

TOWN COUNCIL MINUTES

CALL TO ORDER

Mayor Collins called the special meeting of the Tiburon Town Council to order at 6:30 p.m. on Monday, December 7, 2009, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

PRESENT: COUNCILMEMBERS: Collins, Fraser, Fredericks, O'Donnell, Slavitz

PRESENT: EX OFFICIO: Town Manager Curran, Town Attorney Danforth,
Information Technology Coordinator Monterichard,
Town Clerk Crane Iacopi

ORAL COMMUNICATIONS

None.

Mayor Collins welcomed Council members Fraser and O'Donnell to their first meeting. He said that the Consent Calendar would be heard at the conclusion of the public hearing.

CONSENT CALENDAR

1. **Cypress Hollow Playground Renovation Project** – Adopt Resolution accepting project and authorize filing of Notice of Completion (Director of Public Works/Town Engineer Nguyen)

PUBLIC HEARING

1. **Town Participation in Marin Clean Energy Program:** Review of Marin Energy Authority Contract for Renewable Electric Power; Final Decision Whether to Remain in, or Withdraw from, the Marin Clean Energy Community Choice Aggregation (CCA) - (Town Manager Curran, Town Attorney Danforth)

Town Manager Curran made the following remarks to introduce the item.

“This Special Meeting of the Town Council is to allow the Council to hear from presenters and the public, and to decide whether Tiburon should participate in the Marin Clean Energy CCA program or withdraw from membership in the Marin Energy Authority.

Dawn Weisz of MEA is on hand to describe the contract the Town Council is being asked to consider. A representative from PG&E, Ontario Smith, is present to offer their view of the proposed contract.

As part of this process, the Marin Manager Association commissioned an independent review of the contract to provide completely independent advice to our respective councils. Bill Monson of MRW & Associates is here this evening and will briefly summarize the conclusions of the analysis his firm conducted.

By way of brief overview: On December 19, 2008, Tiburon and other Marin public agencies formed a new Joint Powers Authority: the Marin Energy Authority or MEA, composed of one elected representative from each member jurisdiction. Mayor Collins is Tiburon’s member on the MEA Board.

MEA’s goal is to address state mandates to reduce greenhouse gas emissions and increase the supply of renewably-generated power for the county. MEA members intend to promote the development and use of a wide range of renewable energy sources and energy efficiency programs at competitive rates for customers.

MEA’s initial and most significant effort is a community choice aggregation (CCA) program to supply electric power to customers. Council has already been informed about this process, which resulted in the release of an RFP on May 7, 2009 for electricity supply. This competitive solicitation resulted in 12 bids for power with prices in the expected range described in Marin’s CCA business plan, which in turn were whittled down to three for contract negotiations and now one contractor is recommended: Shell Energy North America. The power costs projected would be at or below PG&E’s projected rates for the light green option (starting at 25% renewable energy and growing to 50% in four years). The 100% renewable energy deep green option would also be available for a premium above PG&E’s projected rates. MEA interim director Dawn Weisz is on hand to review the contract provisions with you.

On October 21, 2008, the Council heard an extensive presentation on the proposed contract from Ms Weisz and Supervisor Charles McGlashan. The Council also heard numerous public comments, both supporting and opposing Town participation in the CCA program.

On November 5, 2009, the MEA Board approved and released a final draft contract for power purchase, triggering the 90-day review period for participating agencies.

The MEA Joint Powers Agreement provides that any party may withdraw its membership prior to the MEA’s execution of the contract by giving at least 30 days advance written notice of its election to do so. Staff expects that MEA will execute the contract with an energy service

provider on February 4, 2010. The calendar tells us that this would require notice to withdraw by January 5, 2010, but the MEA board has acted to extend that deadline to January 13.

Regarding Benefits and Risks: both are associated with remaining in the Marin Energy Authority for this program. Benefits include the promise of a minimum of 25% renewable energy sources for electrical generation for participating customers, with an expected rise in that percentage over time to 100%. Public power has a long and successful history in California and the country, so the notion of a public agency governing the development and procurement of power is neither new or unusual. Because public power agencies by definition do not have to make a profit for shareholders, they are often able to provide power at lower rates than privately-held companies.

There are risks associated with this proposal as well. As the MRW report points out, costs could be higher – or lower – for MEA power relative to PG&E’s rates. MEA will set its initial rates after PG&E’s rates are approved for the upcoming year, but thereafter, PG&E may be able to drop its rates below MEA’s (although they may not set special rates for Marin County). A drop in gas prices will cause effective rates for the CCA to rise temporarily. The converse is also true: if gas prices rise, costs will drop for CCA customers. The point is that these are unknowns at this time, as are PG&E’s future rates. Bill Monson of MRW & Associates will make a brief presentation and be available to address Town Council questions about the risks associated with this endeavor. I want to stress that MRW & Associates was engaged to evaluate risk – they were not asked to evaluate potential benefit from the program.

It is important to note that residents in Tiburon can only participate in the CCA if Tiburon remains in the Marin Energy Authority JPA. In that event, they will automatically become CCA customers unless they choose to ‘opt out’ and remain with PG&E. Many notices will be sent to inform customers of this choice.

If Tiburon withdraws from MEA, Tiburon electric customers may not participate in the CCA and will have no alternative to PG&E as their power provider. This element alone creates a powerful argument for remaining in MEA: doing so affords customer choice; dropping out eliminates customer choice.

Regarding financial impact, the Joint Power Authority, Marin Energy Authority, was constructed so as to insulate all member agencies from any financial exposure to the CCA. Ratepayers, not taxpayers, form the financial basis for the CCA and that is where the CCA must turn for its resources.

In conclusion, if the Town Council takes no action, Tiburon will remain in the Marin Energy Authority. If the Council wishes to withdraw from MEA, an affirmative vote calling for withdrawal is required. It is therefore recommended that the Mayor, at the end of the evening’s discussion, inquire if any member of Council wishes to make a motion to withdraw.

If Council so wishes, it may also elect to revisit this issue at its January 6, 2010 Town Council meeting.”

Mayor Collins introduced Supervisor McGlashan, who urged the Council to stay in MEA and not be swayed by arguments to the contrary. He said the question before the Council, in evaluating whether or not to withdraw from MEA, should be whether there were any risks so “irksome” or dangerous that would preclude allowing the ratepayers of Tiburon to have a choice in their purchase of electricity. McGlashan said that seven peer reviews could not find any irksome or dangerous risks associated with moving forward with community choice through MEA.

Dawn Weisz, interim MEA Director, followed Supervisor’s McGlashan’s statement with an up-to-the minute report from the MEA board meeting earlier in the day. She said that the Board had prepared a response to the Grand Jury report opposing the decision to move forward with MEA. She said that they had also voted to extend the withdrawal deadline for municipalities until January 13, 2010.

The Mayor then introduced PGE representative, Ontario Smith, who said in his presentation that there were several flaws in the proposed venture, such as the unknown of what rates would actually be, and warned of its possible failure and the associated risks. He said that PG&E had been serving customers in Marin for over 100 years and was acting in their best interest in questioning the viability of MEA.

Mayor Collins asked for a presentation from Bill Monson, the independent analyst retained by the Marin Managers’ Association to evaluate the MEA business plan.

Mr. Monson addressed several questions raised by Mr. Smith in his presentation, as well as other issues. He stated that he had worked for PG&E for 8.5 years in a variety of capacities. He agreed that PG&E did not profit from what it sold but from what it owned. He said that if MEA could build its own resources, it could “unwind” from the contract with its supplier. He said that PG&E fixed its rates with its providers at the end of the contract, just as MEA would do; he noted that PG&E bought renewable energy from sources like CAL PINE (geysers) just like MEA would. He said that the energy market was a complex one but noted that MEA had and would hire sophisticated technical consultants to advise the Board in its decision-making.

Monson said that after extensive review of the proposed MEA business plan and contract, there were no fatal flaws. He said that there were nonetheless some risks (and unknowns) associated with the contract, namely, the transmission congestion charges, the PG&E exit fees, and the departing load charges.

Monson said that MEA had only negotiated congestion revenue rights for one year from PG&E, and suggested that they should ask for pricing at the point of supply as well as the point of delivery. With regard to the opt-out risks, he said that it was good that MEA would bear the load (in the newest version of the contract) for its customers who decided to opt out during the initial

“opt-out” period. But he said that there was a risk associated with the cost of future exit fees which would be subject to the volatility of natural gas prices. For instance, Monson said that if gas prices were low, it would mean high exit fees. He recommended that MEA explore some sort of hedge versus high exit fees to shield customers from this risk. Monson said that the departing load charges had the same problem (as the exit fees), and the question was whether MEA could meet or beat PG&E pricing.

Mr. Monson said that these policy issues should be addressed by the MEA Board.

Councilmember O’Donnell thanked Mr. Monson for clarifying the question of congestion surcharge fees.

Councilmember Fredericks asked Mr. Monson to define a “fatal flaw.” Mr. Monson said that it meant, for example, finding a way to place unexpected costs on the customers. He said that this was not the case.

Fredericks asked if the PG&E exit fee in the pricing could be manipulated, and whether it could be manipulated regionally [to target Marin County]. Mr. Monson said that a lot of different people reviewed these prices which were set system-wide, not regionally.

Vice Mayor Slavitz asked Mr. Monson if there was a risk that the opt-out charges would be borne by the municipalities. Mr. Monson said that this was a legal question that had not been evaluated by his company in the scope of its services. However, he commented that buying “green power” would help insulate municipalities from the volatility of natural gas prices and might aid them in budget planning.

Town Attorney Danforth said that state law specifically allows Joint Powers Authorities to insulate their members from the financial liabilities of the JPA, and that the MEA Agreement contained exactly that protection.

Vice Mayor Slavitz asked if there were any other risks to the Town that the Town Attorney could comment upon. Ms. Danforth said that there might be tort liability because that issue had not been fully evaluated by the courts, but that was probably also barred by the JPA.

Mayor Collins opened the hearing to public comment.

The following people spoke:

- Maxine Copland, Paradise Drive, said the Town should avoid the mistakes it made in the undergrounding districts and not join the MEA; she said no one she knew had heard of MEA and that she would opt out of the program;
- Bill Lindqvist, resident, said MEA was a commercial enterprise being undertaken by a public entity; he said the JPA language could be changed and that the risks of underwriting the start-up costs might change with it; said he was concerned that the board

was comprised of elected officials and there were no independent members; stated he would opt out of the program;

- David Barker, Lagoon View Drive, referenced his list of questions, previously submitted; said he concluded that the MEA would not achieve what it set out to achieve and that there was a better way to achieve a reduction in greenhouse gas emissions; said there were some risks, such as regulatory and counter-party risks, that had not yet been evaluated; he encouraged the Council to withdraw from MEA and join SEED and focus on long-range plans for energy efficiency;
- Cheryl Ross, manager for Cecilia Place homes (Ecumenical Housing Association), said that that organization had implemented a “green” energy program; she urged the Council to stay in MEA, stating that it was the single most impactful action they could take to reduce greenhouse gas emissions and that it would place choices about energy production in the hands of the community, rather than shareholders;
- Judy Cinicero, Via Los Altos, “eco-green real estate agent,” said she liked the idea of choice but wondered if MEA would be stuck with Shell Oil as its sole provider after five years; she also questioned what the incentive was for PG&E to “green” its energy sources if 80% came from nuclear power and 20% from other sources;
- Rebecca Collins, Fairfax resident, said that PG&E’s “carbon free” energy sources such as hydroelectric power did have emissions associated with them under new standards; said that nuclear power and disposal was dangerous; said that the qualifications of the CPUC board members were not technical, either; she said that local energy sources were preferable and were available now, as in the Sonoma geysers;
- Helen Lindqvist, resident, said that people had cut back their water consumption and could also cut their energy consumption; she challenged the idea of global warming and said that studies showed that we are actually in a cooling trend for the last 10 years; said that CO-2 was not a dangerous gas and that it was ridiculous to think so; said that Shell Oil had publicly stated they were ending all new investment in wind, solar, and hydro energy sources, and would concentrate on biofuel instead; she said concentration on biofuels had caused world-wide food shortages; she questioned whether a 20-person board at MEA was something the County could afford.

Mayor Collins asked MEA Director Weisz to respond to some of the issues raised during the presentations and public comment portion of the hearing, in particular, to respond to David Barker’s written comments, the Grand Jury report, and the PG&E presentation. He noted that written responses to the Grand Jury report from the MEA Board) were available to the public.

On the question of whether the language of the joint powers agreement (JPA) could be changed, Ms. Weisz said that it in fact could be, but that any change would require a full vote of each city or town council.

Mayor Collins closed the public hearing.

The Council then made their remarks that were strongly in favor of remaining in the JPA. There was no motion to withdraw.

Councilmember Fredericks said that she had attended meetings on the formation of the Marin Energy Authority since 2008, and that no new issues had emerged tonight. She said that she understood the questions of risk that had been raised, and the risk associated with the process of forming the energy authority, but she said that the MRW [Monson] report had confirmed that there were no new risks or fatal flaws. She said that MEA was capable of hiring experts and competent technical staff to manage the business end.

Fredericks said that the benefits of Marin Clean Energy were that the County could generate its own revenues to meet the greenhouse gas omission reduction goals set by AB 32, that that it would help the County qualify for certain funding relating to these reduction programs. She said that the Town should remain a member of the JPA.

Vice Mayor Slavitz said that he too had heard nothing new that would warrant a decision to withdraw from MEA. He said that the risks had been extensively evaluated both to the Town and to the customers. He said that he concluded, after legal review, that the risks were minimal to the Town. Slavitz said that in evaluating the risks to ratepayers, it was important to think about the costs of continuing to use non-renewable energy sources. He said that we could not go on forever burning fossil fuels, and that that Marin Clean Energy was a way to move forward in that direction.

Councilmember O'Donnell echoed Slavitz' remarks, and said that pressing for greater renewable energy would benefit the ratepayers in the long run. He said that the risks were small and that this plan would give customers a choice and that he would vote to remain in the JPA. O'Donnell did state that he was concerned about the "back end" of the business plan. He said that there was a certain amount of hubris in thinking about becoming an energy producer and floating a \$400 million bond. Rather, O'Donnell said that he would like to see MEA retain its broker status and become a marketer and distributor of renewable energy, which he referred to as the "Nike strategy."

Councilmember Fraser said that he had attended the orientation meetings for new council members and the public workshop the previous week in Mill Valley. He said that he, too, supported reduction of greenhouse gas emissions and renewable energy and that MEA represented a long-term solution. He said that in his experience in business internationally, choice created competition which was desirable.

Mayor Collins thanked Mr. Barker for his thorough and thoughtful analysis. He said that he agreed with him on the importance of supporting energy efficiency programs moving forward. He also agreed that the board members of MEA were not energy professionals but that they had technical advisors and professional staff. He said that the Monson report had answered many of the questions that were raised about the efficacy of the business plan. He also said that he agreed with Councilmember O'Donnell about the "back end" of the plan and said that his comments would be evaluated by the Board more fully. He said that the contract with Shell Energy was a means to an end and that the contract was a start. He said that the "end game" was to reduce emissions and that the contract would start with a percentage of renewable energy and end with

100% renewable energy. He said that remaining in the JPA would allow the residents of Tiburon to have a choice in its energy production sources and that he was in favor of letting the ratepayers choose.

The Mayor recommended that a final decision not be made tonight, as noted in the introductory remarks.

Councilmember Fredericks asked if the matter could be brought back in January as a Consent Calendar item. Council concurred that this was a good approach.

Mayor Collins noted that any member of the Council or public could ask for the item to be taken off Consent for additional comment.

Matter continued to January 6, 2010.

CONSENT CALENDAR

1. **Cypress Hollow Playground Renovation Project** – Adopt Resolution accepting project and authorize filing of Notice of Completion (Director of Public Works/Town Engineer Nguyen)

MOTION: To adopt Consent Calendar, as written.

Moved: Slavitz, seconded by Fredericks

Vote: AYES: Unanimous

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Collins adjourned the meeting at 10:27 p.m., to the next regular meeting of the Council scheduled for January 6, 2010.

RICHARD COLLINS, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK