town Clerk Crane Iacopi

ORAL COMMUNICATIONS

Town Manager McIntyre introduced the new Marin Municipal Water District General Manager, Dennis Reid, who was in the audience.

REPORTS FROM TOWN BOARDS, COMMISSIONS AND COMMITTEES

- Marin Commission on Aging – Allan Bortel

Mr. Bortel said that he had begun his second term as the Town’s representative to the Marin Commission on Aging, a 23-person commission formed under the auspices of the Older Americans Act of which there were 600 such commissions around the country.

He listed some of the Commission’s accomplishments, such as helping to establish the Buck Center. He said the Commission met monthly and advocated on behalf of seniors (those over 60 years of age under the Older Americans Act).

Of the 7,000 seniors in Marin County, Mr. Bortel said that 30% lived alone and that the Commission attempted to end this isolation and bring seniors “into the mainstream” through various programs and services.

One service advocated by the Commission in the previous year was for Measure A funding for paratransit taxi service. Another issue was affordable, assisted living, and Mr. Bortel described the shared housing program started by the Commission which was no an official program of the Ecumenical Association for Housing.

Mr. Bortel spoke of the growing need for affordable, assisted living housing within the County. He said that there was a 7-year waiting list at the Redwoods, and that only half of their housing units were “affordable.” He said that he had testified in favor of senior affordable housing at the St. Vincent/Silveira property hearings but that this housing, if approved, was eight or ten years away.

Council thanked Mr. Bortel for his report.

CONSENT CALENDAR

At the request of a member of the public, Council pulled No. 5 from the Consent Calendar.

1. **Approval of Town Council Minutes** – September 7, 2005
2. **Recommendation by Director of Administrative Services** – Accept Town Monthly Investment Summary – August 2005
3. **Recommendation by Director of Public Works/Town Engineer** – Accept 2004-05 Street Rehabilitation Project as Complete
 - a) A Resolution of the Town Council of the Town of Tiburon Accepting 2005 Street Rehabilitation Program
4. **Recommendation by Director of Public Works/Town Engineer** – List of Streets for 2005-06 Street Rehabilitation Project
5. **Recommendation by Project Coordinator** – Approval of Lyford Cove Utility Undergrounding Assessment District Plans and Specifications for Re-bid of Contract
6. **Recommendation by Advance Planner** – Annual General Plan Status Report for FY 2004-2005
7. **Recommendation by Director of Community Development** – Application for Irrigation Well Permit – *continued from August 17, 2005*

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

MOTION: To approve Consent Calendar Item Nos. 1-4; 6 & 7 above.
Moved: Fredericks, seconded by Slavitz
Vote: AYES: Unanimous
ABSENT: Gram

No. 5 – Consent Calendar: Recommendation by Project Coordinator—Approval of Lyford Cove Utility Undergrounding Assessment District Plans and Specifications for Re-Bid of Contract.

August Strotz, 2070 Centro East, addressed several issues. He said that 1) it was difficult to find his way through the bid documents and that it would also be difficult for potential bidders; 2) the \$1,000 per day late penalty was too high (he suggested \$200/day); and that 3) the portion of the bid pertaining to laterals should be “rearranged” for easier reading and to coincide with the drawings.

Mr. Strotz also stated emphatically that he was NOT opposed to undergrounding because he thought it would enhance the neighborhood; he said that his objection was to the equal division of the cost. He said that Lyford was the only undergrounding assessment district assessed in this manner and quoted an article in the *Ark* about a recently-formed district in Belvedere that was formed so that “those properties benefiting the most will be assessed the most.”

Mr. Strotz asked Council to consider his comments and delay approval of the item.

Mayor Berger said that the late penalties were meant to be an impetus to finish the project; he asked Staff whether there was any financial consequence for the district if the project ran longer than expected.

Director of Public Works/Town Engineer Echols said that the first set of bid documents had an “aggressive timeline” and that after speaking with contractors about the timeline, the second [current] set of documents had doubled the time for completion from 6 to 12 months. Echols said that this timeline “should be easily accomplished” and that there was no long lead time involved in obtaining materials such as concrete and asphalt.

Councilmember Fredericks noted that the late clause might not be invoked if there were circumstances beyond the contractor’s control, such as materials being delayed from Louisiana and the Gulf States due to the recent hurricanes.

Councilmember Slavitz said that in the scope of a \$3 million project, \$1,000 per day late fees did not seem out of line.

Mayor Berger agreed with Mr. Strotz that if the drawings were “impenetrable,” the contractors might “pad” their bids.

Project Coordinator Bassett said that the issue was the bid proposal itself rather than the specifications. She agreed with Mr. Strotz that there was no apparent order to the portion pertaining to the 110 properties listed for lateral hook-ups. She said that it might be possible to “re-structure” this data within the bid documents.

Finally, Mayor Berger said that this was not the proper time to discuss the issue of assessment spread but that the Council had thought about it and might consider discussion at a future time.

MOTION: To approve the Lyford Cove plans and specification for re-bid after a “guide key” to the lateral properties was prepared by staff.

Moved: Fredericks, seconded by Smith

Vote: AYES: Unanimous

ABSENT: Gram

REGULAR AGENDA

8. Recommendation by Director of Public Works/Town Engineer – Affirm Town Council Prioritization of Rule 20A Public Utility Undergrounding Funds

Director of Public Works/Town Engineer Echols said that the Town’s Rule 20A allocation credits, which were roughly equal to dollars, currently totaled 191,877.

Echols said that both PGE and SBC had stated they were “five years out” on Rule 20A projects and recommended that communities “get in line early” for future undergrounding projects. He said that “getting in line” would require project plans and preliminary district boundaries in order to qualify for funding.

Echols asked the Council to affirm that Tiburon Boulevard was its priority for Rule 20A undergrounding funds and recommended certain projects, in order. He said that there were two areas for consideration: 1) Reed Ranch Road to Trestle Glen Boulevard; and 2) Tiburon Boulevard between Mar West Street and San Rafael Avenue.

Mr. Echols said that the latter would realize more safety benefits and recommended it as the priority project. He estimated the undergrounding costs of the project at \$1.2 million and recommended that it be broken into two phases; the first phase, Mar West to Ned’s Way, could go first with an estimated project cost of \$700,000.

Councilmember Slavitz asked how much the Reed Ranch Road to Trestle Glen Boulevard project would cost. Mr. Echols said that it would cost \$600,000.

Slavitz said that in his mind that area, at a lesser cost, should go first but he agreed that the Multi-Use Path in the area of Reed School would be more consistent with the “safe routes to school” program.

Councilmember Smith asked if poles on both sides of Tiburon Boulevard would come down; Director Echols affirmed this and said that it was required by Code.

Mr. Echols said that his report covered what would be covered by Rule 20A funds but noted that the Town could supplement these funds which might enhance its position with the utility companies. Councilmember Fredericks said that the Town would “still be in the queue” but should move forward with project plans for the Tiburon Boulevard Rule 20A projects, in the order recommended.

MOTION: To adopt Staff’s recommendations pertaining to Rules 20A project priorities.
Moved: Fredericks, seconded by Slavitz
Vote: AYES: Unanimous
ABSENT: Gram

9. Recommendation by Director of Public Works/Town Engineer – Town Council Policy Regarding Street Repairs in Conjunction with Utility Undergrounding Projects

Director of Public Works/Town Engineer Echols recommended a policy whereby street re-paving could be done in conjunction with utility undergrounding projects.

He said that an “expectation” to re-pave streets had been created in the Stewart Drive undergrounding project but that, in fact, all that was required was “patching” the streets after trenches were cut and filled. This could be from a third to one half of the street, according to Echols.

One way to address this issue, according to Echols, was to apply the cost of re-paving the streets to the 20B assessments. The Town could share in this cost or fully fund a slurry seal if the streets were already in good condition. The Town Engineer said that only streets above the 70 PCI [Pavement Management System rating] would be eligible for the slurry seal.

Vice Mayor Smith expressed concern that adoption of this policy might “obligate” the Town to resurface streets and wondered what would happen if two or three large districts came on line at the same time.

Mr. Echols said that if a street was not on the five-year [street rehabilitation] list, it would not be eligible for the Town’s cost-sharing arrangement but that the project residents could agree to assess themselves for the full value of resurfacing, if they chose to do so.

Mr. Echols also said that the street re-paving portion could be an “alternate bid” portion of the project and that “budget protection” for the Town would be built into the policy.

Mayor Berger asked how the costs would be folded into the assessments. Director Echols said that the terms would be spelled out in the district engineer’s report and noted that current assessments already included “patching” of the streets. He said that street repaving would be an

additional benefit, particularly if the streets in the district were not in the five-year list for resurfacing maintained by the Town.

Mayor Berger commented that this might be another issue for undergrounding district residents who were concerned with how to pay for their assessments. Mr. Echols said that the resurfacing would be offered as an option in the district engineer's report and would not be "forced" on people.

Councilmember Fredericks said that it was a good plan.

Vice Mayor Smith asked whether there was any discretion as to which streets would be resurfaced under this proposal. Mr. Echols said that the street rehabilitation program was based purely on a mathematical formula but that there was a list to cull from constantly, and that other factors played a role. He said these factors included geographical proximity, the timing of other utility work, etc.

Council agreed to the policy in concept and directed Staff to return with a written policy.

Council took Item No. 11 out of order.

PUBLIC HEARING

11) Recommendation by Town Attorney and Director of Community Development – Economic Exception Ordinance – *continued from September 7, 2005*

Introduction and 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

Town Attorney Danforth said that the revisions to the ordinance had created a "better and stronger" tool which would serve both the Town as a whole as well as the development community. She outlined the progression of changes in the staff report.

Ms. Danforth said that the initial draft allowed the Community Development Director the ability to grant extensions to an applicant for an economic exception; at Council's request, the ordinance had been modified to allow applications only after a decision had been reached on a project's merits by either the Planning Commission or the Town Council.

Ms. Danforth also said that revisions recommended by Last Chance Committee attorney Fran Layton were "reasonable and helpful" and had been incorporated into the current draft. These revisions clarified that the Town Council would retain jurisdiction over the process, and would require applications early in the process.

The Town Attorney said that further revisions recommended by Ms. Layton were not necessary but she recommended some typographical revisions to clarify the language in Section 16.7.3 which would address Ms. Layton's concerns.

Community Development Director also pointed out some extraneous language on page 2, line 32.

Ms. Danforth said that takings claims were very expensive and that although this type of ordinance had not been tested in the court of appeals, it would be a cost-saving measure to the Town even if employed only once in 10 years.

Mayor Berger opened the public hearing.

Jerry Riessen, 616 Ridge Road, said the ordinance, as amended, was "great."

Mayor Berger closed the public hearing.

Vice Mayor Smith asked whether there existed a potential to be "overwhelmed" by applications; Town Attorney Danforth replied that while there would be some imposition on staff time, the ordinance would probably not be invoked very often.

Councilmember Slavitz added that the ordinance could be modified, if necessary, over time.

Vice Mayor Smith asked whether adoption of the ordinance could be construed as encouraging the filing of claims. Also, that instead of takings claims, the Town would face litigation over proper application of its ordinance.

The Town Attorney commented that having an ordinance in place, along with the costs associated with hiring experts, would probably discourage the filing of frivolous claims.

Councilmember Fredericks said that she did not share the concern that the ordinance would be used frivolously, and that the downside risks were certainly less than the cost of litigating takings claims. She said the new ordinance would provide a "safety net" for all parties and had the potential benefit of allowing developers to "work it out" with the Town Council.

Mayor Berger agreed. In addition, he said that projects already received a thorough review through the CEQA process but that the economic portion, if disputed, went to the courts. For this reason alone, having an ordinance in place that could address this issue was important.

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

Mayor Berger read, “An Ordinance of the Town Council of the Town of Tiburon adding a New Article VII to Title IV, Chapter 16 (Zoning) of the Tiburon Municipal Code Regarding Economic Exceptions.”

MOTION: To pass first reading of above Ordinance, with typographical revisions as identified by the Town Attorney and Director of Community Development.
Moved: Slavitz, seconded by Smith
Vote: AYES: Berger, Fredericks, Slavitz, Smith
ABSENT: Gram

10. Recommendation by Director of Community Development – New General Plan Implementation Program Prioritization

Director of Community Development Anderson said that now that Tiburon 2020 had been adopted, there was still much work to do for its implementation. The Director’s staff report listed the tasks associated with the implementation and asked for Council’s concurrence on the ranking of these tasks.

In response to a question from Councilmember Fredericks, Anderson said that while there were no mandatory State deadlines for implementation, the resulting inconsistencies between the Town’s General Plan and zoning ordinance would be burdensome to both applicants and staff, until they were brought into alignment.

Councilmember Fredericks asked whether the implementation tasks were something that existing Town staff could accomplish. Director Anderson replied that the Planning Division processes approximately 500 planning applications per year which required virtually all of the staff’s time [excepting that of the Advance Planner]. He also noted that the budget called for the elimination of the Advance Planner position at the end of the calendar year.

Town Manager McIntyre said that the Town had spent a lot of money on a “first class plan” but now faced the task of implementation of this plan. He said that even the highest priorities listed in Anderson’s report would take one year to complete and that, in reality, the Town did not currently have the resources to accomplish this task.

Mayor Berger pointed out that the Advance Planner, Kevin Bryant, was “up to speed on the plan.” Town Manager McIntyre said that Bryant was seeking other employment because his contract with the Town was ending. He recommended that the Council consider the question of staffing at a future meeting.

Mayor Berger said that task Nos. H19(a), H19(d) and H-22, all pertaining to the downtown area, should be moved up to top priority. For example, he said that with the change of ownership of some downtown properties, it would be helpful for future owners/developers to have information on housing overlays and the like before filing applications with the Town.

Director Anderson agreed. He said that existing staff could make “significant progress” on the highest (No. 1) priorities with an Advance Planner before the end of the calendar year but that the other priorities would take more time.

Town Manager McIntyre clarified that all priorities (Nos. 1, 2 &3) could all be accomplished in one year’s time with an Advance Planner on staff.

Councilmember Slavitz said that it was hard to imagine implementation of the General Plan without Mr. Bryant who had done such an excellent job working on the plan over the last three years. He said it was a tough decision to expand Town staff but that it was a good idea given the growth in the planning area.

Councilmember Fredericks asked that any consideration of staffing be brought back to the Council accompanied by costs associated with space planning at Town Hall.

Councilmember Slavitz also asked for a comparison of what it would cost to staff implementation of the plan in-house or by outside consultants.

In summary, the Council agreed with the Director of Community Development’s prioritization of the tasks associated with implementation of the new General Plan, with the addition of Mayor Berger’s prioritizations, and agreed to explore the idea of staffing the Advance Planner position at a future meeting.

COUNCIL AND COMMITTEE REPORTS

Councilmember Fredericks reminded the Council of the MCCMC meeting on September 28 concerning joint efforts by cities, county and schools for school funding (Proposition 98).

WRITTEN COMMUNICATIONS

Town Council Weekly Digest – September 9, 2005

Town Council Weekly Digest – September 16, 2005

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Berger adjourned the meeting at 9:10 p.m., to the next regular meeting scheduled for October 5, 2005.

MILES BERGER, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK