

**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, February 1, 2006, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

PRESENT: COUNCILMEMBERS: Berger, Gram, Slavitz, Smith

ABSENT: COUNCILMEMBERS: Fredericks

PRESENT: EX OFFICIO: Director of Community Development Anderson,
Interim Director of Public Works/Town Engineer Bernardi, Chief of Police Odetto, Director of Administrative Services Bigall, Administrative & Financial Analyst Stott, Project Coordinator Bassett, Meeting Recorder Creekmore

ORAL COMMUNICATIONS

None.

INTRODUCTION AND SWEARING IN OF NEW POLICE OFFICERS

Police Chief Odetto introduced new Police Officers Tyson Miller and Allen Klemme. After Mayor Smith administered the Oath of Office to the new officers, they were presented with their badges.

APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

Mayor Smith explained that the Planning Commission has experienced complications with processing an application from the Tiburon-Belvedere Tennis Club due to a lack of quorum. He nominated Design Review Board member Liz Bird to serve as an acting Planning Commissioner until a permanent appointment can be made. He said that interviews for two permanent candidates are scheduled for March 1.

**M/S Smith/Berger (4-0) to appoint Liz Bird as an interim Planning Commissioner.
(Absent/Fredericks)**

CONSENT CALENDAR

1. **Approval of Town Council Minutes – February 1, 2006**

Amend the following:

Page 11, paragraph 4, lines 2-3: Change to “that baseball was about having heroes and dreams and that Sam is a hero and can keep our kids’ dreams alive.”

2. **Recommendation by Director of Administrative Services – Accept Town Monthly Investment Summary for December 2005**

3. **Recommendation by Director of Administrative Services & Financial Analyst – Amend Hourly Rate Schedule for Town Staff Cost Recovery**

- a. A Resolution of the Town Council of the Town of Tiburon Adopting a Revised Hourly Rate Schedule for Town of Tiburon Personnel

Director of Administrative Services Bigall indicated that the following title changes have been made to Exhibit A of the resolution: Building Permit Technician, Records Management Coordinator, and Police Captain.

4. **Request by Chamber of Commerce – Special Event Permit for Closure of Portion of Tiburon Boulevard for 23rd Annual Wine Festival, May 13, 2006**

MOTION: To adopt Consent Calendar Item Nos. 1 through 4, as amended.

Moved: Smith, seconded by Berger

Vote: AYES: Unanimous

ABSENT: Fredericks

REGULAR AGENDA

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

Dr. Cromwell updated the Council on the efforts made by the Belvedere-Tiburon Disaster Advisory Council to prepare for a local disaster. He said that current statistics report that there is a 62% chance of a 6.7 Richter-scale earthquake occurring in Marin County in the next 30 years, and that CalTrans estimates that an earthquake of that magnitude would render 50% of the County’s roads impassible. He said that while preparedness had been achieved on a local level but not on a regional one, the group was working with the County of Marin to develop a preparedness plan at a regional level. He also informed the Council that the disaster council is working in collaboration with the Red Cross to develop a plan that will provide CERT training to every household in Belvedere and Tiburon.

Dr. Cromwell said that he had spoken with Richard Pearce, Tiburon Fire Protection District Chief, whose preparedness plans include a rejuvenation of the fire alarm system to alert volunteer fire fighters as well as plans to expand the Belvedere radio ban, 840 AM, to the entire peninsula.

Cromwell cautioned against relying on the federal government in the event of a disaster as they failed to provide a timely and adequate response in the recent Hurricane Katrina disaster. He requested the Council's enthusiastic support and noted that he will be attending the Belvedere City Council meeting next week to request the same from their Council members.

Mayor Smith said that the issue of disaster preparedness has been discussed at recent Mayors and Vice-Mayors meetings and that members of the Council are scheduled to receive CERT training.

Councilmember Berger added that the public had expressed support for disaster preparedness during the recent Town Council elections.

PUBLIC HEARING

6. **Recommendation by Interim Director of Public Works and Project Coordinator – Del Mar Valley Utility Undergrounding Assessment District Hearing on Notice of Intention for Proposed Supplemental Engineer's Report and Authorization to Bid**
 - a. A Resolution of the Town Council of the Town of Tiburon of Intention to Make Acquisitions and Improvements Del Mar Valley Undergrounding Supplemental Assessment District

Mayor Smith informed the audience that the reason for the hearing is to discuss the shortfall between the construction bids and the bonds sold for the project. He said that the supplemental Engineer's Report will give itemized details per property and demonstrate how the shortfall affects the project. He said that it has been the general consensus of the Council to let the citizens who would both benefit and be burdened by the costs to decide whether to move forward with the project. He explained that the Notice of Intention is the first step to authorizing the supplemental report. He asked that anyone who chooses to speak during the public hearing state whether they support or oppose the district.

Interim Public Works Director Bernardi presented the Staff report. He explained that the current engineer's estimate (for Del Mar Valley) is based upon bids received for the Lyford Cove underground utility district. He said ways to reduce construction costs were investigated, such as using Rule 20A Funds, but that at this point in time there are no such funds available for this project. He said that the Town is in discussion with Comcast to determine whether they will pay for any funds related to the project, but that they have been met with resistance. He said that they also investigated keeping transformers above ground, which would result in a savings of \$200,000 and will be bid as an alternate item. He said that the members of the district can choose to cancel the district, but that property owners will still have to pay for funds that have already been expended.

Project Coordinator Basset clarified that the shortfall in discussion is an anticipated shortfall as the Town has not yet received bids for the project. She said that Staff is asking for the authorization to proceed with the supplemental engineer's report as well as authorization to put the project out to bid.

Councilmember Berger said that it is in everyone's interest to move as quickly as possible to voting on the project once the bids have been received.

Project Coordinator Basset said that since Staff is asking contractors to guarantee their bids for a lengthy period of time, they would like to move forward with the public process as soon as bids have been received. She said that the engineer's report will be based on actual bids and gave an overview of the schedule for the public process, which will commence with bidding on March 6.

Councilmember Gram recommended that Staff ascertain whether contractors are willing to hold their bids for 90 days. Project Coordinator Basset said that bid specifications will require contractors to guarantee their bid for 90 days. Mayor Smith recommended that should Staff find contractors unwilling to guarantee their bids for that length of time, they investigate alternative options.

Mayor Smith provided an update on the efforts to discuss the franchise agreement with Comcast. He said that he has been trying to get in touch with the appropriate Comcast officials to determine what the right course of action is, not just the appropriate legal action.

Richard Kendell, Tiburon resident, said that it is important to consider not just the cost to move forward but the cost terminate the project.

Kevin Mostyn asked what the public process was for selecting Harris and Associates as the engineering firm to prepare the engineer's report. He said that any company that under-calculates a project by 45% is disingenuous and that one might think that the project was deliberately low-balled in order for it to pass. Mayor Smith indicated that the Town cannot change the engineering firm midstream and that doing so would require a new engineer to start from scratch.

Mayor Smith explained that the district is in the current situation because the project proponents wanted to follow policies that would allow them to come up with less money upfront. He said that if anyone is trying to assess blame, that there are a number of places to do so, not just the engineers.

Councilmember Berger said that the costs are what they are and that the district can choose to vote either for or against the project.

In response to questions, Project Coordinator Basset informed the Council that that if the contract is awarded in June, the contractor could break ground in 30 days from the date of award.

John Tripp, Tiburon resident, asked why the supplemental report will cost \$25,000. Project Coordinator Bassett said that she could not answer that question but that she will provide that information once she has had an opportunity to get an answer from the engineer.

Mark Gooding, Tiburon resident, asked why the Town foreclosed the benefit point issue. Mayor Smith replied that the benefit assessment points were established at the beginning of the project and that they cannot be changed at this time. He said that the options for the members of the district are to vote for or against the project, but not to change the benefit point formula.

Frank Mulberg, Tiburon resident, referenced California Streets and Highway Code 58.98.6 and said that the supplemental assessment seems inequitable. He asked if the Council has considered seeking a parcel vote based on the increased costs to decide whether they want to move forward with a resolution of intention. He said that it appears that the Council is making the decision and that the decision should be left up to the property owners.

Kathleen Bailey, Tiburon resident, said that she is willing to pay the \$100 in order to determine whether the project will work or not. She asked if the contract will be a fixed price. Mayor Smith replied that hard numbers will be provided when the district goes to vote on the project. Councilmember Gram said that a 15% contingency will be worked into the contract and that the contingency will be refunded to the property owners if it is not used.

Paula Kulp, Tiburon resident, asked what will happen to Del Mar School, as they have the largest parcel in the district. She asked the Council to not be cavalier with property owners' money.

Priscilla Trip, Tiburon resident, said that she is shocked and dismayed at the turn of events. She said that selling bonds based on engineer's estimates rather than contractor's bids makes no sense. She stated that she is disappointed in the disregard shown towards the Town's residents. She said that undergrounding is about views, not reliability and safety and that her property will benefit more from the project than her neighbors. She concluded by stating that she cannot support the project as it stands now.

Gary Runes, Tiburon resident, said that he apologizes for the comments made by fellow audience members.

Valerie Bergman, Tiburon resident, urged the Council to seriously consider the policies in place before any future undergrounding projects are pursued. She said that there was a rush to get the project off the ground and that she has no confidence in the Town's ability to manage undergrounding projects.

Chris Carter, Reed Union School District, said that the school district has always been supportive of the Town's undergrounding efforts. She explained that the California Streets and Highways Code precludes the school from being included in the assessment district. She further explained that should the school be included, they would be facing a \$250,000 assessment that would take

away from the programs for the children. She said that while she supports the efforts of the community, she will continue to be an advocate for the children.

The public comment period was closed.

Mayor Smith thanked the public for their comments. He said that the Council will revisit the Town's undergrounding policy, particularly with respect to the sale of bonds based on estimates. He explained that the policy was recently changed in an effort to reduce upfront subscription costs.

In response to questions, Project Coordinator Basset informed the Council that Harris had waived the fee for the supplemental engineer's report for Lyford Cove, but that Harris had indicated that the Del Mar situation was different, and she was not prepared to address why .

Councilmember Slavitz said that he is very disappointed that Harris waived the fee in one case but is not willing to do so now. He suggested to proceed as directed by Staff and to request that Harris and Associates waive the fee for the report.

Vice Mayor Gram said that he strongly supports the policy to have the members of the district make the decision to move forward, not for the Council to make that decision. He encouraged the members of the district to vote on having underground transformers, as that was part of the original plan for the project. He said that the reason that the policy was changed was in response to the proponents of undergrounding.

Councilmember Berger echoed the comments of his fellow Councilmembers. He also urged that the members of the district vote on underground transformers in order to achieve a high quality project. He added that the Council will review the benefits measurement measures in future projects. He said that the decision is ultimately up to the members of the district and that the Council will assist the district in attempts to keep costs down.

Mayor Smith said that he agrees that the right thing to do is to allow the members of the district to vote on whether the project moves forward.

MOTION: To adopt the resolution of intention to make acquisitions and improvements
MOVED: Gram, seconded by Berger
VOTE: AYES: Unanimous
ABSENT: Fredericks

MOTION: To adopt plans and specifications for the Del Mar Valley Utility Undergrounding Assessment District and authorize Staff to solicit bids
MOVED: Gram, seconded by Berger
VOTE: AYES: Unanimous
ABSENT: Fredericks

7. Report by Associate Planner – Appeal of Design Review Board Approval of Variances for Lot Coverage and FAR at 2 Audrey Court

Councilmember Slavitz recused himself from the item and left the meeting.

Associate Planner Krasnove presented the Staff report. She confirmed that the plans submitted to Council show the 30% reduction in eastern side windows. She said that the project is 26% over the allowed FAR.

In response to questions about the approved plans for the project, Tyler Phillips said that an existing deck remains as part of the plans.

Michael King, appellant, expressed concern over the deck between his home at 6 Audrey Court and the project at 2 Audrey Court. He said that there was originally a 3'x8' deck that was removed and replaced with a 16'x11' veranda surrounded by balustrades and columns. He asked the Council to overturn the (3-2) decision made by the Design Review Board. He said that the proposed variances can not be justified under the Tiburon Zoning Ordinance, and cited Section 4.03.01 from the Zoning Code. He said that 2 Audrey Court was built and remodeled several times over the last 35 years and is not in conformance with the Tiburon guidelines for hillside construction or height control. He said that Mr. Phillips has already listed the property for sale and said that granting the proposed variances will negatively affect property values of neighboring homes due to the impact that the project will have on privacy and views. He expressed concern over the impact that uphill-facing windows will have on the privacy of his home, and that those windows will look directly into his dining, living, and breakfast rooms. He also expressed concern over the additional glare created by the project as well as the increased height of the chimney. He referenced the proposal to raise the wall above the garage door by 2 feet and said that it would make more sense to consistently lower the peak roof to 7 feet, which would maintain a 9-foot master bedroom ceiling. He said that he and other neighbors have strongly requested the reduction of the roof to 7 feet. He reminded the Council that he is not requesting a lowering of the roof but rather a complete denial of the variances. He said that although the plans do not provide grading plans, a need for grading is obvious. He urged the Council to deny the variances on the basis that they do not conform to guidelines and codes as well as the negative impact the approval has on neighboring homes.

In response to questions, Associate Planner Krasnove said that the variance request is for 16% lot coverage and that the allowed maximum is 15%. She said that the project is 1,048 square feet over the floor area guideline.

The Council clarified that floor area exception findings are different than those required for a variance and are set forth in Exhibit 5 of the Staff report.

Tyler Phillips, owner of 2 Audrey Court, urged the Council to deny the appeal. He said that the remodel of the home consists of converting it from a non-descript architectural style to one that is similar to the homes in the immediate neighborhood. He said that the footprint and main roof of

the house will remain the same, but that the siding will be replaced with stucco and that balustrades and windows will be added to achieve a Mediterranean look. He said that the added living space is primarily used to expand the family room and add an office. He said that the new home is more attractive and conforms to the standards of other remodeled houses in the immediate neighborhood. He explained that the unique characteristic of the project is that the added living area is located almost exclusively on the southwest corner where an existing third garage space and carport are being converted to new living areas within the existing footprint and envelope of the home. He said the FAR will increase because there is a slight increase in the size of the deck outside of the apartment as well as a new deck at grade on the east side of the house.

Councilmember Berger clarified that Mr. Phillips meant to refer to lot coverage rather than FAR, and that the FAR is increased because space is being enclosed that wasn't enclosed before.

In response to questions about the fireplace retaining wall, Mr. Phillips stated that the fireplace is at grade, which is approximately six feet below the current level of the driveway. He added that the main floor of the house is being lowered by 3 feet. He said the retaining wall on the other side of the house creates a parking space which is level with the driveway. He noted that a number of homes in the immediate area have received similar variances for increased floor space.

Mr. Phillips highlighted the changes made to accommodate neighbors' concerns, which include relocating the pool and the lower deck, including fountain detail to address water noise issues, designing details for the lighting to address light pollution issues, designing a privacy screen, and redesigning the east yard to restore yacht club views.

Mr. Phillips confirmed for Mayor Smith that from the current house there is no access to the deck. He overviewed the additional changes to the house and said that he has responded to every request except the one to lower the roof. He said that making a change to the roof height is beyond the scope and budget of the project and would require a complete redesign in the style of the house as well as a six to nine month setback. He said that he has met with Mr. King to discuss the issue of the roof. He urged the Council to support the Design Review Board by denying the appeal.

Per Councilmember Gram's request, Mr. Phillips gave an overview of the 30% reduction to the windows.

Councilmember Berger noted that the design of the fireplace is not in conformance with the Town's building code requirement that a fireplace must be two feet above any roof within ten feet. Mr. Phillips said that the fireplace would be converted to gas to bring it into compliance.

The public comment period was opened.

Emmett O'Donnell, Design Review Board Chairman, said that it was the consensus of Board that the variances requested were within reason and that the footprint of the house was not going to be expanded. He said that there was disagreement on the Board with respect to the roof and that the

majority of the Board decided that the roof has been in existence for a long period of time and that if it is going to be lowered it should be done outside of the design review process. He said that the issue of excess floor area was not a big factor for the Board during its review of the application.

Mark Casillas, Tiburon resident, spoke in support of Mr. King's appeal. He said that he has concerns with how the exterior lighting might affect his views of the bay. He described the roofline as a wooden carbuncle and said that it was a mistake to have ever approved its design.

Patricia Walder, Tiburon resident, spoke in support of the Mr. King's appeal said that she was horrified when she stood in the King living and dining rooms and saw how the bulk of the roof affects views. She said that the balcony would be an invasion of the Kings' privacy.

Paul Bimatti, spoke in support of Mr. Phillips' project and said that he is very consistent in addressing neighbors' concerns.

Richard Goldman, Tiburon resident, spoke in favor of Mr. Phillips' project. He said that he lives in a home designed and built by Mr. Phillips and that whether the remodel of the house is for profit is irrelevant. He said that Mr. Phillips was forthcoming, honest, and cooperative during the sale of his home at 8 Audrey Court and that it is not his responsibility to lower the roof.

Denise Wein-Klein, Tiburon resident, said that Mr. Tyler is a very passionate designer and sensitive to neighbors' concerns and environmental impacts. She agreed that it is not Mr. Phillips' responsibility to remedy existing issues with the roof.

The public comment period was closed.

Mr. King confirmed for Mayor Smith that he has lived in his home for 35 years. He said that Mr. Phillips' claim that they met last March and that Mrs. King agreed to the roofline is inaccurate.

Councilmember Berger said that while this is a very large FAR exception, it is well sited in terms of the property. He referenced the language of the floor area exception and read the findings that state "the applicant has demonstrated that the visual size and scale of the proposed structure", which he interpreted as the end result of the total work, "is compatible with the physical characteristics of the site." He said that the large size of the FAR change merits looking at the total changes of the project. He said that he thinks there is ample opportunity within the project to find a balance between the excess FAR that is being added and a benefit to neighbors by making the structure more compatible. He said that he has no doubt that the roof can be designed very attractively to please the neighbors. He said that he would eliminate the veranda, as there is no reason to have a deck in the neighbor's main view, and that a review of the lighting needs to be performed to ensure that the lights are low. He said that given the large size of the addition, he feels that an overall design that is more fair and compatible should be developed. He said that he is in favor of granting the appeal.

Vice Mayor Gram said that he is very concerned about the uphill windows and that based on his own experience he can attest that the light from the windows will affect the views of the upslope residents. He said that Staff does not do an adequate job of examining and controlling light issues associated with remodels. He added that he would eliminate the rear deck and balcony. He said that because the project stays within the footprint of the house he is not concerned with the FAR exception.

Mayor Smith said that he has never seen a situation where the Town's ordinances have been interpreted to give authority to modify parts of a house not subject to an application. He said the roof would never be approved under current standards, but it is a preexisting condition. He said that the Town does not have the authority to deny variances unless an applicant complies with their "laundry list" and does not see that the Town can force a change to the roof through this process directly. He thinks that it is an issue of compromise between the applicant and the neighbors. He said that he is not very concerned about the FAR. He stated that after visiting the King's residence he became very concerned with the deck, stating that it impacts them unfairly and that you could "play football between the two houses." He said that the Town usually goes out of the way to control light pollution issues and is very uncomfortable with the amount of windows on the uphill side of the house, even with the 30% reduction. He agreed that the Town does not always do the best job with reviewing the impact of the sum total of a project's lighting. He said that he would grant the appeal on the basis of lighting, the deck, and working further on the uphill windows. He said that he recommends sending the issue back to the Design Review Board.

Vice Mayor Gram said that while he agrees that the roof is unsightly, he did not comment on it because it is a preexisting condition.

Councilmember Berger said that it is the Design Review Board's and Council's objective to make the best and most compatible homes for Tiburon. He commented that with a remodel of this size, it would have been nice if the King's issues were discussed and dealt with early on. He said that he hopes that the roof takes care of itself.

Mayor Smith was of the opinion that the Town does not have the authority to enforce the preexisting roof issue.

Community Development Director Anderson said that the Council has the option to either uphold the appeal, which would deny Mr. Phillips' application, or to remand the item to the Design Review Board with specific direction to both the applicant and the Board regarding project elements that the Council finds unacceptable. He informed the Council that the applicant would have pay a new fee if the appeal was upheld, but not if the item were remanded.

Mayor Smith recommended that the Town Attorney be consulted to ascertain whether or not the Design Review Board has the authority to make any recommendations on the issue of the preexisting roof.

Councilmember Berger commented that the Design Review Board is much more likely to approve projects, especially those with variances and exceptions, when the neighbors speak in support of the project. He said that he hopes that the Kings are in a better position to support the project when it returns to the Board.

Mr. Phillips stated that he would accept the remand to the Design Review Board

MOTION: To remand the item to the Design Review Board with the specific direction provided

MOVE: Berger, seconded by Gram

VOTE: AYES: Berger, Gram, Smith

RECUSED: Slavitz

ABSENT: Fredericks

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Smith adjourned the meeting at 10:25 p.m.

PAUL SMITH, MAYOR
TOWN OF TIBURON

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK