

**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 4, 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, Town Attorney Danforth, Director of Community Development Anderson, Interim Director of Public Works Bernardi, Chief of Police Odetto, Director of Administrative Services McVeigh, Town Clerk Crane Iacopi

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

**CLOSED SESSION**

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

*Town of Tiburon v. Sylvia*  
*Bonander v. Town of Tiburon*

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

Threatened Litigation by County of Marin

**CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**  
(Section 54956.9(c))

Initiation of Litigation – One Case

**ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY**

Mayor Smith said that no action was taken on the matters discussed.

## **ORAL COMMUNICATIONS**

None.

## **CONSENT CALENDAR**

1. **Approval of Town Council Minutes** – November 30, 2005
2. **Approval of Town Council Minutes** – December 7, 2005
3. **Approval of Town Council Minutes** – December 15, 2005

Vice Mayor Gram asked that a sentence be deleted from page 3 of the minutes (4<sup>th</sup> paragraph from bottom of page).

4. **Recommendation by Director of Administrative Services** – Accept Town Monthly Investment Summary – November 2005
5. **Recommendation by Interim Director of Public Works** – Adopt Disadvantaged Business Enterprise (DBE) Program
  - a) A Resolution of the Town Council of the Town of Tiburon Adopting the Disadvantaged Business Enterprise Annual Overall Goal for 2005-06

MOTION: To adopt Consent Calendar Item Nos. 1 through 5, as amended.

Moved: Fredericks, seconded by Berger

Vote: AYES: Unanimous

The Mayor announced that the regular agenda items would be held following the public hearing items.

## **REGULAR AGENDA**

6. **Recommendation by Town Clerk** – Announcement of Pending Vacancies on Town Boards, Commissions and Committees
7. **Recommendation by Mayor** – Town Councilmember Committee Appointments
8. **Recommendation by Director of Community Development** – Adopt Annual Fee Reports

- a) Annual Reporting of Development Project Fees
- b) Housing In-Lieu Fee Report and Findings

9. **Report by Interim Director of Public Works – Pavement Management Update**

**PUBLIC HEARING**

10. **Recommendation by Interim Director of Public Works and Project Coordinator – Consider Actions Pertaining to Formation of Lyford Cove Utility Undergrounding Supplemental Assessment District**

- a) A Resolution of the Town Council of the Town of Tiburon of Intention to Make Acquisitions and Improvements  
Town of Tiburon – Lyford Cove Utility Undergrounding  
Supplemental Assessment District

Interim Director Bernardi gave the report and summarized the actions taken at the December 15 meeting on the subject. He said that by adopting the resolution as presented, the Council would take the next step toward allowing the residents of Lyford Cove to vote whether or not to continue the district and issue a supplemental assessment. He also said that staff continued to seek input on whether to reduce the budget shortfall with certain cost-saving measures, such as reduced trench patching and street light elimination.

Mr. Bernardi said that since the December 15 meeting, it appeared that Rule 20A funds would not, in fact, be available for this project at this time. He also noted that certain amount of bond funding had already been spent on the project which could not be refunded.

Mr. Bernardi also noted that negotiations were continuing with Comcast and Sanitary District No. 5 about their [disputed] portion of funding for the project.

Mr. Bernardi said that the Council had the option at this time to cancel the project due to the budget shortfall; the residents would still be liable for the portion of the assessment described in the staff report over the life of the bonds. He said that staff did not recommend cancellation of the project.

Mr. Bernardi said that staff had negotiated with the low bidder, Maggiora & Ghilotti, and that they had agreed to preserve their bid until the beginning of April, with two caveats: that in addition to an increase in hard costs, to be negotiated, prevailing wage rates would increase after July 1 which was anticipated to be 3-1/2 to 4%.

This being said, Bernardi said that there would be a fixed number in place at the time of the ballots, if the Council decided to go forward with the formation of a supplemental assessment district.

If Council took this action, Mr. Bernardi described a probable timeline, as follows:

- January 18 – accept supplemental engineer’s report (and ballots mailed shortly thereafter)
- March 15 – ballot count following public hearing
- April 19 – authorize sale of bonds
- Award Contract and start construction

Councilmember Fredericks asked for an explanation of why it would be more advantageous to take this course of action rather than re-bidding the project.

Interim Director Bernardi said that “you’ve been to the well twice” and that contractors would not be inclined to bid a job with perceived problems. He said that costs would just keep going up; he said that the Town would be better off preserving the existing bid.

Councilmember Berger asked what would happen if some of the funding sources that did not appear to be available for the district at this time became available later.

Project Coordinator Bassett said that if monies became available before the bonds were sold, it would lower the assessments; if they became available after the bond sale, a refund proportional to the individual assessment would be made.

Councilmember Slavitz asked for an explanation of the low engineer’s estimate by Harris & Associates.

Interim Director Bernardi said that there had been a rapid increase in project costs over the last six to eight months; that there may have been other factors but this was the main one. He said this was evidenced by the fact that the contractor virtually made the same bid the second time around, which reflected the rise in costs after some of the overhead had been cut out.

Mr. Bernardi said that his colleagues at the County of Marin had mentioned five recent public works projects in which the bids had been 25% over estimate.

Project Coordinator Bassett said that contractors were extremely busy; that there had been 20-30 planholders for the project but only three bids.

Mayor Smith opened the public hearing. He asked for comments on additional cost-saving measures, as well, noting that at the last hearing, the Council had the impression that the residents would prefer to “get it done the right way.”

- Larry (Lawrence) Livingston, Mar East, said that an additional assessment of \$350 per year per parcel was not very big compared with the tremendous improvement that would be received and the increase in real estate values for the residents and their heirs;
- Suzanne Lincoln, Mar East, said we should “just bit the bullet and do it;”

- Sandy L'Heureux, Mar East, asked for clarification on the amounts already spent; said she could not reconcile the amount of confirmed assessments vis a vis project costs;

Project Coordinator Bassett said that approximately \$600,000 had been spent to date, primarily on engineering fees to PG&E, SBC, and Harris & Associates; she noted that the total project cost was more than just the construction costs, and consisted of engineering and design fees, the Town's administration costs, and financing fees, among other things. She said that the bond counsel and the underwriters had already been paid.

Town Manager McIntyre added that \$400,000 of the total budget were contingency fees; that these monies would be refunded to the district if they were not spent. He said that staff would present a full accounting of the costs, both soft and hard costs, prior to the Council's adoption of a supplemental engineer's report.

Mr. McIntyre said that staff would be happy to sit down with anyone who wished to review these numbers.

- Jim Coggan, Mar East, listed a number of concerns: 1) that Harris failed to develop a realistic estimate; 2) that the original estimate was \$2 million which went to \$4 million, a 200% increase; 3) that being so, asked whether the engineering documents were sound or whether there would there be many change orders and who would pay for these; 4) said the district was "sold" on the promise of increased service reliability when, in fact, outages came from problems outside the district; and views were not factored into the equation; 5) said that public safety would become an issue if five street lights were removed from Mar East which would not improve safety for pedestrians and bicyclists;

Mayor Smith commented on the Harris question. He said that he too had wondered why their estimate was so far off; that he was now more convinced that an unfortunate series of circumstances had contributed to the "perfect storm" effect. He said that the Town's decision to try to lower up-front [engineering] costs by not getting a firm bid prior to selling the bonds had been a change in policy that would be revisited. He said that these factors, plus Hurricane Katrina, had affected virtually every project that he knew of.

Mr. Coggan agreed that some factors were out of control but cautioned against moving forward with the status quo.

Knowles Hall, Mar East, presented a petition signed by some residents, with the following recommendations:

- That the Town take primary responsibility for the supplemental district to ensure fairness and that it be designed in a cost-effective manner;
- That Harris & Assoc. be replaced and legal action against them be considered;
- That existing specifications be reviewed by a competing firm to ensure that the roads and soils were not de-stabilized; (he added that roads were old and that the soils in Old

- Tiburon were vulnerable and said that proper soils studies had not been done);
- That the Town negotiate with PG&E to share additional costs and that the Town continue to negotiate with the other utilities to reach a reasonable settlement;
- That the Town take steps to ensure that this doesn't happen again (selling bonds based on a flawed estimate);
- That view benefits should count for at least 50% of the assessment;
- That the Town communicate every month with the property owners concerning the status of the project;
- If the above cannot be accomplished, the Town should cancel the project and assume responsibility for all the costs incurred to date.

Councilmember Slavitz asked whether it was possible to hire a new engineer of record. Councilmember Fredericks said that a new engineer would have to start from scratch, thereby incurring new and additional expenses.

Mayor Smith added that a peer review would be an additional cost; he reiterated that the Town was reviewing its policy that allowed a district to move forward with a bond sale prior to receiving bids. He again noted that the trade-offs--that more funding would have to be received from the property owners at the front end in order to accomplish this.

- Gus Strotz, Lyford Cove resident, commended the Mayor for "taking the blame" and said the project had gotten off on the wrong foot; said that the construction costs would probably be \$5 million rather than \$4 million (with a 25% margin); said he would like to see the wires down and that the Town should take a much stronger stand with the utility companies who allow the rate payers to pay for abandoned wires; asked if the contract had been bid out of state for better pricing; concluded that the Town had not been well advised by the professionals it had hired;
- Rolf Eislin, proponent, said "the longer we wait, the more expensive it will be;"
- Rick Jones, Paradise Drive, thanked the project organizers Liz Bird and Joan Lombardo; said that he had experienced heartache over the estimate but would not suggest a peer review; thought the Harris should still get 75% of their fees and not charge for the additional work; that they should invoke their errors & omissions insurance in this case;
- Maxine Coplin, Paradise Drive, senior citizen who did not want to pay an additional assessment, asked whether the Town would guarantee that it would only be \$350/year;

Mayor Smith said that the \$350 was "an average figure" and that it could be "a little more or a little less"; he said that the supplemental report would provide the "hard data."

- Valerie Castellana, Lyford Cove resident, said that a lot of thought had gone into the district by a lot of well-intentioned, smart people, and that while a 25% increase was expensive for her, too, she suggested moving forward with the project.

Mayor Smith closed the public hearing. He asked for Council comments about proposed cost-saving measures.

Councilmember Fredericks said that some of the options were off the table since the last meeting, so that what was left was \$110,000 in savings on street lights and \$90,000 for reduced paving. She said she would not recommend the latter and suggested that if the supplemental assessment went to vote, the residents should vote for everything they need.

Councilmember Berger agreed that the project should be “done right,” but said that option No. 2 (reduced paving and striping) still seemed like “money we can make use of.”

Vice Mayor Gram said that it was a great neighborhood and that the property owners should vote on the “Rolls Royce” package. He said that the Town would not make the decision for them; that they should have the right to vote on whether the project moved forward.

Councilmember Slavitz agreed that all of the improvements should be voted on as a package; Mayor Smith concurred with the exception of directing staff to continue to negotiate with Sanitary District No. 5 to pay for their force main relocation.

With regard to the supplement engineer’s report, Vice Mayor Gram suggested that the contingency be raised from 10 to 15%.

Councilmember Berger said that the supplemental report would reveal the fixed costs and that while it should have been done before, the “hard bids” were what everyone really needed in order to move forward.

Councilmember Slavitz said that there were still no guarantees, as there could be other contingencies, such as legal action and the like, but that the voters should decide whether or not to move forward with the project.

Councilmember Fredericks said that ordering the report and related actions would give the property owners the information they are requesting and provide the property owners with an opportunity to vote to keep the project alive.

MOTION: To adopt the resolution of intention to make acquisitions and improvements.  
Moved: Fredericks, seconded by Slavitz  
Vote: AYES: Unanimous

11. **Recommendation by Planning Manager** – Adopt FEIR for Proposed Five Lot Residential Development (Ling Precise Development Plan) located at the end of Stony Hill Road; AP No. 055-261-10

- a) A Resolution of the Town Council of the Town of Tiburon  
Certifying the Final Environmental Impact Report (FEIR)  
For the Ling Residential Development (PD#24)  
Assessor Parcel No. 055-261-10

Mayor Smith recused himself and left the room.

Planning Manager Watrous gave the staff report. He said that the applicants have submitted an application for a precise development plan to subdivide a 5.6 acre parcel into five lots, each with a single-family dwelling.

According to Watrous, the Planning Commission recommended certification of the final Environmental Impact Report (FEIR) by the Town Council. The report identified one significant unavoidable impact of the project which could not be eliminated or reduced to a less-than-significant level through mitigation measures identified in the EIR: that the proposed residences would adversely affect views from public and private vantage points.

Councilmember Fredericks commented that the Council was being asked only to vote on whether the EIR was complete.

Planning Manager Watrous agreed and said that the merits of the project itself would be heard before the Planning Commission at future meetings.

Vice Mayor Gram opened the public hearing.

Roy Little, 1 Owlswood Road, asked more about the application's approval process, and whether the Council's role was one of advocacy or analysis; also, what role the Planning Commission played.

Director of Community Development Anderson said that the Planning Commission's role was to review and make recommendations to the Town Council, the decision-making body for adoption of the EIR and final approval of the project itself.

Councilmember Berger said that the Planning Commission would make findings based on their review and comments from the public and applicant; he said the Council would go through a similar process.

Councilmember Fredericks said that the Councilmembers would also visit the site.

Councilmember Slavitz said that the Council did not generally attend Planning Commission meetings but that members read the minutes.

Councilmember Berger said that the Planning Commissioners were the "experts" on the application and zoning regulations and that the Council took their recommendations to heart.

Councilmember Fredericks said that if the Council found that a significant [environmental] impact had been overlooked, it could take action.

Betsy Little, 1 Owlswood Road, said that she and her husband had pointed out inconsistencies in the EIR in a 12-page letter that had been submitted to the Planning Commission. She said that this was a “troubled project” and said she was especially concern because she and her husband lived at the base of a landslide [in the vicinity of the project] and that the applicant proposed moving up to 75,000 cubic yards of dirt.

Ms. Little said that she was not certain that the questions concerning the dirt removal had been addressed, specifically, how the project would be winterized over a period of two seasons; she asked whether performance bonds were required along with liability coverage in the event of a slide; said that she and her husband were unable to obtain landslide insurance.

Ms. Little also mentioned density, visual impacts and noise impacts; she stated that the Planning Commission had acknowledged inconsistencies; she asked whether the Council could require further mitigations once the EIR was certified.

Becky Pringle, Comstock Drive, said that issues brought up by residents at the 2004 scoping session had not been addressed; said that the applicants should get together with the neighbors; that the EIR was just a formality, a paper with a staple through it.

Allan Littman, Rolling Hills Road, said that the Herzog [soils] report of May 2004 predicted a high rate of future failure and that the Miller Pacific report said that pits had not been dug deep enough to determine the existence of bedrock. He said that it was not that expensive to find out where the bedrock was and he recommended that the Council require further drilling as a condition of approval. He asked that the EIR not be certified until this was accomplished.

Leonard Charles, EIR consultant, said that both Herzog and his geotechnical subconsultant had agreed that additional borings were needed; however, once this was accomplished, and “competent bedrock” had been discovered, all three parties (applicant, EIR consultants and the Town’s geotechnical consultants) had determined that it [dirt moving and removal] was feasible to do and that any negative impacts could be mitigated.

Mr. Charles said that originally the amount of dirt removal of 50,000 cubic yards but it had been increased to 75,000 cubic yards.

Councilmember Berger asked whether the Herzog firm, which he had previously worked with, thought that there was a “reasonable average” of bedrock across the slide. Mr. Charles replied affirmatively. Mr. Berger said that the Herzog firm was conservative in its approach.

Mr. Littman read from a letter from Miller Pacific which stated that “it is not possible to estimate the existing depth to repair landslides.”

Neil Sorensen, applicant's attorney, said that the applicant's geotechnical staff went back and bored down 29 feet and hit bedrock; he said that this supplemental report had been reviewed and accepted by both Miller and Herzog. Mr. Littman asked if that report was in the EIR and was told it was Appendix D.

Mr. Sorensen said that the applicants had met extensively with the Little's. Mrs. Little said that they had had one meeting. Mr. Sorensen said that five or six people came to the public [scoping] meeting.

Vice Mayor Gram closed the public hearing.

Councilmember Berger asked about the estimated decibel levels for the project. Mr. Charles said that up to 80 decibels would occur, but that would be measured at a distance of 50 feet from a piece of equipment, generally. He also said that the decibel levels represented short bursts of sound, such as equipment start-up, and were not anticipated to be at the highest level over long periods of time.

Councilmember Fredericks addressed Ms. Little's question about further mitigation measures. Director Anderson said that once the EIR was adopted, it was not possible to add mitigation measures; however, he said that it was always possible for the Planning Commission or Town Council to add conditions of approval that have the effect of mitigation measures per the Town's General Plan or the like.

Councilmember Slavitz said that he had read the EIR and the Planning Commission minutes and believed that the EIR had addressed the impacts of the project and had identified mitigation measures. He said that once the CEQA requirements had been met, by certifying the EIR, the real work on the merits of the project would begin.

Councilmember Fredericks concurred, stating that this was a limited hearing that focused only on the adequacy of the EIR. She said that the main concerns of the public about the project itself would be addressed at the Planning Commission and Design Review Board hearings.

Councilmember Berger said that as an architect, he utilizes an EIR as an in-depth study that shows the designer what he had to work with for a proper design. He said that a designer might have to come up with ways to address the mitigation measures more profoundly.

Berger said that the Little's were right to worry about landslides, but that after the project was complete, the hillside would probably be more stable. He said he was confident in the reputation of the Herzog firm and that the EIR was "a good brief."

Vice Mayor Gram said that the EIR was a gathering of information and facts; that three engineers had looked at the soils reports; that there was ample time to comment on the merits of the project in future.

MOTION: To adopt resolution certifying the Final EIR, as recommended.  
Moved: Fredericks, seconded by Berger  
Vote: AYES: Berger, Fredericks, Gram, Slavitz  
RECUSED: Smith

Mayor Smith returned to the dais and commenced hearing the regular agenda items.

**6. Recommendation by Town Clerk – Announcement of Pending Vacancies on Town Boards, Commissions and Committees**

Town Clerk Crane Iacopi said that the Mayor was required by Council policy to announce the current and pending vacancies on boards and commissions at the first regular meeting of the new year. She said that interested parties could contact her, or visit the Town's website, to obtain an application and more information.

Mayor Smith announced that there were vacancies, both current and pending, on the following boards and commissions in 2006: Planning Commission, Parks & Open Space, Heritage & Arts, Library Board, Marin-Sonoma Mosquito Abatement Board, and Tiburon-Hilarita Board.

**7. Recommendation by Mayor – Town Councilmember Committee Appointments**

Mayor Smith asked the Council whether any changes were requested on the Committee roster. Council agreed to maintain the status quo; Councilmember Fredericks asked that it be noted that she was president-elect of MCCMC.

**8. Recommendation by Director of Community Development – Adopt Annual Fee Reports**

- a) Annual Reporting of Development Project Fees
- b) Housing In-Lieu Fee Report and Findings

Director Anderson said that the news was good and that the State required that the Town develop the information and make it available to the public.

Council accepted the report.

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

**9. Report by Interim Director of Public Works – Pavement Management Update**

Interim Director Bernardi said that the report could be used for further discussion and budget planning. He also noted that the report showed the change to the new Town goal of 70% PCI.

Councilmember Slavitz asked why one of the charts showed the deferred maintenance continuing to rise at the same time the Town was putting more funds into repairs.

Mr. Bernardi said that deferred maintenance would continue to increase by a certain amount over time and that it was not possible to “catch up.” However, he said that by selecting a PCI index of 70, the Town had “aimed high.”

Council agreed to continued discussion of the item at the Council/Staff retreat on January 11.

### **COUNCIL AND COMMITTEE REPORTS**

None.

### **WRITTEN COMMUNICATIONS**

**Town Council Weekly Digest – December 9, 2005**

**Town Council Weekly Digest – December 16, 2005**

**Town Council Weekly Digest – December 23, 2005**

### **ADJOURNMENT**

There being no further business before the Town Council of the Town of Tiburon, Mayor Smith adjourned the meeting at 9:25 p.m., sine die.

---

PAUL SMITH, MAYOR

ATTEST:

---

DIANE CRANE IACOPI, TOWN CLERK