

**TOWN COUNCIL
MINUTES**

CALL TO ORDER

Mayor Smith called a special meeting of the Tiburon Town Council to order at 6:00 p.m. on Wednesday, December 15, 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, Interim Director of Public Works Bernardi, Director of Administrative Services McVeigh, Project Coordinator Bassett, Town Clerk Crane Iacopi

ORAL COMMUNICATIONS

None.

PUBLIC HEARING

1. **Recommendation by Interim Director of Public Works/Town Engineer and Project Coordinator** – Lyford Cove Utility Undergrounding Supplemental Assessment District
 - a) Consider Proposals to Fund Construction of Underground Improvements
 - b) A Resolution of the Town Council of the Town of Tiburon Requesting Consent of the Board of Supervisors of the County of Marin for Extra-Territorial Jurisdiction to Undertake Special Assessment Proceedings Under Section 10103 of the Streets and Highways Code

Mayor Smith said that the neither the proposals under consideration tonight by the Council nor adoption of the resolution would bind the Town or participants of the district in any way.

Interim Director of Public Works Bernardi gave the staff report. He echoed the Mayor's comments and said that the purpose of the meeting was to consider the various proposals and to receive public comment; also, to adopt the resolution asking the County for extra-territorial jurisdiction as a first step on the path of continuing to move forward; and to preserve the bid with Maggiora & Ghilotti for another 60 days past the expiration date of December 31, 2005.

Mr. Bernardi said that that low bid on the project, submitted by Maggiora & Ghillotti during the second round of bids, was \$1.4 million over the engineer's estimate. He said that after the first round of bids in July, staff went back to the table to do some "value engineering" and reduced the scope of work. Nevertheless, the second round of bids were still high, according to Bernardi, who said that he was told by contractors that the net effect of escalating prices caused the bids to remain high.

The Interim Director said that staff had again looked at ways to reduce the scope of work and had come up with the following options for consideration:

- Eliminate new street lights from the bid (leave existing lights and poles) for a savings of \$110,000;
- Minimize street repairs by reducing the trench patching width from 48 inches to 24 inches for an estimated savings of \$80,000;
- Other minor adjustments

Even with these savings, a significant shortfall remained, according to Bernardi.

The Interim Director addressed the issue of Comcast's portion of the trenching work which had been valued at \$880,000 by the Town but had not been agreed to by the utility at the time of the bidding. He said that the Town was in discussions with Comcast but that it was unclear whether the company would agree to pay the full amount. This might lead to the Town having to sue for the difference, according to Bernardi.

Mr. Bernardi said that another source of funds as yet unpaid was from Sanitary District No. 5 for the relocation of a force main under Mar West Street. He said that the district had not yet agreed to pay this amount.

Mr. Bernardi said that there was a possibility of utilizing Rule 20A funds because Paradise Drive was a main arterial and would qualify for funds under this program. He said that \$180,000 worth of Rule 20A credits had accrued to the Town's account but that it would not be available until 2007 or later, and that the Town could not take an advance on these funds.

Another option staff had considered, according to Bernardi, was reducing the contingency account for the project. He said that each 1% reduction equaled \$38,000. However, Bernardi said that in his experience, there was rarely a project in which there was not some form of unforeseen work. He said that he would not recommend tapping into the contingency fund.

Finally, Mr. Bernardi addressed the question of releasing funds from the bond reserve fund. He said that the County was covered under the "Teeter Plan" which would make cities whole in the event of a default. He said that the real question was what would happen if the project was cancelled.

Mr. Bernardi said that if this happened, the property owners would be entitled to refunds but not in the full amount of the assessment. He said this was due to the fact that some of the funds had already been spent on plans and specifications, bond counsel, and other services. He said that this would result in a continuing assessment over the life of the bonds, even if cancelled, in the amount of \$120 per year per parcel for 30 years. Mr. Bernardi said that he did not recommend this option.

Mr. Bernardi discussed the recommendation by staff to preserve the existing [low] bid. He said that Maggiora & Ghilotti had indicated that they would extend the bid price another 60 days (past December 31) except for the price of materials. He said that these costs continued to rise and that concrete, for example, was expected to reach \$7.00 per cubic yard on January 1. He said that he recommended that the bid time be extended subject to continued negotiations by staff on the material costs.

Mr. Bernardi said that the question remained of how to fund the shortfall. He said that the Town's current undergrounding policy and state law precluded using town funds for the formation of private districts. He said that if the property owners in the district agreed to assessment themselves to fund the difference, it would increase the assessments by approximately \$300 per year.

In order to consider a supplemental assessment, Bernardi said that the first step was for the Council to adopt the resolution asking the County for extraterritorial jurisdiction, receive an engineer's report incorporating the shortfall and spreading the assessment, adopting the report and going to vote.

Councilmember Berger asked why a new engineer's report would be needed. Mr. Bernardi said that the report would recalculate the assessments based on the shortfall.

Mr. Bernardi confirmed this statement and gave an example of an existing \$1,000 per year assessment that would be increased to \$1300 per year if the vote was in favor of a supplemental assessment.

Town Manager McIntyre said that it was important to remember that these numbers were estimates only, based on an "average parcel," and were ball park figures.

Councilmember Slavitz asked how much of the (\$3.8 million) bid was materials versus labor. Mr. Bernardi said that he did not have an exact figure but estimated that it was not more than half.

Councilmember Slavitz asked how the bid would be "frozen." Mr. Bernardi replied that a final number could be negotiated and agreed to anytime within the 60-day period.

Councilmember Slavitz commented on the fact that the bonds had not been sold in the Stewart Drive undergrounding project until after the bids came in. He said that the final costs in Lyford were always understood to be estimates (and referenced the Town policy and 2003 Town Council minutes where the issue had been discussed); however, he said that no one thought the bids would be so much higher in this case.

Councilmember Fredericks asked staff whether the revised costs would be known prior to and if the district members decided to vote for a supplemental bond. Interim Director Bernardi confirmed this statement.

Mayor Smith opened the public hearing by stating that it would be helpful for the Council to get a sense of what people thought about whether or not to move forward with the district. He said that the various cost-saving proposals could be discussed in more detail at another meeting.

Maxine Copeland, senior citizen, resident since 1962, said that she was against a supplemental assessment and that she was willing to wait until 2007 for PGE funding. She suggested that the Town go outside of Marin County to get cheaper bids. She said she derived no benefit from the district.

Councilmember Fredericks noted that Rule 20A funding would not necessarily be available at that time and that it would not necessarily be allocated to Paradise Drive.

Councilmember Slavitz said that while the bids had come in before the bonds were sold in the Stewart Drive district, the property owners had put more “upfront” money into the district as well. He said that the Council reduced the amount of money required from the property owners to fund the initial studies (for Lyford Cove); unfortunately, the bids had not come in as estimated like they had in Stewart Drive. He said that a supplemental assessment was a way of addressing this issue.

Mayor Smith said that two things had occurred: the Town had tried to keep the front end costs down because it was what everyone wanted at the time; that the combined forces of Hurricane Katrina and the war in Iraq had driven prices higher. He said that in his own experience, prices had doubled over the estimates he received to remodel his house.

Gus Strotz, resident since 1959, said that PG&E had gained the benefit of subletting the rights-of-way all those years and that they should pay for the difference (\$1.4 million); said that the Town should take a firm stand on this; said that the Town should not use Harris & Associates (engineers) again because they had already given two bad estimates.

Rick Barberi, resident of Lyford Cove, asked how many Councilmembers lived in the district – (none); said that it was “great” how this had played out; that the project was a “farce” and was for aesthetics only; stated that if you wanted to get “fleeced” you should live in Tiburon.

Mayor Smith commented that the Rule 20A credits were just that—credits, not money—to be used for qualified projects for undergrounding utilities on arterials like Tiburon Boulevard. He said that the Council had recently prioritized the Town's 20A funds but that the Council also had the ability to re-prioritize if it chose to do so. He said that there was a possibility that the credits could be put toward this district in order to shrink the amount of the shortfall but noted that there were other parts of town, such as Del Mar Valley, that also qualified for these credits. He said that because the money was for use to benefit the community as a whole, it had to be used on main arteries.

Knowles Hall, resident since 1961, said that he was against the project from the beginning; that it had been handled poorly; that he believed in majority rule but said that it would help if the costs were borne by the people “above the road” rather than the downhill neighbors (Paradise Drive).

Councilmember Fredericks asked for clarification of this point. She said that it was her understanding that the district would have to be abandoned and re-formed in order to change the method of assessment. Staff confirmed this statement.

Councilmember Berger asked whether a supplemental assessment had to be made on the same basis as the original assessment. Staff replied that the argument was that the assessments were spread based on the benefit derived by the property owner and would remain the same, in this instance.

Councilmember Slavitz asked for the amount of Rule 20A funds spent on the Stewart Drive project. Town Manager McIntyre said that \$100,000 worth of Rule 20A credits had been expended to remove a pole at the intersection of Tiburon Boulevard and Stewart Drive.

Mayor Smith said that even if the district was cancelled and a new one was formed (on a different assessment basis), the property owners would still have to pay \$120 per year on the old district.

Shelly Brown, Lyford Cove resident, said that she had lost power three times during the recent storm; said that she was in favor of the supplemental assessment for the good of the community; that everyone who drove into Old Tiburon saw poles and wires that would be removed; that the benefits would also be derived by their children and grandchildren; that 68% of the property owners had voted in favor of the district.

Rob Ellsberg, Lyford Cove resident, said that he had promoted an undergrounding district in the 70's which had failed even with the Council's allocation of Rule 20A funds; said that an enormous amount of time had been spent on this district and that the people in the neighborhood deserved an opportunity to revisit the issue and vote. He said that he hoped that additional funding alternatives could also be explored but said that costs keep going up now and in the future. He asked that the Council authorize another vote as soon as possible in order to secure the cheapest price.

Ron Becker, Lyford Cove resident, said that the local power outages were rarely a symptom of a local problem but rather with the grid in West Marin. He said that this project made him think of the Bay Bridge [cost overruns], stating that the project was 30% over cost now and asked where would it end.

Mayor Smith said that the contingency fund was built in to try to address this. He acknowledged that the issue of a final cost remained open, pending negotiations on the costs of materials and the like.

Bob Harrison, Lyford Cove resident, said that we even with the existing bid it [the final cost] would still be higher.

Mayor Smith said that the bid cost would be fixed some time within the 60-day period but that there was also a time requirement to send out notices and ballots.

Interim Director Bernardi said that once a [bid] number was fixed, “the contractor will live with it.”

Mr. Harrison said that a larger contingency should be figured into the cost this time around and that he was in favor of doing the project “right” rather than removing or leaving certain poles and smaller road patches and the like; he said that this should be a “Cadillac” of a project.

Councilmember Berger asked for a show of hands for how many people wanted to leave the existing street lights and poles (in order to save \$110,000). Most of the hands were raised in favor of taking them down.

Jim Gerber, recent property owner in Lyford Cove, said that one reason he bought his house was because he heard that the [power] lines were coming down; that this is a “world class town” that required a “world class solution.” He agreed that architects and contractors had been “overwhelmed” lately due to rising prices but that some costs, such as gasoline, were coming down. He said that the [assessment] numbers under discussion compared to the increased property values realized from the district were not significant but that he was concerned about some of the numbers, such as the Comcast contribution, which was close to a \$1 million. He added that people who were in favor of a project usually “don’t come out.”

Councilmember Slavitz said that it was possible that litigation with Comcast could go on for years but that the money would “come back” to the district, after legal costs.

Town Attorney Danforth clarified that the Town was having “amicable” conversations with Comcast but that they were trying to argue why they did not have to pay for the trenching costs.

She verified Councilmember Slavitz’ comment that the money would come back to the district after legal costs.

Councilmember Fredericks added that Comcast was currently lobbying the state and federal governments to take away local control (of their franchise agreements).

Mike McMullen, Lyford Cove property owner, asked how much of the cost overrun was due to the dispute with Comcast. Project Coordinator Bassett said that \$785,000 had been included in the project budget; McMullen commented that it was roughly half of the shortfall.

Mr. McMullen said that he supported moving forward with the adoption of the resolution.

Project organizers Joan Lombardo and Liz Bird said that they appreciated the Town's help in resolving the issues with the district. Ms. Lombardo said that the project started out with a 15% contingency which had been reduced to 10%. She said that she hoped the Town would consider all of the alternatives in order to be fair and reasonable to all of the district members; and that they hoped some sort of compromise could be reached for the best solution.

Liz Bird said that she still thought the district was a great idea and she hoped to see it through.

Mayor Smith closed the public hearing.

Councilmember Fredericks said that there would be plenty of opportunities to discuss the cost-saving alternatives but that she was in favor of giving staff direction to initiate the process that would lead to a vote. She said that there was no advantage to re-bid the project and that we should "re-position ourselves so that all of our options are open."

Councilmember Berger said that the cost savings methods discussed in the staff report, as well as resolution of the Comcast issue, could reduce the shortfall by a million dollars, and that that the Council might be willing to consider using Rule 20A funds for Paradise Drive. He said that he was encouraged by the comments he had heard tonight.

Vice Mayor Gram said that adopting the resolution could not hurt and that there was no cost associated with its adoption. He said that the district members should at least have the right to vote again.

Councilmember Slavitz agreed, stating that the district was a good idea in the first place and still was. He said that the Town would revisit its policy on subscription deposits and that he would be in favor of utilizing Rule 20A credits in this case. He said that even if the town's policy with regard to subscription deposits was revised, there would still be a shortfall in this district.

Mayor Smith said that he was pleased to hear the comments that if the district should move forward, it should be done "right." He said that the Town would consider all of the cost-savings options but if it were his neighborhood, he would want the best job to be done. He said that it was important to use all available mechanisms to shrink the shortfall, including re-prioritizing Rule 20A funds, and that the district should have a good handle on the costs before it went to vote.

MOTION: To adopt resolution requesting consent of the Marin County Board of Supervisors for extra-territorial jurisdiction to undertake special assessment proceedings.
Moved: Berger, seconded by Slavitz
Vote: AYES: Unanimous

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Smith adjourned the meeting at 7:03 p.m., to the next regular meeting scheduled for January 4, 2006.

PAUL SMITH, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK