

**TOWN COUNCIL
MINUTES**

CALL TO ORDER

Mayor Smith called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, January 18, 2006 , in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

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

PRESENT: EX OFFICIO: Town Manager McIntyre, Director of Community Development Anderson, Interim Director of Public Works Bernardi, Chief of Police Odetto, Director of Administrative Services Bigall, Project Coordinator Troy Bassett, Town Clerk Crane Iacopi

Prior to the regular meeting, beginning at 6:45 p.m., the Town Council met in closed session to discuss the following:

CLOSED SESSION

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

Siciliano v. Town of Tiburon
County of Marin v. Martha Company

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

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

ORAL COMMUNICATIONS

None.

CONSENT CALENDAR

1. **Approval of Town Council Minutes** – January 4, 2006
2. **Recommendation by Director of Administrative Services** – Reallocation of Reserves for FY 2005-06

3. **Recommendation by Director of Public Works/Town Engineer – Revised Street Rehabilitation Policy for Undergrounding Assessment Districts**

Town Manager McIntyre asked that Item No. 2 be continued to a date uncertain. Council concurred.

MOTION: To adopt Consent Calendar Item Nos. 1 and 3, above.

Moved: Slavitz, seconded by Berger

Vote: AYES: Unanimous

PUBLIC HEARING

4. **Recommendation by Interim Director of Public Works and Project Coordinator – Approve Preliminary Engineer’s Report for Formation of Lyford Cove Utility Undergrounding Supplemental Assessment District**

- a) A Resolution of the Town Council of the Town of Tiburon Preliminarily Approving Engineer’s Report and Directing Related Actions

Interim Director of Public Works Bernardi gave the report. He summarized the actions taken by Council at its December 15, 2005 and January 4, 2006 meetings. Bernardi then itemized the costs that were in addition to the amount of the construction bid that was over estimate; he said together this would comprise the total package for the supplemental assessment.

Delineated more fully in his staff report, Mr. Bernardi said that these costs were for increased materials and labor costs (“not to exceed” numbers negotiated with the contractor); increased contingency costs; increased construction management costs (in order to extend the duration of the contract from six months to one year); a potential litigation fund; underwriter and bond counsel fees, as well as miscellaneous costs associated with the supplemental bond issue; and other, mandated bond reserve and funded interest requirements.

Mr. Bernardi said that no additional fees would be included in the assessment for services provided by the Town or Harris & Associates for this work; he noted that Harris & Associates had not billed the district for their time and expenses associated with the second bid package prepared last fall, as well as with the preparation of the supplemental engineer’s report, nor with any additional meetings since the first bids were received in July of 2005.

Further cost reductions had been included in the supplemental engineer’s report and these included deletions of some street lights and reduction in width of pavement patching in the district, according to Bernardi.

Mr. Bernardi said that it remained unknown whether Comcast or Sanitary District No. 5 would pay their portion of the trench costs and relocation of the force main, respectively. He said that if

these monies were received by the Town, the property owners in the district would be reimbursed accordingly. He also said that it appeared that Rule 20A funds were not available for use by the district at this time.

The Interim Director said that Council could still cancel the project but noted that over \$600,000 in costs that had already been incurred would still result in a per parcel assessment of approximately \$241 for the life of the bonds.

Mr. Bernardi said that if Council decided to go forward with the project, and allow the property owners to vote on the supplemental assessment, the ballots would be mailed out with a supplemental assessment notice and be counted on March 15 at a public hearing before the Town Council. He said that staff recommended this course of action.

Councilmember Fredericks asked if the reduced pavement patching would [adversely] affect the life of the pavement. Mr. Bernardi said that it would not, and described how the trenches would be paved after construction.

Vice Mayor Gram asked about the increased costs for labor and materials. Mr. Bernardi verified that the numbers were maximum amounts.

Mayor Smith asked if the Rule 20A funds were “off the table” due to the Town’s policy (which gives priority to other streets within the Town limits). Mr. Bernardi said this was the case and agreed with the Mayor’s statement that the policy could be changed.

Councilmember Slavitz clarified that in the case of Lyford Cove, the engineer’s report had found there was no public benefit to the project and therefore the district was not eligible for Rule 20A funding. Town Manager McIntyre concurred with this statement, adding that it was stated in both the original and supplemental engineer’s reports.

Councilmember Berger asked about the amount of additional construction management costs and said that the contract should stipulate the number of site visits; otherwise, Berger said the maximum amount was likely to be spent.

Project Coordinator Bassett said that it was necessary to have an inspector on site and that the amount reflected the additional days the inspector would have to be on site.

Councilmember Slavitz asked about the numbers that comprised the Maggiora & Ghilotti construction contract. In addition to material and labor, Mr. Bernardi said that the rest of the amount was overhead, equipment rental and profit.

Councilmember Slavitz asked about the cost of issuing supplemental bonds. Project Coordinator Bassett confirmed that the only cost that was “extra” was the \$48,000+ of “miscellaneous” costs for the paying agent, printing, registration, servicing and filing fees; the other bond costs would have been incurred anyway as a percentage of the bond itself.

Vice Mayor Gram said that at the last public hearing, it was stated that the supplemental assessment would be around \$300 - \$350. He asked what the new average supplemental assessment would be, based on the numbers presented tonight.

Ms. Bassett said that the supplemental assessment would be \$550 per year, on average.

Mayor Smith summed up the supplemental bond assessment as being comprised of construction costs plus contingencies, plus “soft costs,” for a total of \$2,260,000.

Councilmember Slavitz asked if this was “the bottom line.” Ms. Bassett confirmed this statement.

Mayor Smith asked if this number “got bigger,” would the Town have to pay. Town Manager McIntyre answered affirmatively.

Mayor Smith opened the public hearing.

- Maxine Coplin, Lyford Cove resident since 1962, referenced an article in the Marin Independent Journal about the recent power outages in Novato wherein residents were without telephone and cable because underground [utility] vaults had flooded and repairs still had to be made to restore power;
- Robert Ellsberg, Lyford Cove utility underground organizer in the 70’s, said that Paradise Drive was one of only two thoroughfares in and out of town and asked whether the use of Rule 20A funds in the district might be revisited, adding that the Council had supported their use in the 70’s;
- Rick Barberi, Mar East, listed 10 reasons to “cut loose and bury” the project (see footnote #1);
- Tom Young, Centro East, said he voted yes on original bond because \$20k was a “reasonable price;” said that the additional costs were a result of an “incredible screw-up” which the Council had presided over and that going forward, “someone else” should pay;
- Todd Moody, professional engineer, said he too had seen estimates “go both ways;” thought people would still vote in favor of the assessment and that property values would rise and the neighborhood would look better;
- Dave Stollmeyer, Mar East, referenced a letter from Diane Lynch (showing tiered assessments in a Berkeley undergrounding district) and said Lyford residents should be given the same options;

1 - alleged gerrymandering of district; assessment based on aesthetics; no significant examples of power poles every being down; construction estimate off by \$1.4 million; precipitous action by Council to bond before bids received; faulty reasoning to go forward because \$616,000 had already been spent; transparency in numbers; unknown whether Comcast will pay; statements that Rule 20A funds would not be available until 2007 have now “vaporized;” no new bidders resulting in compromised position; Town’s ability to bank overages; unknown costs of trench maintenance.

Mayor Smith clarified that there was no option to revisit the method of assessment at this point in time (without terminating the existing district and starting anew).

- Mr. Stollmeyer continued that the reduction in number of street lights would leave his street “pitch black” which was a safety hazard;
- Gary Hansen, Lyford Cove resident, asked about seismicity; said that he was in the 1964 Anchorage earthquake where entire streets opened up and it took nine months to get federal money to repair them, during which time significant utilities were out of service;
- Claus Meinberg, Mar East, advised the Council to “go ahead and finish the project or we will never get it done;” that undergrounding would enhance the entire neighborhood and that the “wires will only get bigger” as time goes by;
- Rod Decker, Lyford Cove, asked about Harris’ track record of meeting estimates; said the increase was “not modest” and asked why the Town did not pay for the misjudgment;

With regard to the estimates, Councilmember Fredericks said that she knew of at least two CAL/TRANS projects that had also come in over bid around the same time.

Mayor Smith said that the Council was aware of the risk in going to bid before bond but that on reverse, the up-front subscription costs would have been significantly higher to the proponents of the district; said that next time the Town might do it differently.

- Mr. Decker said that the costs were 100% over projections;

Project Coordinator Bassett said that the number was actually 50%.

Mayor Smith said that \$1.4 million was in excess of the engineer’s estimate but that the other costs were actually what it would take to go to bond again. Ms. Bassett added that the incremental cost was about \$50,000.

- Mr. Decker said that many people who voted in favor of the district had “strategized” their budgets and now faced an additional liability; he also asked about the status of lateral estimates.

Ms. Bassett said that the estimates for lateral connections had come in “very high” and that she had advised property owners to obtain their own estimates because the Town did not have a contract to perform this work.

- Bruce Portner, Centro East, said that he was in favor of the district because in future it would cost a “whole lot more;” said that “we pay to live in a community like this.”

Mayor Smith closed the public hearing.

Town Manager McIntyre said that the entire “team” had worked with the district to get to this point; he reiterated that Jones, Hall (bond counsel) and Wulff, Hansen (bond underwriters) had stated that they would reduce their costs associated with the supplemental assessment.

Councilmember Slavitz said that the Council had heard “loud and clear” the shock, concern and outrage of the residents in Lyford Cove concerning the estimate overages. He said that the Council was surprised and shocked, as well, but that the more they looked into it for what went wrong, they could not find a “smoking gun.” Rather, Slavitz said that they found that other agencies had experienced similar problems with bidding in recent past and that after two rounds of bids, the Council had accepted the facts as they were, as the “price of the project.”

Councilmember Slavitz noted that many of the costs contained in the supplemental bid were contingencies that, if not spent, would be returned to the district. He also noted that many of the costs would have been incurred whether the district had gone to bond once or twice.

Councilmember Slavitz said that the Town could offer the following: to guarantee the contract; he also proposed that the Town contribute the additional costs associated with the supplemental bond issue (roughly \$48,000 per the staff report). He said that the Town could not change the method of assessment, the district engineers, or the reality of the bids themselves.

Councilmember Berger commended Councilmember Slavitz and concurred with his remarks. He said that he applauded the idea of the Town contributing the aforementioned money in order to make a “frustrating situation as painless as possible.”

Councilmember Fredericks echoed these comments and noted that the only way to have avoided these incremental costs would have been to have the engineer’s report completed “up front” which would have been more expensive; she said that the district had received 70% support in the first ballot and said that it was appropriate to give the community another chance to vote.

Vice Mayor Gram concurred that the change in policy was the reduction of the upfront “risk” money; he said that the Town had been told by the proponents that the district might not have “flown” otherwise. Specifically, Gram said that district proponent Joan Lombardo told him that if the proponents had been required to raise \$6,000 instead of \$1,000 [in individual subscription deposits], they could not have raised the necessary funds.

Mayor Smith said that he empathized with the anger and frustration that had been expressed but agreed with Councilmember Slavitz that there was “no where to point the finger.” He said that the Council was doing its best to make the situation palatable and that the undergrounding, if it moved forward, would be a positive thing for the neighborhood and the community as a whole.

Mayor Smith agreed that the Town should pay the additional incremental bond costs.

Town Manager McIntyre said that the engineer's report would be modified and the ballot would be drawn up to reflect these and other cost reductions.

MOTION: To adopt the resolution preliminarily adopting the supplemental engineer's report which would reflect the changes in numbers, as discussed.
Moved: Gram, seconded by Berger
Vote: AYES: Unanimous

5. **Recommendation by Planning Manager** – Amendment to Cypress Hollow Precise Development Plan for additional FAR at 20 Baccharis Place
 - a) A Resolution of the Town Council of the Town of Tiburon Approving an Amendment to the Cypress Hollow Precise Development Plan (PD#45) for Property located at 20 Baccharis Place – Assessor Parcel No. 034-394-15

Director of Community Development Anderson noted a correction in the staff report to reflect that the proposed amendment did not exceed the basic FAR; he also stated that the neighbors had “signed off” on the project.

Mayor Smith opened the public hearing.

Mr. Brown, applicant, said that it was a simple request.

Mayor Smith closed the public hearing.

Councilmember Berger said that the Planning Commission had done a good job reviewing the application.

Vice Mayor Gram said that he would vote in favor of the amendment because it fell within a narrow exception in the Town's rules.

Mayor Smith summarized that the application was for an amendment that did not impact the neighbors, was within the existing footprint of the house, and did not exceed the FAR.

Councilmember Fredericks said that if the deck was extended it could be argued that the footprint of the house had been extended; therefore, a problem might arise wherein future applications to enclose the area below the might come before the Council. She recommended that language be added to the resolution that would preclude enclosing any under-deck areas of the residence in the future. Mr. Browne stated he had no objection to this condition.

Council concurred.

MOTION: To adopt resolution, as amended.
Moved: Berger, seconded by Fredericks
Vote: AYES: Unanimous

REGULAR AGENDA

6. Presentation by Chamber of Commerce – Funding & Scheduling for Friday Nights on Main 2006

Steve Sears, representing the Chamber, presented the Council with the proposed scheduled, beginning May 5 and ending the second weekend in October, which included two additional Friday nights from the previous year. He also asked the Council for approve police that might be needed for the events and said that the restaurants and Chamber of Commerce would assume the other costs associated with producing “Friday Nights on Main.”

Mr. Sears said that this year vendors would be allowed to participate for a fee; he added that Town Manager McIntyre had suggested that if other local non-profit groups or public agencies wanted to participate, they should be allowed to show for free. Mr. Sears said that the Chamber had agreed to this request, and that they were in the process of creating guidelines. He said that the \$25 fee would go to the Chamber.

Councilmember Fredericks asked if there would be amplified voice or music during the 24 evenings. She said that the previous Friday Nights on Main were very successful without any amplication. She said that one event with amplified voice ran late and ended with someone yelling into the microphone. This amplified voice was heard at her house a half mile away. She said if amplified voice was going to be used, it should be controlled as it was for the rest of the evening.

Mr. Sears said that once a month there might be music, for instance, a mariachi band on May 5. He said that the Chamber would seek appropriate approval [permit] from the Town for these occasions. Councilmember Berger added that there was a German band last year during Oktoberfest.

Mayor Smith asked about the number of police that would be needed and whether the City of Belvedere would also contribute (to police presence).

Chief Odetto said that initially the Tiburon Police Department had two officers present but had reduced it to one over the course of the events. He said that one Belvedere officer had also participated at first but was found be unnecessary.

Councilmember Berger also said that Belvedere was planning to hold some dances for teens during these evenings, and that Main Street Properties would light the area behind the theater.

Chief Odetto estimated that it had cost the Town \$7,500 for police personnel in 2005.

Mayor Smith suggested that there be a “not to exceed” number for 2006, in the amount of \$5,000 or \$6,000, and that the number of police should be monitored by the Chief, as needed.

The Mayor also recommended that the Chamber pay for any overages to such an agreement.

Council directed Staff to proceed with a budget amendment.

7. Presentation by Jay MacMahon – Proposed Statue in honor of Sam Chapman

Mr. MacMahon presented a proposal to Council whereby local baseball legend Sam Chapman would be honored through the installation of a bronze sculpture on a bench at the Tiburon Ferry Plaza. He said that he had known Sam for 50 years and that he would turn 90 on April 11.

Mr. MacMahon said that no public funds would be involved in the project, which would be funded by residents and businesses in Belvedere and Tiburon. He estimated the project cost to be between \$36,000 and \$40,000.

Mr. MacMahon submitted an updated list of business owners who had endorsed the project to the Council. He noted that Mrs. Laleh Zelinsky had indicated that she would support both the statue and its proposed location, and said that Kathy Chapman, Sam’s daughter, had received a similar response from Mrs. Chong Cook. In addition, he said that Town Historian Bran Fanning endorsed the project.

Mr. MacMahon said that the Heritage & Arts Commission had unanimously approved the project in concept in March 2005. He said that the Commission had deemed the Ferry Plaza bench to be the best location; he said that this location was significant in that the statue would face the approximate location of the field where Mr. Chapman used to play.

According to MacMahon, the Commission suggested that an information plaque, similar to the historic trail plaques installed by the Tiburon Peninsula Foundation, be installed to describe the significance of the statue.

Mr. MacMahon reviewed Mr. Chapman’s athletic career; he said that the last time that CAL had won the Rose Bowl was 67 years ago when Mr. Chapman was on the team. He also enumerated his accomplishments as a baseball player, drafted directly out of CAL, to the Philadelphia Athletics. Mr. Chapman interrupted his baseball career to go to war, according to MacMahon, when he joined the Navy in 1942-1945. He ended his baseball career in 1951 with the Cleveland Indians, and was subsequently inducted into five halls of fame.

Mr. MacMahon said that Mr. Chapman was the best athlete to come out of Marin and certainly to come from Tiburon. In addition, he said that his qualities of integrity and humility made him an exemplary model for youth in Tiburon and the County.

MacMahon said that the only issue raised by the Heritage & Arts Commission was the question of setting a precedent (for other requests to install commemorative statues in public space); he said that it would not be a precedent if it were made clear that this man was a regionally and nationally known star with family roots in Tiburon; that this was a “one of a kind” tribute.

Kaleen (Kathy) Chapman, daughter, said that the seed for the idea had been planted 20 years ago when her father had been asked to be Grand Marshal in a parade to honor Tiburon’s 100 years of railroad history. She said that he was an innately kind and inclusive man and that he could be seen as an “historical face” of Tiburon. She added that the sculpture would be an interesting piece of local history.

Mill Valley artist Gloria Nusse described the material (bronze) and concept of the sculpture— Sam sitting on the bench with a bat in hand. She said that it would be interactive in that people could sit next to him for photographs and the like. She said that the mounting details would have to be worked out but said that it would have to be “bronze on bronze.”

Ms. Nusse noted her experience working with public agencies, including a recent installation at Yosemite National Park, and said that she looked forward to the project.

Councilmember Fredericks asked if the sculpture could be forged and installed for \$34,000. Ms. Nusse replied that it was the price of the sculpture only.

Chris Morrison, Ark Row, said that he had joined the committee because it was an excellent project; said that it would become a focal point of the ferry plaza and that it shouldn’t be located “in a ball field somewhere.” He said that the drawings were preliminary; that the only opposition he had encountered was from one person in Point Tiburon who was concerned about their view.

Councilmember Fredericks asked if the residents of Pt. Tiburon had received notice of this meeting. Chris Morrison replied that he had invited the person to come to the meeting and that some Pt. Tiburon residents had signed the petition in favor of the project.

Mayor Smith asked what the Council was being asked to consider this evening. Town Manager McIntyre said that the Council should give feedback to Mr. MacMahon and the committee.

Bill Kuhn, Belvedere resident and member of Sunset Rotary, said that his organization supported the project. He said that he had thought about other locations, such as one of the school fields or Strawberry, but said that Sam was a Tiburon boy and that the location was perfect.

Don Davis, Corinthian Island resident, said that he met Sam in 1951 or 1952; said that he was a strong but gentle man, and humble. He said that he could recommend the project to commemorate a “good friend” and a “first class nice guy.”

Fred Montegani, Tiburon native born in 1918, gave additional historical background on Sam and his own baseball experience with the Tiburon Timeclocks. He said that Sam had gone on to “put Tiburon on the map” in those days.

Mayor Smith closed the public hearing.

The Mayor said that he was a strong supporter of the project for several reasons. He agreed that the ferry plaza would be enhanced and that it was the best location; he said that it did not impact any views because “people sit [on benches] too.” He said that he had discussed the issue with several Pt. Tiburon boardmembers.

Mayor Smith said that it was important to let today’s kids see the Town’s history and to have someone to look up to; that baseball was about having heroes and dreams and that Sam is a hero who can keep our kids’ dreams alive. He noted that the Town had recently approved a fountain in honor of one of its citizens, Mr. Zelinsky, and added that the Town lacked this kind of artwork.

Councilmember Fredericks asked that serious examination be given to other points of views and that the larger questions, such as who deserves a memorial, be answered. She said that it would be a “sad task” to have to choose.

Councilmember Fredericks said that the Town had adopted a policy in order to limit the placement of plaques and benches in public space and that past applications for public art in the waterfront area had been denied. She said that the idea of keeping the area with “compelling views of the Bay” pristine was worth considering.

That being said, Councilmember Fredericks said that perhaps this project would be an exception due to Mr. Chapman’s historical ties with Tiburon; however, she said that there should be a serious investigation into other locations, as well.

Councilmember Berger said that there was no doubt in his mind that the project would receive funding. He added that there might have to be room on a bench for Tiburon athletes Johnny Moseley and Pam Healy, as well.

Berger said that the committee should proceed with its efforts to work out the details. He said that the sculpture was a way to keep telling the history of Tiburon.

When asked about the proposed location, Berger concurred that the siting was good, facing the old ball field, and added that it was “exactly the right spot.”

Councilmember Gram said he, too, was in favor of the location. He said that he would like to see the total cost of the package and to have the issues of ongoing maintenance and possible vandalism addressed. He also said that he would like to see how the committee planned to display the plaque and asked that it not detract from the artwork itself.

Councilmember Slavitz agreed that Sam “is a legendary person.” He said that he had served on the Heritage & Arts Commission when the “Memory Book” was instituted [in lieu of plaques and benches] and that it just did not seem to be enough.

However, Slavitz said that he was concerned about how this sculpture would work with the other public art installation nearby and hoped that it would all work together and not be out of character. He said that he was in favor of the idea and thought that the location was appropriate.

Mr. MacMahon asked what procedure should be followed to pursue the project. Mayor Smith directed Mr. MacMahon to prepare a formal proposal and address the specific issues raised by the Council, and that mock-ups and material samples would be helpful, as well.

Item continued.

8. **Presentation by Dr. Tom Cromwell** – Disaster Preparedness for Tiburon Peninsula

Item continued without hearing.

9. **Report by Director of Community Development** – Options to Fill Planning Commission Vacancy

Because the Council was not prepared to interview commission applicants prior to its March 1 meeting, Director Anderson recommended that a former Mayor or Planning Commissioner be appointed on an interim basis in order to reach a quorum for the Belvedere Tennis Club application hearing scheduled before the Planning Commission on February 22.

Council directed Anderson to return with some names for Council’s consideration and to schedule an interim appointment.

COUNCIL AND COMMITTEE REPORTS

None.

WRITTEN COMMUNICATIONS

Town Council Weekly Digest – January 6, 2006

Town Council Weekly Digest – January 13, 2006

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ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Smith adjourned the meeting at 9:52 p.m., to the next regular meeting scheduled for February 1, 2006.

PAUL SMITH, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK