

**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 7, 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, Advance Planner Bryant, Director of Public Works/Town Engineer Echols, Chief of Police Odetto, Director of Administrative Services Bigall, Town Clerk Crane Iacopi

Prior to the regular session, beginning at 6:15 p.m., the Council met in closed session to discuss the following matters:

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Section 54956.9(a))

Town of Tiburon v. Sylvia

CONFERENCE WITH LEGAL COUNSEL – THREATENED LITIGATION
(Section 54956.9(b))

Threatened litigation by County of Marin

INTERVIEW – 7:15 p.m.

- Frank Doyle, 85 Round Hill Road

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

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

ORAL COMMUNICATIONS

John Kunzweiler, 16 Norman Way, said that he had just returned from Baton Rouge, Louisiana and described the “absolute catastrophe” he had witnessed. He urged the Council to focus on disaster preparedness for the Tiburon community.

Mr. Kunzweiler said that he was trying to enroll his two nephews (from Louisiana) in Marin County private schools and had encountered obstacles due to caps placed on the number of students by virtue of their conditional use permits. He suggested that a “prudent and speedy way” to deal with this disaster-related scenario be considered.

Councilmember Fredericks invited Mr. Kunzweiler to the next meeting of the Belvedere-Tiburon Joint Disaster Advisory Council.

Mayor Berger also noted that the Council was working with police and fire personnel to “get the word out” about disaster preparedness.

APPOINTMENTS TO BOARDS, COMMISSIONS AND COMMITTEES

- Design Review Board – (One Vacancy)

MOTION: To appoint Frank Doyle to the Design Review Board

Moved: Slavitz, seconded by Smith

Vote: AYES: Unanimous

CONSENT CALENDAR

1. Approval of Town Council Minutes – August 17, 2005

Amendments were submitted as “late mail” by Councilmember Fredericks and Mayor Berger; Councilmember Gram read his changes to page 7 of the August 17, 2005 minutes. (After the first paragraph add, “approval of this application in no way affects the validity of the agreement.”)

E.C. Grayson, President of the Pt. Tiburon Bayside Homeowner’s Association, also commented on the August 17 minutes.

Mr. Grayson said that Vice Mayor Smith had been “very articulate” in his description of the height of the berm [at the site of the proposed gallows wheels installation at the Donahue building], by stating that if you were to shoot a laser line across the top of the berm, the gallows wheels would not be visible.

Mr. Grayson said that an architect/engineer had measured the height of the berm and he submitted these measurements and a photograph of the berm to the Council [which also appeared

in the September 2, 2005 Town Council Digest]. Grayson said this showed that the top of the berm was “nine inches from the baseline.”

Finally, Mr. Grayson said that another issue that had been brought up was lighting and stated that it was their understanding that there was to be no lighting at the site.

He said that the minutes should reflect these items.

Mayor Berger replied that the direction given by the Council in its approval of the installation was that the wheels were to be no higher than the berm.

Vice Mayor Smith said that he had indeed made the statement about the laser level.

Mayor Berger said that “we didn’t mention lighting.”

Town Attorney affirmed that lighting had not been discussed at the [August 17] hearing and said that it could not therefore be added to the minutes.

Vice Mayor Smith asked for clarification that the project application as presented did not include lighting. Town Manager McIntyre affirmed this statement.

Mayor Berger noted that the record now reflected Mr. Grayson’s comments as well as the Council’s comments.

2. **Recommendation by Director of Public Works/Town Engineer** – Denial of Appeal of Encroachment Permit Conditions for Installation of Fence and Gate at 696 Hilary Drive
 - a) A Resolution of the Town Council of the Town of Tiburon Denying an Appeal by Mark Gineris of Encroachment Permit Conditions and Directing Actions for Compliance, Including a 90-day Non-Enforcement Grace Period (Assessor Parcel No. 055-212-04)
3. **Request by Chamber of Commerce** – Funding for Second Annual Oktoberfest on Main Street, September 30, 2005
4. **Recommendation by Town Manager** – Retention of Executive Recruiter for Town Engineer/Director of Public Works Recruitment
5. **Recommendation by Town Manager** – Retention of Consultant for Management Audit of Community Development Department
6. **Request by Reed Union School District** – Support of November 8, 2005 Facilities School Bond

- a) A Resolution of the Town Council of the Town of Tiburon
In Support of Measure “A” for the Reed Union School District
\$13 Million Facilities Bond Measure

Christine Carter, Reed Union School Superintendent, gave a brief history and presentation on the latest bond measure needed to complete the school district’s facilities plan. She thanked the Council for its support of the measure.

MOTION: To adopt Consent Calendar Item Nos. 1 through 6, as amended.
Moved: Slavitz, seconded by Smith
Vote: AYES: Unanimous

REGULAR AGENDA

- 7. **Recommendation by Town Manager** – Lyford Cove Utility Undergrounding
Assessment District Resolution Authorizing Supplemental Bond Sale – Series 2005-2
 - a) A Resolution of the Town Council of the Town of Tiburon
Authorizing Issuance of Limited Obligation Improvement Bonds
(Lyford Cove Utility Undergrounding Assessment District)

Town Manager McIntyre said that the recommendation was to issue a second series of bonds for the above district due to the fact that the first series was issued for less than the dollar amount approved by the Council. He stated that the sale would not increase the individual assessments of the property owners in the district, nor would it affect the amount of money available for construction.

At the request of the Mayor, Mark Pressman, bond underwriter, explained the situation more fully. He stated that the proponents had not raised enough money to cover the engineering costs of the district, a fact which did not come to light until after the bonds were sold. Typically, the engineering study would be complete prior to the assessments being determined, according to Pressman, but this was not the case in the Lyford Cove district.

There were other factors which resulted in the bonds not being sized properly in the first sale, according to Pressman, but by working with bond counsel, the district engineers, and the bank, they had come up with a way to sell \$173,000 which would take the total bond sale amount up to the \$400,000, This was the amount “everyone expected to pay,” and was the same amount approved by Council resolution, according to Pressman.

Vice Mayor Smith asked about the cost of the series 2 bonds. Mr. Pressman said that the first series had come in at 88.4% for construction and engineering, with a 2% reserve; series 2 would place 95.6% “into the ground” with a 2% reserve with an additional \$4100 in “soft costs.”

Mr. Pressman said that neither his firm (Wulff, Hansen), bond counsel (Jones, Hall) nor the town had charged any fees for this transaction.

Councilmember Gram asked about the estimated percentage rate for the bond sale. Mr. Pressman said that he expected to sell them at 5.1%.

Gram also asked if the matter had been discussed with the district organizers. Town Manager affirmed this statement.

MOTION: To adopt resolution authorizing bond sale, as presented.

Moved: Fredericks, seconded by Slavitz

Vote: AYES: Unanimous

8. **Presentation and Report by Godbe Research – Tiburon Peninsula Public Opinion Research Survey Results**

The Town Manager re-introduced Brian Godbe and Sean Bridge of Godbe Research, who had conducted the survey. Godbe and Bridge provided information concerning the methodology and results of the survey.

One highlight was that the respondents rated their overall satisfaction with Town services at 91%; Godbe and Bridge noted that this was a very high approval rating and that only one other city (Cerritos, in Southern California) had rated higher in a similar survey.

Some of the “perceived challenges” uncovered in the survey questions were:

- Too much growth
- Damaged roads
- High cost of living
- Traffic and lack of public transportation

In prioritizing town services into the categories of “how important” and “how satisfied,” the respondents rated “maintaining local streets” both low in satisfaction and low in priority; and “providing building and planning services” as both high in importance and high in satisfaction.

Mr. Godbe commented on the portion of survey that dealt with Tiburon’s downtown. He said that there was a 15% dissatisfaction rate, which showed room for improvement, and that 38% said that they went downtown 20 or more times per month, and 30% of those respondents said they went downtown on weekdays during the day.

Mayor Berger said that these respondents might be commuters.

Councilmember Fredericks asked whether there was a comparison between frequency of downtown visits and level of satisfaction. Mr. Godbe replied that the results illustrated this.

Mr. Godbe said that the primary reasons (stated by respondents) for coming downtown were:

- Dining out
- Shopping for food
- Shopping for apparel/gifts

The Vice Mayor commented that there were different perceptions of the parameters of “downtown” Tiburon.

Mr. Godbe said that another question concerning downtown was (the lack of) parking question which he said was calculated as a factor but not very high.

Other questions regarding downtown asked what kinds of restaurants the respondents would like to see and what kinds of stores. Mr. Godbe said that the 18-39 age group was most interested in seeing additional Asian and family/casual dining restaurants. He said that the most requested stores were “clothing, drugstore, gourmet and children’s.”

Mr. Godbe said that one other question concerned a proposed housing plan for downtown; 46% had agreed with the concept, while 44% had disagreed with the idea.

Councilmember Fredericks said that there was no sense of what the disagreement represented; Councilmember Slavitz commented that it could be an opposition to development, generally.

Mr. Bridges said that if the survey had focused on a specific [housing] project it would lend more specific results.

Mayor Berger commented that most people had not thought about the concept and that this was probably the first time they had heard the question.

Councilmember Gram said that the question focused on housing, and that he thought the question would ask for an opinion on “a retail-serving plan downtown with some housing.” These were two very different questions, according to Gram.

Mr. Godbe said that the conclusions that could be drawn from the survey were that there was high satisfaction with Town services and satisfaction with downtown but that there was also room to improve. He recommended that the Council review the responses to the “open-ended” questions in the survey results in order to gain insights on how to shape future of the downtown area.

Mayor Berger opened the public hearing.

Allan Bortel asked about the Belvedere-Tiburon library. Mr. Godbe said that both importance and satisfaction were rated “extremely high,” with 78% stating it was “very important” and 94% stating they were “very or somewhat satisfied.”

Mr. Bortel asked whether going to the library was listed as a reason for going downtown. Godbe said that only 11% answered this question affirmatively.

Mayor Berger said that the library was very valuable to the community.

Town Manager McIntyre said that the survey results reaffirmed Council's direction on several topics—that the Council had doubled the amount of money budgeted for street maintenance and repair in the current fiscal year (but that concerns regarding sustaining this level of funding needed to be addressed). He also stated that the Council had approved a management review of the [services provided by the] Community Development Department.

Mr. McIntyre said that the survey provided useful information and that a follow-up survey in a couple of years would let the Town Council review the results of its efforts in these areas.

Mayor Berger commented that the issues discussed in the survey were timely in relationship to the downtown area, given that there was a movement for change as a result of changes in property ownership and the like; that the survey was not just a “feel good” effort by the Town.

The Town Manager said that additional detail from the survey would be provided to the Council.

PUBLIC HEARING

9. Recommendation by Town Attorney and Director of Community Development – Economic Exception Ordinance – *continued from June 29, 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 proposed ordinance had first been presented to the Town Council in June. She said that the Council had directed staff to revise the timelines section and that the Vice Mayor further suggested that the timelines be postponed until after the Town Council had approved a project on the merits.

Ms. Danforth said that Fran Layton, attorney for the Last Chance Committee, had proposed additional language to clarify that the applicant be required to come in as soon as possible [to file for an economic exception], as well as language stating that the Town Council would retain jurisdiction to act on an economic exception application after the decision on the merits.

Vice Mayor Smith asked for clarification between the two drafts submitted as “late mail.”

Councilmember Gram commented that due to the latest proposed changes to the ordinance, which had just been received by Council this evening, the item should be continued.

Vice Mayor Smith concurred, and said that the staff report should highlight all of the proposed changes to the ordinance, and the pros and cons of adopting this type of procedure.

Mayor Berger asked for a definition of “economically viable” in the context of an expert evaluating the economic viability of a project. He asked whether the process of analysis could be amplified and whether standards for judging viability.

Ms. Danforth said that the courts have not established a clear definition of economic viability. The Institute for Local Self Government uses that phrase because it is central to recent takings decisions, according to Danforth. The courts delineate the meaning of economic viability on a case-by-case basis and the Town would do the same. She said that having an [economic exception] ordinance in place would not necessarily avoid takings lawsuits but that it would provide a better basis on which to uphold the Town’s decisions.

Councilmember Fredericks asked if this would also reduce the amount of discovery (in a lawsuit); Ms. Danforth agreed with this statement.

Mayor Berger opened the public hearing.

Jerry Riessen, 616 Ridge Road, said that staff had done a good job in preparing the ordinance; he said that it would encourage a “positive process and be a great tool to safeguard you in land planning.”

Mayor Berger closed the public hearing.

MOTION: To continue the item to September 21, 2005.

Moved: Fredericks, seconded by Slavitz

Vote: AYES: Unanimous

10. Recommendation by Advance Planner – Adoption of Tiburon General Plan

- a) A Resolution of the Town Council of the Town of Tiburon Certifying the Final Environmental Impact Report for the Adoption of the Tiburon General Plan, *Tiburon 2020*

- b) A Resolution of the Town Council of the Town of Tiburon Adopting Findings, A Statement of Overriding Considerations, And a Mitigation Monitoring Program, relating to the Adoption of Of the Tiburon General Plan, *Tiburon 2020*, pursuant to the California Environmental Quality Act

c) A Resolution of the Town Council of the Town of Tiburon
Adopting the Tiburon General Plan, *Tiburon 2020*

Director of Community Development Anderson made some opening remarks and then turned over the floor to Advance Planner Bryant.

Anderson said that *Tiburon 2020* represented a complete update of all the elements of the Tiburon General Plan. He said that the town's general plan had not been updated in 16 years and that the new plan was a big improvement over the last one.

Director Anderson said the process had been a smooth and healthy one and that while there were certainly costs associated with the update, the process and end result was in some respects "priceless." He remarked that some bridges had been rebuilt in the community as a result.

Anderson praised the talent and professionalism of Advance Planner Kevin Bryant who did a "masterful job." He also thanked the Planning Commission, Town Council and EIR consultant Bob Berman for their efforts.

Advance Planner Bryant reviewed the history and process of creating the new general plan, *Tiburon 2020*. He said that 400 people had provided input into the plan and that all this feedback had been taken into account. He outlined the Planning Commission approval process and the next steps to be taken by Council.

Bryant said that the smooth process and level of participation "speaks to the quality of the community;" he said it had been a pleasure to work on the plan with all those who were involved.

Bryant introduced members of the Planning Commission, past and present, who were in the audience: Randy Greenberg (now a Marin County Planning Commissioner); John Kunzweiler and Wayne Snow.

Mayor Berger opened the public hearing.

George Landau, 82 Sugarloaf Drive, said that something should be added to protect the view of "people who have been here a long time." He urged the Council to insert more view protection language in the General Plan.

Councilmember Slavitz commented that the Advance Planner had stated that view issues were more appropriately addressed in the Town Code and other regulations than in the General Plan.

John Kunzweiler, Planning Commission Chair, said that he respectfully disagreed with Mr. Landau's position and stated that the General Plan was a "big [picture] plan." He said that there had been a lot of "wordsmithing" on all of the issues and that the time had come to complete the process.

Mr. Kunzweiler said that the Planning Commission recommended unanimous approval of the plan.

Jerry Riessen, 616 Ridge Road, complimented the Planning Commissioners for their work on the new plan, as well as Kevin Bryant, who he said had worked so well with everyone involved.

Allan Bortel, Tiburon representative to the Marin Commission on Aging, took issue with a statement in the plan about the perceived lack of future housing county-wide for those with dementia. He said that this statement was not true; that there were now ample market-rate dementia facilities in the County with more coming on-line; otherwise, Bortel said, the plan “looked great for seniors.”

Mr. Bortel said that the greatest need for seniors in the county was for affordable housing; he recommended that the word “affordable” be inserted before “dementia” in describing the need for housing.

Council discussed his recommendation and agreed to insert the language in Section 9-22 of the Housing Element. Advance Planner Bryant said that this action would have no material effect on the plan.

Mayor Berger closed the public hearing.

Mayor Berger praised the level of discussion and care undertaken in writing the new plan; he said it was a testament to the hard work of the Planning Commission and others who had participated in the process.

Vice Mayor Smith echoed these comments and said that the process had “gone so much better than it could have gone.”

Councilmember Gram remarked that the Town had a good plan but that the new plan strengthened the ability to improve and upgrade the downtown, as well as providing further protection of open space.

Gram praised Mr. Bryant stating that his work was “expertly done,” and that he had dealt with people and issues in an exemplary manner.

Councilmember Fredericks said that the new plan was not only coherent, but educational; she said it was a tool that clearly set out the priorities of the Town. She said that the actual meaning of the general plan was a “story about our community,” made even more compelling by the level of passionate participation throughout the process.

Councilmember Slavitz echoed the sentiments expressed by his colleagues and said that the plan was an “excellent vision of the future.”

MOTION: To approve the resolution certifying the Final Environmental Impact Report
Moved: Gram, seconded by Slavitz
Vote: AYES: Unanimous

MOTION: To approve the resolution of findings, a statement of overriding considerations, and a mitigation monitoring plan
Moved: Smith, seconded by Fredericks
Vote: AYES: Unanimous

MOTION: To adopt the Tiburon General Plan, *Tiburon 2020*
Moved: Slavitz, seconded by Smith
Vote: AYES: Unanimous

COUNCIL AND COMMITTEE REPORTS

Mayor Berger remarked on the success of the Labor Day Parade and especially thanked Tony Iacopi for creating the Town's "float."

Councilmember Fredericks asked her fellow councilmembers to review a resolution sponsored by the City of San Francisco regarding broadband service that would be considered for adoption at the League Conference in October.

WRITTEN COMMUNICATIONS

Town Council Weekly Digest – August 19, 2005

Town Council Weekly Digest – August 26, 2005

Town Council Weekly Digest – September 2, 2005

Town Manager McIntyre asked for interest in participating in the "Belvedere Open" golf tournament.

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Berger adjourned the meeting at 9:27 p.m., to the next regular meeting scheduled for September 21, 2005.

MILES BERGER, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK