

**TOWN COUNCIL  
MINUTES**

**CALL TO ORDER**

Vice Mayor Gram called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, April 19, 2006, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

**ROLL CALL**

PRESENT: COUNCILMEMBERS: Berger, Fredericks, Gram, Slavitz

ABSENT: COUNCILMEMBERS: Smith

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

**ORAL COMMUNICATIONS**

There were none.

**CONSENT CALENDAR**

1. **Approval of Town Council Minutes** – March 20, 2006
2. **Recommendation by Chief of Police** – Special Event Permit Request to Close Paradise Drive for Classic Car Show on June 18, 2006
3. **Recommendation by Director of Public Works/Town Engineer** – Authorize Bids for 2006 Street Rehabilitation Program
4. **Report by Interim Town Manager** – Accounting of Assessment District Funds and Disposition of Surplus

Vice Mayor Gram recommended the following changes to Section 22, Disposition of Surplus Funds:

- Paragraph 1, line 3: Include “less any reserves for potential claims and liabilities, i.e. litigation.”

5. **Recommendation by Interim Town Manager** – Appoint Chief Matt Odetto to Marin Emergency Authority (MERA) Board to replace Alex D. McIntyre as Town Representative

MOTION: To approve Items 1-5 as amended.  
Moved: Fredericks, seconded by Berger  
Vote: AYES: Unanimous  
ABSENT: Smith

### **REGULAR AGENDA**

6. **Recommendation by the Director of Public Works/Town Engineer** – Approve Budget Amendment and Location for transport of cattail vegetation from Railroad Marsh – *continued from April 5, 2006*

Interim Director Bernardi presented the Staff report. He said that based on Staff's review, it is recommended that the Council consider the second option, which is to have Mill Valley refuse haul the cattail vegetation to their facility.

Councilmember Slavitz noted that the \$23,000 figure seems high and asked if it includes debris boxes and other associated costs. He asked if the expectation exists that Blackie's Pasture will continue to be used for mulching.

Mr. Bernardi replied that the figure does include debris boxes. He said that the issue of using Blackie's Pasture for mulching will be a future discussion item and that historically it has been used by the Department of Public Works for staging and mulching.

Leslie Doyle, Tiburon resident, urged the Town to discontinue dumping vegetation at Blackie's Pasture. She said that she and members of Blackie's Brigade had worked very hard to restore Blackie's Pasture and that there was debris other than plants being dumped there.

Councilmember Berger said dumping at Blackie's Pasture is inappropriate and should be discontinued.

Councilmember Slavitz said that he agrees with Ms. Doyle and Councilmember Berger and that a policy should be made to discontinue the use of Blackie's Pasture as a site for dumping and mulching. He said that if there is any way that the vegetation that is currently at Blackie's could be picked up, he would like to see that that is done.

7. **Recommendation by Director of Public Works/Town Engineer** – Lyford Cove Utility Undergrounding Assessment District
  - a) Resolution Authorizing Issuance of Limited Obligation Improvement Bonds, Lyford Cove Utility Undergrounding Supplemental Assessment District

b) Award of Construction Contract – Maggiora & Ghilotti

Interim Director Bernardi presented the Staff report and noted that this is the last step before construction on the project begins.

Councilmember Slavitz asked if the bonds are not completely sold, can the Town buy them back and resell them.

Mark Pressman, representing bond underwriter Wulff, Hansen & Co., explained that the nature of the bond purchase agreement is that Wulff, Hansen would commit to buy all of the bonds up to a maximum of \$2,180,000. He said that the cash payment period is not over until Monday, April 24, 2006, and the amount of bonds to be purchased will be determined at that time.

Mr. Pressman explained that the following changes have been made to the bond purchase agreement: (1) the odd-lot bonds, which will be less than \$5,000, have been moved into the last maturity fund and (2) interest rates ranging from 5 to 5.25% have been put in the bond purchase agreement.

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

MOTION: To approve the bond purchase agreement  
Moved: Fredericks, seconded by Berger  
Vote: AYES: Unanimous  
ABSENT: Smith

MOTION: To adopt the resolution authorizing the issuance of the bonds  
Moved: Slavitz, seconded by Berger  
Vote: AYES: Unanimous  
ABSENT: Smith

MOTION: To award construction contract to Maggiora and Ghilotti  
Moved: Berger, seconded by Slavitz  
Vote: AYES: Unanimous  
ABSENT: Smith

8. **Recommendation by Director of Community Development** – Tiburon Glen Project and Mitigation Plan (PD #22); Review of Second Addendum to Certified EIR; 3700 Block of Paradise Drive Near Norman Way; Xanadu Property Holdings, Inc., Owners; AP No. 39-241-01

- a) A Resolution of the Town Council of the Town of Tiburon Amplifying and Supplementing Provisions of the Tiburon Zoning Ordinance with Respect to Planned Development #22 and Adopting a Mitigation Monitoring Plan

Assessor Parcel Number 39-241-01

- b) A Resolution of the Town Council of the Town of Tiburon Adopting Findings related to the Tiburon Glen Project (PD #22) Pursuant to the California Environmental Quality Act  
Assessor Parcel Number 39-241-01

Community Development Director Anderson presented the Staff report. He said that Condition #20 has been revised to reflect the direction of the Council with respect to off-site tree mitigation.

Councilmember Fredericks commented that it seems odd to approve a project without an approved mitigation plan. She asked how that works under CEQA law.

Bob Berman, project EIR consultant, said that it is fairly common to have mitigation measures become a condition of approval. He said it puts the burden back on the applicant that they will need to develop a specific mitigation design prior to proceeding with the project. He said that he is confident that there are adequate off-site mitigation sites in order to implement the mitigation measure consistent with what is in the EIR. He said that there are times when mitigation measures are incorporated into a project prior to approval, but that that usually happens with redesign projects. He explained that this mitigation measure does not affect the project layout itself, but rather it will require an off-site approval.

Councilmember Fredericks expressed concern that unless there is a finding of overriding consideration, the Council could hypothetically find itself in the position of having approved a 3-lot project only to find that the proposed mitigations don't really restore habitat. She asked if the trees are planted at the recommended distance from each other, how many can be replanted onsite.

Mr. Berman said that he is confident that the mitigation design is feasible and will be successful.

Melissa Denena, project biologist, said that a number of trees proposed to be planted onsite have 12-foot centers. She said that an increase to 15-foot centers has been proposed for some of trees on-site, which would result in a slight increase of the number of trees that would need to be planted off-site. She said that there is more than enough land to accommodate the off-site mitigation. She confirmed that the report stated that 15-foot centers are ideal for successful mitigation. She said that some of the on-site trees will be planted with 20-foot centers.

Councilmember Fredericks said that she would have liked specific data regarding the number of trees that are to be planted on and off-site, including their respective centers, to have been made available to the public.

Councilmember Berger asked what the detailed planting plan is. He asked what the process is for approving the plan.

Mr. Berman said that a detailed planting plan has not been designed, noting that Staff's recommended condition is that the Council approve a final detailed restoration plan prior to issuing a grading permit.

Community Development Director Anderson explained that no subdivision improvement drawings have been made yet and that a detailed tree plan will come to the Council for review and approval at that time.

Councilmember Slavitz asked if Council is being asked to determine the location that the applicant will approve.

Community Development Director Anderson replied that Council is being asked to determine whether there are enough sites to find the mitigation feasible. He said that any direction regarding what sites the Council prefers would be appreciated and would allow the restoration ecologists retained by the Town to narrow their focus.

Councilmember Slavitz asked if there is enough space at the Hillcrest site to perform the all of the off-site mitigation.

Ms. Denena confirmed that sufficient suitable area had been identified. She said that if not all of the off-site mitigation could be achieved on the [Hillcrest] site, then the Eagle Rock site would be her next preference, where there is more than adequate room to perform the off-site mitigation.

Councilmember Slavitz asked if that plan would return to Council before final approval was granted.

Community Development Director confirmed that Council would review the plan after Staff performed a preliminary review. He said that the only reason the Gilmartin possibility was left in the plan was because it offered broom removal. He said that except where there might be broom removal credit, there is a 3 to 1 ratio for tree replacement.

Councilmember Fredericks asked if Eagle Rock is Town-owned open space. Community Development Director replied that the Eagle Rock and Hillcrest sites are Town-owned open space.

Vice Mayor Gram opened the public hearing.

Scott Hochstrasser, representative for Xanadu Property Holdings, pointed out that Area 4 is a 60-acre site and that if they could plant 70 trees per acre, a total of 4,200 trees could be planted on the property if the entire site was used.

Mr. Hochstrasser said that 504 trees are needed to mitigate the removal of 168 trees on 27 acres of land, 72 % of which are unhealthy. He said that in order to retain or restore woodland habitat, the Council would ask that the 41 healthy trees be replaced at the 3 to 1 ratio.

Councilmember Berger asked if the sites have other protected habitat.

Don Blaney, landscape architect for the project, said that he does not know whether there are other protected habitats present at the recommended sites. He said that he thinks the trees should be planted at 20-foot centers to provide an optimal condition for the success of the trees. He said that if necessary, more than 315 trees could be planted on the Tiburon Glen site. He said that he intends on saving as many of the healthy trees as possible.

Councilmember Slavitz asked how the consultants arrived at the recommended 15 and 20-foot centers.

Ms. Denena said that her firm recommended that a 15-foot or greater distance be provided as it will allow the trees to flourish better than a 12-foot center planting scheme.

Anne Norman, Tiburon resident, said that in the past week, four 80-foot bay laurel trees have fallen over in the area adjacent to where the third house is proposed. She suggested that the stability of the soil be investigated.

George Landau, Tiburon resident, said that a great deal of hard work went into acquiring the Town's open space and that the Town should work hard to preserve it. He said that if broom continues to be a problem, an ongoing broom removal plan should be implemented. He urged the Council to pay close attention to the ecology of the Town's open space.

Betsy Little, Tiburon resident, said that she has concerns with the off-site mitigation. She said that she would prefer that all mitigation be performed on-site and reduced to a less than significant level if possible.

Councilmember Slavitz said that if all of the trees were crammed on-site, ideal centers could not be achieved and the trees would not flourish.

Mr. Berman said that he has not seen any evidence supporting the prospect that all of the mitigation could be performed on-site.

Randy Greenberg, Tiburon resident, said that all the literature that she has seen supports 20-foot centers. She said that she is very concerned about deferring the design of the off-site mitigation plan is critical to this project. She said that habitat is being lost and that the Council needs to look at areas where it is appropriate to replant the trees. She said that while she agrees that some areas on Eagle Rock could accommodate some replanting, it cannot accommodate hundreds of trees. She urged the Council to defer approval of the mitigation plan as insufficient information has been provided in order to make a decision; or to approve the environmentally superior 2-unit

project. She requested that the Gilmartin site be removed from the list as it does not satisfy habitat restoration.

Vice Mayor Gram asked if the Council moves forward with the approval, and the applicant returns with off-site mitigation the Council is not happy with, would the Council be required to issue the grading permit.

Town Attorney Danforth replied that the application is not complete unless it is accompanied by a satisfactory tree mitigation plan. She said that if the Council does not decide that the sites are appropriate, the applicant will not be permitted to move forward with the project.

Councilmember Slavitz asked why the Council would be compelled to approve the mitigation plan at all.

Town Attorney Danforth said that it would be extremely rare for an applicant to be required to submit plans with that level of detail at this early stage in the approval process.

Community Development Director Anderson said that it is too early in the process to determine which trees will be removed. He noted that it is likely that fewer trees will be removed than what is being presented as part of the mitigation plan. He said that at this point, Council would want to know if the sites being considered can easily accommodate the maximum number of trees expected to be replaced as part of the project.

Councilmember Fredericks expressed discomfort with the lack of data provided.

Community Development Director Anderson said that EIRs are not intended to produce perfect information but rather to provide enough information to make a decision and have an understanding of the impacts. He said that Staff has a fairly good idea of the magnitude of the tree loss. He assured the Council that Staff has a good understanding of the sites being considered for off-site mitigation. He said it is the objective of the restoration ecologist to focus replanting in areas that would be best for off-site mitigation.

Councilmember Fredericks asked for more information about the northerly sites. She said that she is not in favor of the Gilmartin site.

Ms. Denena said that there is an abundance of area available for mitigation planting. She said they focused on areas that are dominated by broom or are very disturbed and noted [in response to an earlier question by Councilmember Berger] that the grasses growing on the Eagle Rock and Paradise Drive sites are non-native species. She said that for the Eagle Rock site, she envisioned broom eradication and tree planting along the drainage swale that would be contiguous with existing woodlands and not create fragmented pieces of woodland. She said that water lines from existing sources would be used to establish the new trees. She explained that a very detailed monitoring plan, which would include remediation measures, would be in place to ensure the success of the trees.

John Kunzweiler, Tiburon resident, asked the Council to consider how far off-site is acceptable for mitigation. He said that in the spirit of CEQA, mitigations should directly relate or impact the environmental impact that is being done. He said that Eagle Rock is becoming the preferred place to “fix problems” with unavoidable impacts. He expressed concern about future development using off-site mitigation and cautioned about the precedent that the Council will be setting for those projects.

Town Attorney Danforth said that CEQA does not require that each impact be mitigated at the same site that it is caused, which would often be impossible. Rather, you must look at the nature of the impact and determine if the impact is addressed. She said that if the offsite mitigation is addressing the impact of regional habitat loss, then she would say that CEQA permits mitigation at a regional level.

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In response to comments regarding offsite impacts on public land, Scott Hochstrasser said that many local municipalities request off-site mitigation. He said that they are trying to create a healthy forest on public lands, which seems consistent with the Town’s policy on preserving and protecting public lands.

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Helen Lindqvist, Tiburon resident, said that she has been eradicating broom on open space for nine years. She said that the applicant is trying to create oak forests were they don’t belong and that drainage ditches may not be the best site for planting.

Vice Mayor Gram closed the public hearing.

Councilmember Berger said that he feels comfortable that forest for forest mitigation can be accomplished. He said he would like the applicant to strive to keep as many trees on their property as possible. He said that he is comfortable that mitigation details can be worked out at a later time. He said that he would like to investigate whether grasslands could be replaced instead of oak woodlands. He said that while he agrees that there are better sites for off-site mitigation, he disagrees that the Gilmartin site could not benefit from woodland restoration. He said that the Council is not looking at preserving grasslands as opposed to oak forests, but rather is interested in keeping broom from choking out the existing vegetation on open space. He said that as far as what distance is appropriate, anywhere in the Tiburon sphere of influence is acceptable for this type of off-site mitigation.

Councilmember Fredericks said that the project is aimed at mitigating loss of habitat, not at broom eradication. She said that broom eradication is important in the sense that it will allow the new vegetation to flourish. She would like to see new oak trees planted in a contiguous pattern with existing woodland. She said that the Paradise Drive area is an adequate site to consider for off-site mitigation. In response to general fears raised about open space, she mentioned that the open space plots being considered were not acquired through open space bond issuance but through exactions from developers. She added to Councilmember Berger’s comment by stating that the chosen for off-site mitigation should be the same kind of habitat as the one impacted by the project.

Councilmember Slavitz added that per the EIR, off-site remediation is acceptable and Staff and the applicant have done a good job at identifying appropriate off-site mitigation.

With regard to the Gilmartin site, Slavitz said that he believes that there is more than adequate space at the Paradise and Eagle Rock sites, and that Condition #20 should be revised to reflect this by deleting references to the Gilmartin Drive sites. He said that he would like to add that the trees should be planted as far apart as practicable to encourage that they flourish.

Vice Mayor Gram said that the Town will continue to preserve open space, not destroy it. He said that he will not feel pressured to accept the applicant's proposal until they present the right one.

MOTION: To adopt A Resolution of the Town Council of the Town of Tiburon Amplifying and Supplementing Provisions of the Tiburon Zoning Ordinance with Respect to Planned Development #22 and Adopting a Mitigation Monitoring Plan as presented, with the one modification that reference to the Gilmartin Drive sites be deleted from Condition #20

Moved: Berger, seconded by Fredericks

Vote: AYES: Unanimous  
ABSENT: Smith

MOTION: To adopt A Resolution of the Town Council of the Town of Tiburon Adopting Findings related to the Tiburon Glen Project (PD #22) Pursuant to the California Environmental Quality Act

Moved: Berger, seconded by Slavitz

Vote: AYES: Unanimous  
ABSENT: Smith

## **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) Rezoning of an Affordable Housing Overlay within the Tiburon Planning Area

Vice Mayor Gram opened and closed the public hearing. There were no comments.

Councilmember Berger noted that the Council can add additional aspects to the Affordable Housing Overlay, but that this is something that had to been done in order to comply with State standards.

MOTION: To read ordinance by title only  
MOVED: Berger, seconded by Slavitz  
VOTE: AYES: Unanimous  
ABSENT: Smith

Vice Mayor Gram 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 adopt the ordinance  
MOVED: Gram, seconded by Berger  
VOTE: AYES: Berger, Gram, Fredericks, Slavitz  
ABSENT: Smith

- 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

MOTION: To read ordinance by title only  
MOVED: Berger, seconded by Fredericks  
VOTE: AYES: Unanimous  
ABSENT: Smith

Vice Mayor Gram read, "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."

MOTION: To pass adopt the prezoning ordinance  
MOVED: Slavitz, seconded by Berger  
VOTE: AYES: Berger, Fredericks, Gram, Slavitz  
ABSENT: Smith

**10. Report by Building Official – Appeal of Fines for Expired Building Permit and  
Reactivation Fees Appellant**

Appellant: Abraham Valentino  
Project Address: 121 Sugarloaf Drive  
AP No. 58-313-03

*Continued at Appellant's Request until June 7, 2006*

**COUNCIL AND COMMITTEE REPORTS**

Interim Town Manager Bigall reintroduced Nick Nguyen, the new Town Engineer/  
Director of Public Works, whose first day of employment was April 17, 2006.

Councilmember Fredericks provided a report on the City/County Planning Committee, formerly known as the County-wide Planning Agency. She said that the members have formulated their list of priorities and mission statement and that the committee will meet quarterly to address various sub-regional issues. Fredericks said that they will require either a TAM member or an alternate to serve on the committee.

**ADJOURNMENT**

There being no further business before the Town Council of the Town of Tiburon, Vice Mayor Gram adjourned the meeting at 9:10 p.m., to a special meeting scheduled for May 8, 2006.

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TOM GRAM, VICE MAYOR

ATTEST:

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DIANE CRANE IACOPI, TOWN CLERK