

**TOWN COUNCIL  
MINUTES**

**CALL TO ORDER**

Mayor Smith called the special meeting of the Tiburon Town Council to order at 7:00 p.m. on Wednesday, May 8, 2006, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

**ROLL CALL**

PRESENT: COUNCILMEMBERS: Fredericks, Gram, Slavitz, Smith

ABSENT: COUNCILMEMBERS: Berger

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

**ORAL COMMUNICATIONS**

None.

**PUBLIC HEARING**

1. Recommendation by Director of Public Works/Town Engineer – Formation of Del Mar Valley Undergrounding Supplemental Assessment District

Mayor Smith read the following statement:

**Before I open the hearing**, are there any of you who have Assessment Ballots that you wish to present. If you do, please give them to the Clerk now. If you do not want to give your ballot now, you can wait until the end of the hearing and I will remind you at that time.

The public hearing is now open and we will proceed as follows:

**First.** There will be a summary of the project and the proposed financing by staff and the consultants.

**Second.** I will then accept question and comments from the public. In asking questions and stating your views, please come forward to the speaker's podium, announce your name and address and identify the property you own or represent in the proposed assessment district.

**Third.** When there is no further public comment, I will again ask for any remaining Assessment Ballots and then close the public hearing. No ballots may be submitted after the hearing is formally closed. After that, we will take a brief break to allow the Clerk time to open and tabulate the Assessment Ballots. When that is done, we will announce the results.

**Fourth.** Based on the results of the balloting, the Council will discuss the matter and determine how to proceed.

If the Council decides to proceed, we will consider and adopt the *Resolution of the Town Council of the Town of Tiburon Adopting Engineer's Report, Confirming the Assessment, Ordering the Improvements and Directing Related Actions*.

a) Project Summary

Interim Director of Public Works Dave Bernardi said that this was the culmination of a series of meetings that had been held for the formation of the district, including a property owner's advisory meeting earlier in the evening. He said that tonight was the final public hearing that would determine whether the district would be formed or not, based upon the vote.

Mr. Bernardi said that if 50% of the ballots were in favor, the Council could take action to move forward; if it fell short, the process would stop here.

District Engineer Joan Cox, Harris & Associates noted that the boundaries of the supplemental district were the same as the original Del Mar Valley Assessment District. She said that the total proposed assessment is \$3,173,222, which represents a reduction (from the previous engineer's report) of \$6,778.

Ms. Cox said that the property located at 1 Tanfield Road, which was not included in the assessment district, had been allocated special benefit from the proposed undergrounding. She said that this property takes its utility services and its main access from Tanfield Road, which is not part of the undergrounding project. Because this property has a secondary access point on Hacienda Drive, according to Cox, it had been deemed to receive half the benefit from aesthetics and half the benefit from safety.

The District Engineer said that based on this criterion, its assessment allocation for the supplemental district is (\$6,778); this would result in a reduced assessment for the properties in the Hacienda Drive area of approximately \$200 dollars, and the Noche Vista properties' assessment would be reduced by between \$55 and \$100, due to their lesser benefit allocation.

Councilmember Slavitz asked whether 1 Tanfield would also be assessed for the original district. Ms. Cox said that it was too late to assess the original district; its benefit was being allocated, however, and that amount of benefit had been reduced from the Hacienda Drive properties.

With this change, District Engineer Cox said that she believed that the proposed assessments were in proportion for the properties within the assessment district.

b) Public Hearing

A member of the public asked if the outcome of the election was based on 50% of the parcels voting, or 50% of the vote.

District Engineer Cox explained that the ballots were weighted in proportion to the assessment amount shown on the ballot. She clarified that the vote represented the amount of the assessment rather than the assessed [property] value. Additionally, she said that only ballots that had been received would be counted.

Kevin Mostyn, reading from a statement he presented to the Council, expressed concern about his ballot envelope being transparent and the contents visible. In addition, he said that he had observed June Strunk recording numbers off of the ballot envelopes at Town Hall. He said that Town staff had provided the envelopes to Ms. Strunk at the front counter and then left her alone with them "for a minute or so." He also described a scene wherein a staff member was confused about whether or not Ms. Strunk could take a replacement ballot away. He asked that the ballot envelopes be declared tainted; that the election be cancelled, and that a new set of ballots be issued for the election.

Councilmember Slavitz asked Staff whether there was a problem with looking at the ballot envelopes. Town Attorney Danforth replied that the only issue raised by Mr. Mostyn that might be a problem was whether the ballots were left unattended by reception desk personnel. The Town Attorney said that generally speaking, there was not a problem in looking at the exterior of the envelope because it was a public record and could not be reasonably withheld.

Councilmember Slavitz said that he understood the voting record was public and that if someone wanted to check to see how a person actually voted, they could do so. The Town Attorney confirmed this statement.

Vice Mayor Gram asked Mr. Mostyn whether he had followed up with the Town Clerk to see if he [too] could record the numbers on the ballot envelopes. Mr. Mostyn replied that he had not.

District proponent June Strunk asked to reply. She explained that she or [district proponent] Hank Broderick came to Town Hall to look at the ballot envelopes every day in order to keep track of whether their supporters had voted or not. Ms. Strunk said that it never occurred to her to look at the envelopes more closely. She also explained about picking up a replacement ballot for Mrs. Petri, who had requested one but could not drive to Town Hall to pick it up.

A resident of Geldert Drive said that she had held her own envelope up to the light to make sure that she had signed the ballot. She said that the ballot was visible through the envelope.

Marvin Breen, stating that he had voted in favor of every school bond and tax measure within the Town and was “not a malcontent,” said that he felt the vote was tainted. He urged the Council to take an envelope, press it down, and see how someone voted. He said that because of this, “these people” would have had an opportunity to see how someone voted and would also have had an opportunity to speak with someone who had voted against the district and urge them to cast another vote.

Mayor Smith asked Mr. Breen how seeing someone else’s ballot envelope would affect him. Mr. Breen responded that he could imagine a proponent or opponent calling the property owner and pressuring them to change their vote.

Councilmember Slavitz asked Mr. Breen if he’d spoken to anyone in the district who had been pressured to change his or her vote. Mr. Breen replied that he had not, although he said that he had not spoken to anyone other than his neighbors. Councilmember Slavitz said that a wider audience was present tonight and could speak to this issue.

Councilmember Fredericks asked Staff if records were kept of people asking to change their ballots. Town Clerk Crane Iacopi first explained the assessment ballot process and how it differed from a regular election, wherein ballots were never viewed by the public.

The Town Clerk then said that replacement ballots were requested for a variety of reasons, by residents claiming to have never received them, or having lost them, or just wanting another ballot. She said that they were either mailed out to the requesting party or picked up at Town Hall by the person requesting it, a spouse, or in this case, one of the proponents.

Ms. Crane Iacopi said that the number on the upper left-hand corner of the envelope corresponded to an assessment [parcel] number in the engineer’s report, and that this number was used by the proponents to determine whether a ballot for a property had been received. She also said that it was a way for her to determine whether a ballot had been received when a property owner made an inquiry; she showed an example of someone in the audience who had asked whether his ballot had been received and she found the corresponding number on the envelope.

The Town Clerk said that she did not keep a list of everyone who had requested a replacement ballot for reasons other than withdrawing their ballot in order to change their vote, because she did not always know the reason for the request. She noted that someone had come in to Town Hall that day to change their vote and she had given their original ballot back to them.

Sue Morris, 38-year resident of Del Mar, said that she was appalled by the challenge on June Strunk’s and Hank Broderick’s integrity and that it was not proper to impune them.

Ms. Morris said that she herself had run for office and stated that everyone in the country had the same right to work toward ensuring that something passed in an election. She said that it was proper and legal to see who had voted in this election.

Paula Kulp, 31-year resident of Del Mar, said that she had no idea that she could look at the sealed envelopes at Town Hall prior to the vote count. She said that she “grew up” with the notion that ballots were kept secret; she questioned whether the project was handled legally and ethically from the beginning. Ms. Kulp also said that a neighborhood was comprised of more than just “wires and poles.”

Ken Barber agreed that there had been a “heavy lobby” both for and against the project. He urged the audience not to waste time and money on more lawsuits. He said that that all residents had had ample time and opportunity to vote and urged the Council to move forward with the undergrounding.

Betsy Wright said that undergrounding was a critical factor in her family’s recent decision to purchase a home in Del Mar area. Mrs. Wright also noted that her family paid more money, “north of \$2 million,” because they thought the lines were coming down.

Doris Eberts, stating that she was one of the original homeowners in Del Mar area, said that the neighborhood needed a “facelift” and asked people to support the project. She said that living in the neighborhood “comes with a price,” but noted that the proposed assessments were only one or two percent of the value of the homes. She urged everyone to “put something back into the neighborhood.”

Jean Bonander handed out a copy of Government Code Section 53753 which states that the contents of assessment ballots shall be concealed after they are sealed, and that the public agency can provide envelopes in which to return them. Bonander said that nothing in the section talked about handling the envelopes, or whether or not markings were allowed, in Proposition 218 elections.

Ms. Bonander suggested that in this case, the contents of the ballots might not have been concealed before the ballots were opened; she said that while she “absolutely assumed that nothing happened outside of the realm of propriety,” she was concerned that a reasonable doubt had been created about securing the vote. She asked the Council to continue the public hearing, under Section 53753.

Ms. Bonander said that it had never dawned on her that the envelopes would be provided to opponents or proponents, stating that they did not become a public record until after the ballots were counted. She suggested that if people had questions about the vote, they could ask to view their own ballot and envelope after the votes were counted.

Ms. Bonander noted that the costs of undergrounding were very high, in her case \$50,000 if she

paid immediately and \$150,000 if she paid over time. She said that each family had to weigh the value of the benefit, and whether it was affordable out of their discretionary income. She said she had heard that in some cases it might make the difference of whether someone could afford to stay in their home.

Finally, Ms. Bonander asked for clarification on the deduction coming out of the contingency for the perceived value at 1 Tanfield Road and asked if the property owner would pay for that. Interim Town Manager Bigall replied that the Town had requested and would require District Engineers Harris & Associates to repay the contingency fund the exact amount of the assessment.

Ms. Bonander asked if the Town Manager thought that any other properties might qualify for such a deduction. Ms. Bigall replied that she did not.

Mayor Smith asked the Town Clerk to bring a random ballot envelope to examine to see if the ballot contents were visible. Town Clerk Crane Iacopi delivered the box of ballots to the dais.

After examining an envelope, Vice Mayor Gram said, "I can't tell how that person voted." Mayor Smith concurred, as did Councilmember Fredericks.

The Town Councilmembers examined different envelopes to see if the ballot contents were visible and concluded that they were not.

Councilmember Slavitz asked the Town Clerk if the voting records would be posted on the Town website. Town Clerk Crane Iacopi said that the day after the vote, a print-out of who voted and how was available to any member of the public, upon request.

Del Mar Valley Homeowner's Association President Jim Taggart said that he was for undergrounding because it would improve the neighborhood; that it would protect his investment in his home and increase its value; that it would make everyone "richer" whether they voted for it or not.

Mr. Taggart said that he was a working resident nearing retirement age but that he liked the neighborhood and would like to see it improved. He said that he was disappointed in the tenor of the evening and said that he hoped people could have a longer view and put their animosity behind them. He said that the opportunity to put the utilities underground would not come again.

Roger Smith gave the following example of how the numbers on the ballot envelopes were used. He said that when June Strunk had looked at the ballot envelopes and realized that his vote was not in, she told a neighbor who came and told his wife. Mr. Smith said that he then went to recast his ballot at Town Hall.

Brian Strunk thanked his wife June, and Hank Broderick, for all their hard work in organizing the undergrounding effort. He said that change was difficult but that he hoped this process might

lead to even more proactive changes.

Mr. Strunk said that while it was easy to criticize the process, there would never be a plan that everyone thought was “fair.” He said that costs had doubled since the Stewart Drive project but that the increase over time was proportionate to the rising value of the homes in the area.

Mr. Strunk said that Del Mar would be a “second-class neighborhood” without undergrounding and urged those who planned to vote no to consider changing their vote.

Another resident asked if the discussed property enhancement as a result of undergrounding meant that the property would be re-assessed by the tax collector.

Mayor Smith said that a property would be reassessed only if it were sold. Town Attorney Danforth added, “or in the case of a serious remodel.”

Priscilla Tripp said that she was concerned about the integrity of the process; she said that the government code section referred to by Ms. Bonander required the envelopes to be in a form that concealed their contents. She said that state officials would be concerned about this, as well.

Mayor Smith asked where the envelopes came from; District Engineer Cox said that they were printed by Harris & Associates, along with the ballots. Mayor Smith asked if they were the same ones used [by Harris] throughout the state. Ms. Cox answered affirmatively.

Councilmember Slavitz asked whether the Town Attorney saw any improprieties.

Town Attorney Danforth said that some people had testified tonight that they were able to see the contents of the ballots, either by holding the envelope up to light or by making large, repeated x’s. However, she noted that the Council had examined some of the ballot envelopes and had not been able to see the ballot results inside; she said that in the majority of cases, the contents could not be seen and even if there were an exception, she thought that the process would pass muster.

Ms. Danforth also noted that the ballots would be available for public inspection, once opened, and that any resident who wanted to inspect their ballot for discrepancies could do so.

Mayor Smith asked if the ballot envelope met statutory qualifications.

Bond Counsel Scott Ferguson, Jones Hall, said that the ballot envelope and the procedures that he had discussed with the Town Clerk were reasonable under Government Code Section 53753. He said that Proposition 218 landowner elections were based on the assumption that people were not committing fraud; otherwise the procedures would be different.

Frank Mulberg said that he had a problem with the handling of the ballots. He reiterated that the government code said that the ballots must be concealed; he asked bond counsel to explain why

there should be any identifying mark on the envelope.

Mr. Mulberg said that the problem was not whether the ballots were supervised or not. He claimed that they were not public documents until they were opened and tabulated; he said that only at that time could a member of the public look at the ballots. He said that the integrity of the process had been tampered with even though no direct allegations had been made [of ballot tampering].

In this case, Mr. Mulberg said that a ballot had not been concealed because it was in a translucent envelope. He noted that the information sheet attached to the ballots said that the voter was required to use the envelope supplied by the town or their vote would not be counted. Mr. Mulberg said that the Council should cancel the election and put forth another ballot.

William Cox, 38-year resident, said that the ballot question was “ridiculous” and was an attempt to delay the process. He said that he had worked for the undergrounding and urged that the ballots be counted tonight in order to determine if the district should proceed.

Hawthorne Terrace resident Kathleen Bailey also spoke in favor of formation of the district. She said that the ballot handling issue was a “red herring;” that this was a grass roots effort and unlike a presidential or gubernatorial election, the votes were published. She said that anyone could check to see if their vote was correctly reflected after the fact.

Ms. Bailey said that undergrounding was different from remodeling, for instance, in that it required a group effort. She said that she had studied construction cost data since 1980 and that costs had not declined over time. She said that undergrounding would compliment the beauty of the area and she urged a vote in favor of the district in order to take the poles and wires down.

c) Request final submittal of ballots to the Town Clerk

Mayor Smith requested that anyone who would like to submit or change a ballot should do so at this time. Several residents submitted ballots or requested replacement ballots and submitted them to the Town Clerk. Thereafter, Mayor Smith closed the public hearing.

### **ADJOURNMENT – TO CLOSED SESSION DURING BALLOT COUNT RECESS**

### **CALL TO ORDER FOLLOWING CLOSED SESSION**

Mayor Smith resumed the hearing on the Del Mar Valley Undergrounding Supplemental Assessment District.

d) Town Clerk Crane Iacopi made the announcement of the results of ballot election.

She stated that that 56% voted in favor of the Del Mar Valley Utility Undergrounding

Supplemental Assessment District and 44% had voted against it.

Mayor Smith congratulated the proponents and asked for consideration of the resolutions.

- i) A Resolution of the Town Council of the Town of Tiburon Ordering Changes and Modifications – Town of Tiburon, Del Mar Valley Utility Undergrounding Supplemental Assessment District

MOTION: To adopt Resolution Ordering Changes and Modifications

Moved: Slavitz, seconded by Gram

Vote: AYES: Unanimous

- ii) A Resolution of the Town Council of the Town of Tiburon Adopting Engineer’s Report, Confirming the Assessment, Ordering the Work and Acquisitions and Directing Actions with Respect thereto – Town of Tiburon, Del Mar Valley Utility Undergrounding Supplemental Assessment District

MOTION: To adopt Resolution Adopting Engineer’s Report, etc., above

Moved: Fredericks, seconded by Slavitz

Vote: AYES: Unanimous

Mayor Smith commented that it had been “a long haul;” that some people were happy and some were not. He said that he was glad to see that the undergrounding was getting done.

Councilmember Slavitz thanked Staff for the extra amount of energy and effort it took to get to this point.

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

*Siciliano v. Town of Tiburon*

*Mulberg, Bonander v. Town of Tiburon*

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

**CONSENT CALENDAR**

2. **Approval of Town Council Minutes** - April 5, 2006
3. **Approval of Town Council Minutes** - April 19, 2006
4. **Recommendation by Interim Director of Administrative Services** – Accept March 2006 Town Investment Summary
5. **Recommendation by Director of Community Development** – Approve Professional Services Agreement for Traffic Mitigation Fee Program

6. **Recommendation by Chief of Police** - Approve Professional Services Agreements with County of Marin
  - a) Dispatch Services
  - b) RMS (Record-keeping) Services
  
7. **Recommendation by Interim Town Manager** – Add Belvedere-Tiburon Joint Recreation Department as Insured under Town’s Liability Insurance Program
  
8. **Recommendation by Belvedere-Tiburon Library Agency** - Support of Proposition 81 – Library Bond
  - a) A Resolution of the Town Council of the Town of Tiburon in Support of Proposition 81, Library Construction Bond

MOTION: To adopt Consent Calendar Item Nos. 1, 2, 3, 4, 6 & 7; Item No. 5 continued.  
 Moved: Slavitz, seconded by Fredericks  
 Vote: AYES: Unanimous

**APPOINTMENTS TO BOARDS, COMMISSIONS & COMMITTEES**

- Heritage & Arts Commission

The Council noted that both applicants were well qualified and were also involved with the Landmark’s Society.

MOTION: To appoint Ida Mae Berg to the Heritage & Arts Commission.  
 Moved: Slavitz, seconded by Gram  
 Vote: AYES: Unanimous

- Design Review Board

MOTION: To appoint Cathy Frymier to the Design Review Board.  
 Moved: Slavitz, seconded by Fredericks  
 Vote: AYES: Unanimous

**ADJOURNMENT**

There being no further business before the Town Council of the Town of Tiburon, Mayor Smith adjourned the meeting at 9:15 p.m., to the next regular meeting, scheduled for May 17, 2006.

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PAUL SMITH, MAYOR

ATTEST:

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DIANE CRANE IACOPI, TOWN CLERK