

**TOWN COUNCIL
MINUTES**

CALL TO ORDER

Mayor Fredericks called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, February 18, 2009, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

PRESENT: COUNCILMEMBERS: Berger, Collins, Fredericks, Gram

ABSENT: COUNCILMEMBERS: Slavitz

PRESENT: EX OFFICIO: Town Manager Curran, Town Attorney Danforth, Director of Administrative Services Bigall, Planning Manager Watrous, Assistant Planner Phillips, Director of Public Works/Town Engineer Nguyen, Chief of Police Cronin, Town Clerk Crane Iacopi

Prior to regular session, the Council convened at 7:00 p.m. for a closed session.

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Section 54956.9(a))

Wayne et al. v. Town of Tiburon

CLOSED SESSION ANNOUNCEMENT

Mayor Fredericks announced that an emergency item was added to the agenda. She said that the Town had been served today with a lawsuit and therefore there was not adequate time for regular notice of the item. Mayor Fredericks said that the Council voted unanimously to authorize defense of the suit. She also said that direction was given to Counsel regarding the *Wayne* case.

ORAL COMMUNICATIONS

None.

CONSENT CALENDAR

1. **Town Council Minutes** – Adopt minutes of February 4, 2009 (Town Clerk Crane Iacopi)
2. **Construction Noise on Saturdays and Noise from Tree Work on Weekends and Holidays** – (Director of Community Development Anderson)
 - a) Final adoption of ordinance amending Title IV, Chapter 13, Section 13-6 of the Town Code to modify hours of construction and use of heavy equipment allowed pursuant to a building permit
3. **Sign Ordinance** – (Town Attorney Danforth/Director of Community Development Anderson)
 - a) Final adoption of ordinance amending and replacing Chapter 16 of the Town Code pertaining to signs (Town Attorney Danforth/Director of Community Development Anderson)
 - b) Consider adoption of resolution establishing policies for signs on Town property and on the Public Right-of-Way
4. **Belvedere-Tiburon Library Expansion Project** – Approve Services Agreement for Preparation of an Environmental Impact Report (Director of Community Development Anderson)
5. **Metal Beam Guardrail Replacement Project** – Award of contract to A-1 Septic Construction for replacement of guardrails in various locations (Director of Public Works/Town Engineer Nguyen)

Mayor Fredericks said that Item No. 3(b) was being removed from the Consent Calendar. She also noted that the two ordinances that had passed first reading at the last meeting were set for adoption on Consent Calendar by a roll call vote.

MOTION: To approve Consent Calendar Item Nos. 1 through 5, as written, with the exception of Item No. 3(b).
Moved: Berger, seconded by Collins
Vote: AYES: Berger, Collins, Fredericks, Gram
ABSENT: Slavitz

3. **Sign Ordinance** – (Town Attorney Danforth/Director of Community Development

Anderson)

- b) Consider adoption of resolution establishing policies for signs on Town property and on the Public Right-of-Way

Town Manager Curran said that there had been an ongoing discussion with the real estate community in particular about the placement of signs on the public right-of-way. She said that two changes to the times signs were allowed in the public right-of-way were contemplated: One change would ensure consistency with the new sign ordinance and the other would extend the hours that signs were allowed on Wednesdays.

Ms. Curran recommended that Section 7(B) of the resolution be amended to state that signs would be allowed on Sundays between the hours of 12:30 and 5:30 p.m. (changed from 5:00 p.m.), and on Wednesdays from 10:00 a.m. until 4:00 p.m. (changed from 2:00 p.m.).

MOTION: To approve the recommended changes and adopt the resolution, as amended.
Moved: Collins, seconded by Berger
Vote: AYES: Unanimous
ABSENT: Slavitz

PUBLIC HEARING

1. **Design Review Appeal** – Consider appeal of Design Review Board decision to approve a Site Plan and Architectural Review to construct a new single-family dwelling at 5035 Paradise Drive (Assistant Planner Phillips)

Project Site: 5035 Paradise Drive
Assessor Parcel No.: 038-031-01
Owner/Applicant: Helene Marsh
Appellants: Greg Borton and Grace Wei
Appellants' Address: 5045 Paradise Drive

Assistant Planner Phillips reviewed the appeals procedure and gave the staff report.

Phillips said the applicant, Helene Marsh, had submitted a request for construction of a new single-family home on the property located at 5035 Paradise Drive. He said that the new, two-level home would replace the existing dwelling on the site, and would include three bedrooms, a two-car garage, laundry room and storage room on the lower level, as well as a master bedroom suite, guest room kitchen, dining room and living room on the upper level. Phillips noted that it was the first application filed to comply with the Town's new "Green Building" ordinance that was adopted by the Council late last year.

Assistant Planner Phillips said that the application was first reviewed by the Design Review

Board on December 4, 2008.

Phillips said the closest neighbor to the project, Grace Wei, 5045 Paradise Drive, stated that the mass from the second story of the new house would adversely impact her home. She said that views from the kitchen and other primary living spaces would be completely blocked. Phillips said she objected to the idea of the proposed house gaining views at the expense of lost views from her property.

Phillips said that architect Michael Heckmann spoke on Ms. Wei's behalf and suggested alternative placements on the site for the new house, noting that there was room to place portions of the house in the foreground and to the rear of the property.

Also at that meeting, Phillips said that David Santi spoke on behalf of Steven Scarpa, owner of the home at 6 Cibrian Drive. Mr. Santi expressed concerns that the proposed home would block water views from Mr. Scarpa's primary living space. Mr. Santi suggested lowering the home to avoid this.

According to Phillips, the Board concluded that the views from Mr. Scarpa's home would not be substantially impacted by the design of the proposed home but that Ms. Wei's views would be. The Board suggested moving the house on the site and lowering the height of the roof. The application was continued to the January 15, 2009 meeting.

At the January 15 Design Review Board meeting, the applicant reviewed changes that had been made to the plans—shifting the house six feet west and towards the rear, to be more out of the way of the Wei/Borton view corridors, noting this was the maximum distance from the road allowed by the Tiburon Fire Marshall. The applicants also proposed reducing the roof height by four feet, and eliminating a kitchen exhaust element from the roof.

Phillips said that Wei/Burtons contended at the meeting that these were only minor modifications and that there were other options that had not yet been explored. Phillips said that the Board consensus was that these were significant compromises made by the applicant and suggested that trimming of some of the trees and shrubs would also help to open the slot views still impacted by the design.

Phillips said that Board voted 3-1 in favor of approving the application, with Boardmember Wilson dissenting. The vote included an additional condition requiring the applicant to add landscaping and fencing to the boundary area between 5035 and 5045 Paradise Drive, he said.

Phillips said that the owners of 5035 Paradise Drive, Grace Wei and Greg Borton, filed a timely appeal of the Design Review Board decision on two grounds:

1. That the new home did not comply with the Design Guidelines for Hillside Dwellings in regard to view blockage from 5045 Paradise Drive; and

2. The option of installing an additional fire hydrant to allow for repositioning of the home on the site was not fully discussed by the Design Review Board.

Mr. Phillips outlined staff's response to the grounds of the appeal:

1. The view from the Wei/Borton property can be described as a panoramic view and the new home at 5035 Paradise Drive would impact a lower corner of this view toward Paradise Cay. The removal of a fir tree would open the view up even more. He further described the process by the Board to evaluate the hillside design of the new home.

2. The proposed location of the new home is the maximum distance from Paradise Drive as allowed by the Tiburon Fire Marshall for emergency access to the home without the installation of a fire hydrant.

Councilmember Gram asked whether this was a [water] pressure issue or whether a hydrant could be installed in another location. Planning Manager Watrous said that his understanding was that if the house is located more than 150 feet from the roadway, a hydrant was needed.

Vice Mayor Berger explained his understanding of the fire code; he said that there was a hydrant within 400 feet on Paradise Drive.

Councilmember Gram asked what it would cost to install a new hydrant.

Staff indicated that the applicant might address the issue more fully in their presentation.

Councilmember Gram asked that the issue be addressed in any event.

In concluding his report, Planner Phillips said that the Design Review Board had adhered to the Town's guidelines for Site Plan and Architectural Review and the Hillside Guidelines in its review of the project. He said the Board determined that while the original house design would potentially affect views from the appellants' home, the revised design represented a significant compromise for the project and the most appropriate location for the house, and would not substantially impact the views from the residence at 5045 Paradise Drive. He recommended that the Council uphold the Board's decision and deny the appeal.

The Mayor asked if there were any more questions from the Council.

Vice Mayor Berger asked about the effects of relocating the house on the site to Mr. Scarpa, as well as Wei/Bortons. Planner Phillips said that moving the house more to the rear would result in an increase to the height toward the rear of the lot which would have potential impacts on the Scarpa's primary views.

In response to a question from Councilmember Gram, Phillips said that it might be possible to

excavate the house into the rear hillside but that would render the rear yard unusable. He said that staff had concluded that was not a good lay-out.

Mayor Fredericks noted that most of the available useable space was on the side of the house on this property.

Councilmember Collins asked for clarification; he said that he noticed a side lawn area when he had visited the site but did not see such a “dog leg” in the plans.

Planner Phillips responded to the Mayor and Councilmember’s questions. He said that the subject project yard was limited to the paved area pointed out by Mayor Fredericks; he said that the plan proposed removing the paving and replacing it with yard space.

Mayor Fredericks opened the public hearing.

Appellant Grace Wei, 5045 Paradise Drive, thanked the Council for the opportunity to make a presentation. She asked the Council to focus on the long-term consequences and to uphold the Town’s Hillside Design Guidelines. She said that the first house design would have been devastating to her views and that the house should terrace more into the hillside. She said these guidelines called for a reduction of bulk and mass and also recommended that homes be built into hillsides wherever possible, and terraced.

Ms. Wei said that one side of the building at 5035 Paradise Drive would be a mere two car lengths away from her home. She said that additional landscaping recommended by the Board would not block the giant bulk of the proposed house, nor the windows facing her home.

Ms. Wei said she could understand that the Town’s desire for LEED homes, but said that such homes should enrich the neighborhood. She said that she and her husband had consulted with two architects; one was a leader in Green Building Practices. She read from a letter from the architect, David Bushnell, which noted that a “design is not sustainable if it is at the expense of other” homes; that LEED standards were voluntary and that an equal level of consideration should be given to site impact factors.

Mr. Bushnell further contended in his letter that it did “not appear that there are any particularly outstanding, unique or inventive environmental features that define this project such that it would warrant exceptions to the design guidelines and good neighbor considerations.”

Michael Heckmann, Tiburon architect retained by Ms. Wei, said that the original scheme of the project was so excessive that the concessions offered by the applicant seemed substantial to the DRB. However, he said that several issues remained, including the view blockage from Ms. Wei’s kitchen and dining room, the position of the “massive wall” of one side of the proposed home, and nighttime light impacts from the windows on that side, including the windows in a stairwell. He said that there was a need to reduce the height of the house another four feet and to either relocate the master bedroom suite and kitchen or reduce its height.

Helene Marsh, applicant, presented her response to the Council. She said that she was attempting to build an aesthetically pleasing and efficient home for her family, and one that would replace the dilapidated home on the property. She told of her meetings with Fire Marshall Barney and the restrictions for siting the new home on the property. She explained that a fire truck could only go 150 feet up the driveway before having to turn around; to go further would require either widening the road or creating a "T" or circle turnaround, which would take up most of the flat area on the site.

Ms. Marsh said that in the current siting, two fire hoses could go 150' around each side of the proposed house and meet at one corner, as required by the fire code; she said if the hydrant is moved farther up the road, the truck would still need a turnaround. She said that the Board agreed that it was reasonable and appropriate to site the house in its proposed location.

Ms. Marsh said that she and her team had worked very hard to meet all of the Town's guidelines; she quoted from Goal 3 (Hillside Design Guidelines) which says that "new dwellings ... should have access to similar views" as the surrounding neighbors. She said they had met with the Wei/Burtens early on in the process and that they had made significant concessions throughout the design review process. She said that her neighbors would lose a slot view but that she had even gone so far as to help open up the view by removing one tree on her property and trimming others.

Ms. Marsh reviewed the changes she made throughout the process which had increased the cost of the project by over \$100,000 and resulted in the loss of back yard space and an area for a water storage tank:

- complete roof redesign, lowering the roof by four feet; and in one area, lowering the roof by five feet resulting in loss of light and space
- moved the house back six feet
- lowered the house two feet by excavation
- removed kitchen exhaust element from the roof
- removed cedar tree
- trimmed all the trees on property
- made a commitment to build a fence on one side and plant trees

Ms. Marsh's architect, Louis Butler, answered questions from the Council. He noted that there were no variances requested for the project, the roofline was well below the 30 foot height limit allowed by the Town, and that the new home would take up 13% of the site which was below the 15% allowed by the zoning ordinance. However, he said that they must use the existing driveway to access the flat area of the lot, and explained again the fire requirements and topography of the sloped site.

Butler showed the changes made to the projects on the plans and said that they couldn't lower

the house further without digging back into the hillside. He said that they had already built retaining walls to accommodate the changes.

Councilmember Collins asked Butler to address the issue of the windows facing the Wei/Burton home, as well as the stairwell windows.

Mayor Fredericks asked him to describe what the neighbors would see when looking that way—for instance, was the wall lower than the Wei/Burton kitchen.

Mr. Butler said that the Wei/Burton home was higher but that the house on the lower elevation was usually the one concerned with privacy issues.

Mayor Fredericks said that sometimes light pollution was the issue.

Vice Mayor Berger commented that the stairwell window was large. Mr. Butler said that 17% of the wall area on that side of the house was windows, not a significant amount.

Mayor Fredericks asked about the location of the stairwell window. Mr. Butler said that existing trees would hide it; he showed three additional windows from two bathrooms and a bedroom that would be visible to the Wei/Burtens.

Councilmember Gram asked about ceiling heights. Mr. Butler said that the bedroom ceiling was 8'3", or up to 8'9" on a 3% slope. In response to Councilmember Collins, Butler said that on the lower floor the ceiling height was 9 feet.

Mayor Fredericks asked about designing a single-level home if an elderly parent of Ms. Marsh was planning to live there. Mr. Butler said that one level would put the project over the 15% site coverage and create more "lot sprawl." He said that an elevator could be installed in the current design. Councilmember Collins asked about the proposed elevator and recommended that it be placed in the center of the house.

Mayor Fredericks asked if there was any comment from the public. There was none.

The Mayor closed the public hearing and asked for a rebuttal from the appellants.

Mr. Heckmann objected to the use of the term "slot view" to describe the view that would be lost by his clients. He said that the view from the family room/dining room was a "major view."

Heckmann said that they had never objected to the split level design but contended that there were many design options that the applicants seemed unwilling to pursue.

Heckmann said that the value of the landscaping was misrepresented, and that the windows, mass and bulk were still issues and that there were "lots of solutions" still to be explored. In response to a question from the Council, Heckmann showed a corner of the building that

could be moved that, in his opinion, would lessen the mass and bulk.

Ms. Wei added to the view discussion the statement that “we don’t stand for dinner” and questioned what other views had been opened up for them. She said that this was her only view from the family/kitchen area. She said that in future, when she came home at night, she would also have to look at lights in the new dwelling. Wei said that viewing the mass head on was quite considerable. She suggested that the office and guest room might be re-located in the design.

Mayor Fredericks closed the appeal and directed that discussion to Council.

Vice Mayor Berger said it was a difficult appeal because while there was no legal right to look “over” someone’s property, the silhouette of the new home would block the near view of the Wei/Burtons, but not the distant view. Berger also noted that there were different density levels in different neighborhoods around town, and that in this area, the greater distances between the homes created the character and value of that neighborhood.

Berger said that LEED was not an issue but rather, had enough been done to satisfy the Town’s [hillside design] requirements. He said there was no need to lower the house any more; that there were other means to lessen the impact on the neighbors, but that not much effort had been put into the design of the side elevation. He suggested that one corner could be made “more modest.” He said that he had been told by Mr. Burton that making a change in that portion of the house would satisfy him.

Vice Mayor Berger also pointed out the “tremendous light pollution” from the master bedroom and stairwell. He said light from that side would interfere with views at night. Nevertheless, Berger said the house was nicely designed overall and that the Burtons would still retain excellent views.

Berger said he sought a change that would neither lessen the utility of the project nor incur more expense to the applicant; he said he would hesitate to remand the project to the Design Review Board.

The Council discussed various plan revisions with the Vice Mayor. He said that he thought the façade on the one corner could be broken up with more articulation. Councilmember Gram asked Boardmember Doyle if the Board had considered this.

Mr. Doyle said that the Board first looks to see if a project meets all of the Town’s zoning requirements and Hillside Design Guidelines. He said that this project did so and that the applicant also made all of the recommended subsequent design changes suggested by the Board.

Doyle said that the portion of the Wei view that was being lost was, in the Board’s opinion, so small and the amount of interference to their property so small, that they voted to approve the project.

Vice Mayor Berger agreed that it was a good design. However, he said that there were other

portions of the Hillside Design Guidelines that talked about façade and articulation (to address the issue of mass and bulk). He said that the existing wall in the design was “flat” and that the windows were in the wrong place; he said there were three “good sides” to the house but that this one was too prominent to the neighbors.

Councilmember Gram commented that any changes to the design then would not just affect views; Berger said the loss of views was bound to happen but the side could be made “more friendly.”

Councilmember Collins asked the Town Attorney to explore options for Council action.

Town Attorney Danforth said that one option was to grant the appeal; another option was to partially grant the appeal and send it back to the Board with specific direction; or, Council could impose conditions specific enough tonight so that someone on the staff could ensure that they were executed.

Vice Mayor Berger said that he thought the staff would be able to carry out the Council’s direction. Mayor Fredericks asked him to articulate this direction.

Berger said the idea was to soften the view of that corner from the neighbors without a loss of square footage or “chopping off” the corner.

Councilmember Collins noted that the Wei/Burtons had panoramic views except at this one corner of their house, but said that he would like to see the glare and number of windows lessened from that side, as well as do something about the articulation of the corner. However, at that moment, he said he was leaning toward denying the appeal because the applicants had gone through the process and the neighbors still had tremendous views.

Councilmember Gram agreed, noting the two Design Review hearings and the decision of the Board. He said there was nothing wrong with that decision and said that LEED was not a factor in it. He said he had to ask whether the Wei/Burton views were substantially degraded and concluded they were not. However, he too said he would like the light from the windows dealt with without disrupting the integrity of the total design.

Mayor Fredericks said that the Hillside Design Guidelines were open to interpretation. She said that it boiled down to “equities,” for example, Ms. Marsh gaining a view from the master bedroom versus the substantial loss of view from the Wei/Burton kitchen.

Ms. Fredericks said that the appellant had articulated the problem of mass and bulk well: that she would be facing a 69-foot façade full of windows. Fredericks said she thought a little more could be done to address the light pollution and view elements.

Planning Manager Watrous said that more specific information would be helpful if the

application was remanded to staff.

Town Attorney Danforth said that she had heard two different directives earlier in the discussion: 1) to soften the façade (Berger) and 2) to pull it back (Gram). This led the Vice Mayor to draw a diagonal line across the master suite and suggest turning it rather than “clipping” the corner; he said the lower floor could remain unchanged.

Architect Butler said that his client was prepared to make changes to that side of the house but that if any one of the elements were to be moved more than six or eight feet, it would create a substantial change to the design and loss of views to the main room. He proposed “losing” one window on that side and installing wood siding on the side of the master bedroom. Berger said that a color and material change were not enough.

Councilmember Collins said he did not favor a re-design; that he would continue to vote to deny the appeal but remain open to “tweaking” of the design.

Mayor Fredericks asked what reducing the corner by two feet would do. Vice Mayor Berger said that it would put some dimension into the façade but not open up the view. Again, Council asked whether views were the issue or whether the light pollution and flatness of the side was the problem.

Mayor Fredericks said that if the direction of the master bedroom could be manipulated, as Berger had proposed earlier, it would be good idea.

Vice Mayor Berger suggested to Mr. Butler that he “lose one foot off the side,” turn the room 90%, and cantilever it over the bottom floor. Burton clarified that he was being asked to “pull in the master bedroom by one foot and then turn it.”

Planning Manager Watrous said that the above directions were becoming clearer to staff, in addition to the suggestion to remove one window on the one side and change in materials. Vice Mayor Berger added that the stairwell window should be treated or glazed to minimize glare.

MOTION: To partially uphold the appeal and direct staff to return with a resolution of findings, including the following conditions: Applicant to rotate master bedroom 90 degrees away from property line; interior dimensions of bedroom to be 17 x 14 square feet; redesign the stairwell window to lessen light pollution; eliminate one window in the master bedroom and obscure the glass on the west-facing bathroom window; change materials on west side of the master bedroom.

Moved: Berger, seconded by Collins

Vote: AYES: Unanimous

ABSENT: Slavitz

TOWN COUNCIL REPORTS

None.

TOWN MANAGER'S REPORT

None.

WEEKLY DIGESTS

- Town Council Weekly Digest – February 6, 2009
- Town Council Weekly Digest – February 13, 2009

ADJOURNMENT - *to a meeting of the Tiburon Redevelopment Agency*

TIBURON REDEVELOPMENT AGENCY
(See Redevelopment Agency Minutes)

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Fredericks adjourned the meeting at 9:50 p.m.

ALICE FREDERICKS, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK