

**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, April 5, 2006, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

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

ABSENT: COUNCILMEMBERS: None

PRESENT: EX OFFICIO: Interim Town Manager Bigall, Director of Community Development Anderson, Interim Director of Public Works/Town Engineer Bernardi, Town Attorney Danforth, Chief of Police Odetto, Interim Director of Administrative Services Stott, Planning Manager Watrous, Meeting Recorder Creekmore

ORAL COMMUNICATIONS

Alan Littman, Tiburon resident, commented on the rampant growth of Scotch broom on the hills and open space. He said that it can best be removed when the soil is wet and volunteered to be on the committee to remove the broom. He urged the Council to take action to remove the broom and said that the Town should bear the costs to do so. Mayor Smith acknowledged that broom removal is a very important issue and recommended that Mr. Littman contact Interim Town Manager Bigall to discuss the issue further.

Henry Broderick, Del Mar Valley resident, brought a resolution regarding the Del Mar Valley Undergrounding District to the Council's attention. He said that the issue of contingency money in the existing and proposed bond measure has arisen several times and that members of the district would like to know where the money will go if the contingencies do not occur. He requested that the item be scheduled for the next Council meeting. He wants something concrete stated that district members will receive some form of credit if the money is not used. Mayor Smith commented that the issue is important and asked Mr. Broderick to get in touch Interim Town Manager Bigall and Town Attorney Danforth to discuss how the issue can be addressed procedurally.

Mayor Smith said that the Council performed an interview for the current Design Review Board vacancy but that they are not ready to make an appointment at this time.

PRESENTATION

Roger Smith, Tiburon representative to the Marin County Mosquito Vector Control District, stated that 3,000 case of West Nile virus were reported in the U.S in previous year and that no fatal cases in this district were reported. He said that 1,500 square miles have been added to the district and that certain chemical agents were not used in western Marin due to organic farming in the area. Mayor Smith asked what impact the unusually high amounts of rainfall will have. Mr. Smith replied that there will be an increase in standing water and more work for the abatement district but assured the mayor that the district is confident in its abilities to control the mosquito population. Councilmember Berger inquired about avian flu related issues. Mr. Smith replied that it is not a vector-related disease.

CONSENT CALENDAR

1. **Approval of Town Council Minutes** – March 1, 2006
2. **Approval of Town Council Minutes** – March 15, 2006
3. **Recommendation by Interim Director of Administrative Services** – Accept Monthly Town Investment Summary – February 2006
4. **Recommendation by Director of Public Works/Town Engineer** – Authorize Work for Storm Drain Remediation at 6 Mateo Drive & Use of Unallocated Reserves (Budget Amendment)
5. **Recommendation by Director of Public Works/Town Engineer** – Application for TEA funds for Pine Terrace Pathway Improvements (Resolution)
6. **Recommendation by Director of Public Works/Town Engineer** – Approved Budget amendment and authorization to transport cattail vegetation from Railroad Marsh
7. **Recommendation by Interim Town Manager** – Approve Changes to Scope of Work – Fountain Art Project

The Council agreed to remove Item #6 and to combine Item #7 with Regular Agenda Item #8.

Mayor Smith noted that a number of cattails directly behind Town Hall had been removed and noted that there is a cost savings to remove them once they have dried out. He said that he would like the item removed from the agenda to ascertain whether there are any alternatives to taking the cattails to Blackie's Pasture; if there is any chance that debris boxes and a backhoe can be used to facilitate the removal, and if the weather will cooperate with allowing the cattails to dry out.

MOTION: To adopt Consent Calendar Item Nos. 1 through 5 as amended.
Moved: Slavitz, seconded by Fredericks
Vote: AYES: Unanimous

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REGULAR AGENDA

8. **Recommendation by the Director of Public Works/Town Engineer – Fountain Plaza Improvements**
 - a. Approve Plans and Specifications by Pedersen Landscape Architects & Authorize Bids
 - b. Progress Report by Foundation Artists Jeffrey Reed and Jennifer Madden

Jennifer Madden, fountain project sculptor, explained that the main changes to the project is that water will go all the way around the fountain, that she and Jeffrey Reed have donated a larger water weir, and that they are proposing to change the number of sails from five to seven. She noted that the overall height and width of the sculpture will remain the same.

Councilmember Berger commented on the full-size model and said that the new five sail proposal is quite impressive and that the sails are still beautiful and smooth. He noted that the overall size of the fountain will not increase. He explained that the bench revisions improve the impact of the fountain.

Ms. Madden commented on the fountain's lighting and said that small wattage lights, similar to small garden lights, will be used to achieve a dim glow. She explained that the bench, as shown on the model, will remain the same. She noted that there will be three lights on either side of the fountain.

Councilmember Fredericks noted that when the fountain is built, the trees will be young and the fountain will be located in a community that is sensitive to night lighting.

Ms. Madden confirmed for Councilmember Slavitz that the depth of the pool will be decreased from 18 to 3 inches, which is ideal for keeping a placid surface. She said that the surface of the pool will resemble a sandy beach bottom or mud flat with black ripples in the basin.

The Council discussed the issue of voting on the item contingent upon approving the proposal to reduce the number of sails from five to seven. Vice Mayor Gram asked if Ms. Madden could produce a visual representation of the proposed change, which she said she could make available at the end of the public comment period to aid the Council in making a decision at tonight's meeting. Councilmember Berger encouraged his fellow council members to see the full-size model of the sculpture.

Jeffrey Madden, project sculptor, said that reducing the sails to five gives the sculpture a "lightness".

Councilmember Fredericks said that the reduction from seven to five sails is a major design change that should have been brought to the Council's attention prior to the sculptors investing a great deal of time into the change.

Councilmember Berger said that the change was made strictly because it is an aesthetic improvement, not to make the project easier.

Pete Pederson presented the budget for the project and noted Late Mail Item 8(a). He said that one of the more concerning numbers for the project is paving and that he is confident that the actual cost will be much less. He said he stands behind all of the numbers except for paving. He said that all of the elements in the budget are essential to the project.

Councilmember Slavitz asked, with respect to the bench changes, if there will be same net number of places for people to sit. He also asked if the project gets delayed until August 1 if everything else will be delayed. Mr. Pederson replied that many things are already in place and that the timeline for plaza work can be condensed. Mr. Pederson confirmed that there will be the same number of places to sit with the change to the benches. He said that only minimal impacts to the timeline will result from the August 1 extension. He noted that 36" or 48" boxed marina and maple trees will be used for landscaping.

Town Engineer Bernardi stated that the delay is a result of the weather as well as discovering a six-inch high pressure gas main, which delayed the project by 45-60 days. He said that PG&E is ready to begin its demolition by next week.

Councilmember Fredericks asked if the budget is complete and noted that it does not include the cost for the gas pipe. She requested that Staff provide a running balance of project costs.

Ms. Madden noted that three and a half months would be needed (until August 1) if they start next week, and that if they are not able to start next week, they will need additional time. Mayor Smith replied that as a practical matter, he is thinking September 1 would be sufficient. He added that he would like, to the greatest extent possible, to have the area that is to be closed off be confined to the plaza.

Town Engineer Bernardi noted that Council is not being asked to approve the budget but rather for authorization to receive bids on the work. Mayor Smith added that the Council is also being asked to approve an additional 60 days for the project.

The public hearing was opened and closed. There were no comments.

Ms. Madden showed the Council members a digital photo of a 5-sail 1/4-scale mock-up. The Council agreed on the 5-sail sculpture after viewing the photos.

Motion: To approve proposed changes to fountain sculpture
Moved: Fredericks, seconded by Gram
Vote: AYES: Unanimous

Motion: To approve plans and specifications by Pedersen Landscape Architects and to

authorize bids
Moved: Slavitz, seconded by Fredericks
Vote: AYES: Unanimous

Motion: To approve the extension of time to complete the Fountain Plaza Project to August 1, 2006

Moved: Berger, seconded by Fredericks
Vote: AYES: Unanimous

PUBLIC HEARING

9. **Recommendation by Director of Community Development** – Amendments to Chapter 16 of the Town Code (Zoning) establishing a) Residential Multiple Planned/Affordable Housing Overlay Zone Regulations and Development Incentives; and b) Prezoning of an Affordable Housing Overlay within the Tiburon Planning Area
 - a) An Ordinance of the Town Council of the Town of Tiburon Amending Title IV, Chapter 16 (Zoning) of the Tiburon Municipal Code by Making Text Amendments thereto
 - b) An Ordinance of the Town Council of the Town of Tiburon Prezoning Unincorporated Territory in the Eagle Rock/ Bay Vista Portion of the Tiburon Planning Area

Mayor Smith noted that the Affordable Housing Overlay (AHO) was approved at a previous meeting as part of the General Plan process. He explained what the Council is doing at tonight's meeting is to adjust the Town's ordinances to comply with what is already part of the General Plan as well adopt those policies that are required by the State in order to certify the Housing Element. He said that what is being done tonight is not changing any thing that is already part of the General Plan.

Community Development Director Anderson presented Staff report 9(b) and noted that the Town is not contemplating initiating any annexation of unincorporated properties at this time.

Mayor Smith asked if annexations, in general, which once resulted in a tax benefits, are now considered a tax loss. Director of Community Development Anderson confirmed that annexations once resulted in additional revenue to the Town but that they are most often a money loser for the annexation due to tax law changes.

Community Development Director Anderson said that it is important to note that this action establishes zoning should the properties ever be annexed in the Town, but that it does not initiate any annexation proceedings, change any boundaries, or advance any development proposals.

He confirmed for Councilmember Fredericks that the prezoning would only apply if the

properties were annexed and that annexation is not particularly likely.

Councilmember Slavitz asked if the properties were ever to be annexed and a developer wanted to develop the property, would they still need to go through the design review and planning processes. Community Development Director Anderson replied that the developer would be required to go through the precise development plan procedure as well as design review. He confirmed for Councilmember Slavitz asked if even if the housing overlay was accepted, the issue of whether the properties would fall within the Reed Union School District boundaries is not part of the Town's decision.

Planning Manager Watrous presented Staff report 9(a) and noted that one additional change that Staff is recommending to the text is establishing a base density to mirror the General Plan land use diagram density.

Planning Manager Watrous confirmed for Mayor Smith that implementing the programs outlined in the Staff report is required by the State as part of the certification of the Town's Housing Element.

The public hearing was opened.

George Silvestri Jr., attorney for the Bay Vista Neighborhood Association, argued that the Town has a tremendous incentive for annexation and that it has managed to get a conditional green light for its Housing Element if property is designated outside of Town limits as being potential affordable housing. He said that compliance must be determined with what is in Town limits. He said that he is concerned that compliance with State regulations will be achieved through annexation. He noted that LAFCO is precluded by state law from getting involved in land use determination. He said that he has not seen sufficient environmental analysis and questioned why the Town thinks a provision of affordable housing is at the discretion of the property owner.

He said that the locations of the affected parcels was unclear and should be clarified. He also asked that what percentage of sites will be subject to the overlay.

Community Development Director informed the Council that using properties within the Town's sphere of influence is allowed and that the designation of the AHO is shown on maps to scale. He confirmed that what the Council is being asked to do is conform to what was already done in the General Plan.

Town Attorney Danforth said that in regards to CEQA, once the General Plan was adopted, the Town was required to take the actions before the Council tonight in order to implement the General Plan. She said that one could argue that they are not even subject to CEQA because they are mandated by the General Plan and the General Plan was exhaustively studied in the program EIR. She said that with respect to the State housing laws affecting affordable housing, the Town is required to get certification by HCD, which has been conditionally granted to the Town.

Community Development Director Anderson stated that the AHO portion of the property is intended to be an incentive for a developer, such as receiving an increased density bonus, to want to go ahead with a project of that kind. He noted that the State's thresholds for receiving a density bonus are much lower than the Town's. He confirmed that any area with more than 12 registered voters will go to a vote to decide whether a property will be annexed. Mayor Smith added that that town would lose money if there were to annex any properties.

Ed Sotello, Tiburon resident and owner of the property directly adjacent to the project, noted that Pan Pacific gave him a \$1,500 check one year ago to get the project started. He expressed concern over traffic safety issues that may arise should the project be accepted by the Town.

Ralph Meyers, former Tiburon homeowner, respectfully requested that the rezoning amendment be declined with respect to the Strawberry area.

Mayor Smith noted that the item is a state law mandated issue and has nothing to do with wanting to annex properties in the Town's sphere of influence.

Liz Fochs expressed opposition towards any zoning changes in the Bay Vista area.

Eric Friedman, resident of the Bay Vista area, also expressed concern with the Town's rezoning ordinance in Bay Vista.

Bill Duane, Tiburon resident, expressed concern with traffic safety issues. He asked if there has been any exploratory investigation for buying the land as open space.

Jim Allen, manager of the Belvedere Land Company, said that a housing project cannot afford to be built with 60% affordable housing. Mayor Smith informed Mr. Allen that a density bonus is offered to encourage a higher percentage of affordable housing. Community Development Director Anderson confirmed that developers must pay a 15% in lieu fee if they do not want to provide affordable housing for a project.

A Tiburon resident asked what the consequence would be if the Town did not rezone outside of its limits. Mayor Smith replied that the Town would not be in compliance with State law.

Councilmember Fredericks informed the audience that the aim of the item is to make the rezoning consistent with the Town's General Plan.

Linda Galosso, Tiburon resident, expressed concern with the proposed change to zoning. Mayor Smith explained that no zoning changes will occur to County properties as a result of tonight's meeting. He clarified that the rezoning will only come into effect if the property was annexed by the Town.

Mathew Sessions, Tiburon resident, asked why Bay Vista is part of the Tiburon Planning Area if the Town has no interest in annexing it and how often the sphere of influence is reviewed. Mayor Smith recommended that Mr. Sessions contact Community Development Director Anderson with issues regarding the Town's sphere of influence. Councilmember Slavitz explained that LAFCO determines the Town's sphere of influence based on their own criteria.

Corey Bosco, Tiburon resident, expressed dissatisfaction with the Town's noticing on this item. He said that if Bay Vista is annexed, he opposes the rezoning.

Steve Choco, Tiburon resident, said that he opposes the proposed rezoning.

There being no further public comments, the public hearing was closed.

Councilmember Slavitz agreed with comments that the issue of rezoning seems illogical but stated that it is what the Town is required to do. He reiterated that all that the Town is doing is defining an overlay, as mandated by State regulations. He encouraged the audience to contact Peter Banning of LAFCO or Community Development Director Anderson if they have further concerns regarding the rezoning.

Councilmember Berger clarified that that the Council is not saying that no affordable housing will be built, but rather that 15% of housing in Tiburon will be affordable. He said that the overlay is an attempt to "sweeten the pie" and noted that he has discussed with Community Development Director Anderson what it would take to extend the overlay to the Boardwalk.

- a) An Ordinance of the Town Council of the Town of Tiburon Amending Title IV, Chapter 16 (Zoning) of the Tiburon Municipal Code by Making Text Amendments thereto

MOTION: To read ordinance by title only
MOVED: Gram, seconded by Berger
VOTE: AYES: Unanimous

Mayor Smith read, "An Ordinance of the Town Council of the Town of Tiburon Amending Title IV, Chapter 16 (Zoning) of the Tiburon Municipal Code by Making Text Amendments thereto."

MOTION: To pass first reading of the zoning ordinance
MOVED: Gram, seconded by Berger
VOTE: AYES: Berger, Gram, Fredericks, Slavitz, Smith

- b) An Ordinance of the Town Council of the Town of Tiburon Rezoning Unincorporated Territory in the Eagle Rock/ Bay Vista Portion of the Tiburon Planning Area

MOTION: To read ordinance by title only
MOVED: Gram, seconded by Berger
VOTE: AYES: Unanimous

Mayor Smith read, "An Ordinance of the Town Council of the Town of Tiburon rezoning unincorporated territory in the Eagle Rock/Bay Vista portion of the Tiburon planning area."

MOTION: To pass first reading of the rezoning ordinance
MOVED: Gram, seconded by Berger
VOTE: AYES: Berger, Fredericks, Gram, Slavitz, Smith

COUNCIL AND COMMITTEE REPORTS

Councilmember Fredericks brought the Council up to date on the Transportation Authority of Marin and said that \$25 million has been awarded in Federal money to the County for non-motorized projects.

Paul Smith announced that a kayak trip from Blackie's Pasture to Arambaru Island will be held on April 22, Earth Day.

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Smith adjourned the meeting at 9:30 p.m., to the next regular meeting.

PAUL SMITH, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK