

**TOWN COUNCIL
MINUTES**

Before its regular meeting on July 7, 2010, the Council conducted an interview for a vacancy on the Design Review Board.

INTERVIEWS FOR BOARD AND COMMISSION VACANCIES – (7:15 p.m.)

(Design Review Board – One Vacancy)

- Linda Emberson, 686 Hawthorne Drive

CALL TO ORDER

Mayor Collins called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, July 7, 2010, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

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

PRESENT: EX OFFICIO: Town Manager Curran, Director of Administrative Services Bigall, Director of Community Development Anderson, Planning Manager Watrous, Director of Public Works/Town Engineer Nguyen, Town Clerk Crane Iacopi

CLOSED SESSION ANNOUNCEMENT, IF ANY

There was no closed session.

ORAL COMMUNICATIONS

Barry Crotty, Vice President of Frank Howard Allen (FHA), said that a video monitor had been installed in the Tiburon Boulevard office to display photographs of homes for sale. He said that the Town had sent a letter asking FHA to remove the monitor because it was not in compliance with the Town’s sign ordinance. He asked the Council to reconsider this action, stating that this was not a sign because there were no messages displayed. He also said that it was far more tasteful to the previous display board and that it met the Town’s sign ordinance criteria “to improve and preserve the aesthetics of the Town.”

Mr. Crotty said that he had sought the advice of Town staff before installing the sign and that he had not been told that it was an illegal sign. He said their contractor also received the same

advice. Mr. Crotty's office manager said that FHA was out of pocket \$5,000 based on this assumption.

John Sanford, 50-year resident, said the display monitor greatly improved the appearance of the building; he suggested that the Council find a creative way to allow it to remain in place.

Mayor Collins asked whether the Council would like to agendaize the matter for a future meeting.

Councilmember Fredericks commented that the law underlying the Town's sign ordinance was "tricky" in that it could only speak to the types of signs allowed rather than content. She noted the great amount of time and study spent by the Council on the ordinance's recent adoption.

Councilmember O'Donnell said that he would like to see the sign in person before commenting further on this issue.

Councilmember Fraser said that while the sign ordinance was correct, there are sometimes miscommunications about process and procedure. He said that he, too, would like to see the sign and perhaps review the permit application.

Director of Community Development Anderson noted that the Town would not have been able to accept a permit application because it was not a sign allowed under the Town's ordinance.

Vice Mayor Slavitz asked FHA whether they had applied for a permit to install the sign. He was told that they did not. The Vice Mayor said that while he had been willing to revisit the issue, he was not willing to do so once he knew that FHA had not applied for a permit.

Mayor Collins agreed. He also concurred with Councilmember Fredericks on the amount of time spent by the Council on the recent adoption of the ordinance.

Town Manager Curran said that the FHA complaint was puzzling to staff and she apologized for any misunderstanding in the process. She reiterated the comments about the Town's inability to regulate commercial "speech" under the sign ordinance. She said that she would ask the Town Attorney to prepare a memo summarizing the issues for the Council.

CONSENT CALENDAR

1. **Town Council Minutes** – Adopt Minutes of June 2, 2010 meeting (Town Clerk Crane Iacopi)
2. **Town Council Minutes** – Adopt Minutes of June 16, 2010 meeting (Town Clerk Crane Iacopi)

3. **Del Mar Valley Utility Undergrounding Supplemental Assessment District** – Approve Agreement with Reed Union School District regarding payment of the RUSD Supplemental District Assessment (Town Attorney Danforth)
4. **Purchase of Tax and Revenue Anticipation Note for Investment Purposes** – Recommendation to authorize purchase of the \$750,000 Town of Fairfax FY 2010-11 Tax and Revenue Anticipation Note (Director of Administrative Services Bigall)
5. **Safe Routes to School** – Accept Safe Routes to School Del Mar Middle School project and authorize filing of the Notice of Completion (Director of Public Works/Town Engineer Nguyen)
6. **2010 Annual Street Improvement Project** – Approve Plans and Specifications For the 2010 Annual Street Improvement Project and Authorize the Solicitation for Bids (Director of Public Works/Town Engineer Nguyen)

Councilmember Fraser asked to remove Item No. 4 from the consent calendar.

Councilmembers Fraser and Fredericks made changes to the June 2 and June 16 minutes.

MOTION: To approve Consent Calendar Item Nos. 1, 2, 3, 5 and 6, as amended.
 Moved: Slavitz, seconded by O'Donnell
 Vote: AYES: Unanimous
 ABSTAIN: Collins (June 2, 2010 Minutes)

Discussion of Consent Calendar Item No. 4:

***Purchase of Tax and Revenue Anticipation Note for Investment Purposes** – Recommendation to authorize purchase of the \$750,000 Town of Fairfax FY 2010-11 Tax and Revenue Anticipation Note (Director of Administrative Services Bigall)*

Councilmember Fraser expressed his discomfort in authorizing the purchase because he had read an article in the Marin Independent Journal that the Town of Fairfax had voted to become a guarantor of the Marin Clean Energy program in the amount of \$100,000. Fraser wondered how Fairfax could be in a position to loan money to another entity at the same time it sought a loan from the Town of Tiburon. He said that he also discovered that the Town of Tiburon had been asked to be a guarantor of MCE but had declined on the grounds that it was not fiscally prudent at this time to do so. Had he known these facts, Fraser said, he might not have voted to support the recommended TRANs loan to Fairfax.

Mayor Collins commented that it was more a case of the Town purchasing a note rather than making a loan, because the money was guaranteed by the Fairfax property tax receivable.

Councilmember Fredericks added that she heard the banks were no longer asking MCE for guarantors. However, she said that she voted in favor of the purchase because it met the Town's investment policy guidelines of safety and liquidity, and that the Town's Treasurer had also recommended its purchase, stating that it was not a risk to the Town.

Councilmember O'Donnell asked if this was the start of a "rolling borrowing" request by the Town of Fairfax. Town Manager Curran said that she was unaware of any future requests and said that the recommended action did not make any pledges beyond this note. She said that Fairfax was one of many communities that utilized TRANs as a budgeting tool to balance cash flow.

In response to the borrowing question, Mark Pressman, investment advisor for the Town of Fairfax, said that the Town would need to utilize TRANs for several more years because its revenues had not increased sufficiently due to the recession. Pressman noted that it did not matter what the Town committed its resources to, in this case, because the Town of Tiburon had first call on the property tax receipts. He also said that the Town of Fairfax planned to "go elsewhere" for its TRANs in the future.

Councilmember Slavitz asked what the anticipated tax property revenue was. Director Bigall said that it was slightly in excess of \$2 million.

Councilmember O'Donnell said that while he believed the money was secured, he still thought that the Town of Tiburon should not become the "Bank of Tiburon" as a matter of policy. He said that Tiburon funds should be used for Tiburon purposes.

Councilmember Fredericks said that she viewed it as an investment for the Town rather than a loan. Vice Mayor Slavitz agreed, stating that he still thought it was a great investment.

Mayor Collins said that he would support the current TRANs purchase, but not future ones.

MOTION: To approve the resolution authorizing the Fairfax TRANs purchase.

Moved: Fredericks, Slavitz

Vote: AYES: Collins, Fredericks, Slavitz

NAYES: Fraser, O'Donnell

ACTION ITEMS

1. **Secondary Dwelling Units** – Consider adoption of updates to the Town's Standards for Secondary Dwelling Units (Director of Community Development Anderson)

Director of Community Development Anderson said that this was the final step in the "clean up" amendments resulting from the Town's recently revised Zoning Ordinance. He said these largely section number changes as a result of the new Zoning Ordinance or were required to achieve

consistency with State statutes. Anderson described the updates as minor and non-controversial in the view of staff.

Councilmember O'Donnell asked about changes pertaining to the tree ordinance in Standard No. 10. Anderson said it had to do with the way the tree ordinance was written which would create a loophole for "undesirable" trees when an application for a secondary dwelling unit, which was largely ministerial in nature, was reviewed by the Town. This change addressed the tree issue in a way that would not allow "undesirable" trees to be planted without the requirement for a tree permit, while still honoring the State-required "ministerial" decision-making process for secondary dwelling unit applications, according to the Director.

Mayor Collins opened the public hearing. There was no public comment. Mayor Collins closed the public hearing.

MOTION: To adopt the resolution, as written.
Moved: Slavitz, seconded by Fraser
Vote: AYES: Unanimous

2. **Design Review Board Vacancy** – Consider appointment to fill vacancy on Design Review Board (Town Clerk Crane Iacopi)

Council waived the staff report.

MOTION: To appoint Linda Emberson to the DRB.
Moved: O'Donnell, seconded by Fredericks
Vote: AYES: Unanimous

PUBLIC HEARINGS

1. **1490 Vistazo West Appeal** – Appeal of Design Review Board decision to approve a request for site plan and architectural review to construct a new single-family dwelling, with variances for reduced side yard setback and excess building height (Planning Manager Watrous)
AP No. 058-223-14
Applicants: Shadduck
Appellants: Bernheim/Straub

Planning Manager gave the report and summarized the eight grounds of the appeal, as well as staff's responses. He said staff recommended that the Council uphold the Design Review Board's approval of the project and deny the appeal, with an added [DRB] condition that the drainage plan be submitted and meet criteria established by the Town Engineer.

The Council asked a series of questions about the DRB review of the application, including the Board's response to the question of neighborhood character, view corridors, and privacy.

Mayor Collins asked whether this was the first application the Town had received to separate two structures (the response was that it was). Councilmember Fredericks asked whether a property owner with a non-conforming structure could be “grandfathered” into approval of another non-conforming structure. (Staff’s response was not if the application was voluntary; the exception being a rebuild due to fire or other disaster.)

Mayor Collins asked whether the drainage easement had been recorded and who the beneficiaries were. Director Anderson said that the 1962 subdivision map gave no indication. Planning Manager Watrous said that the current application called for relocation of the drainage easement.

Councilmember Slavitz asked what would happen to the [attached] Sears’ residence once it was detached. Watrous said that Condition No 19 of the DRB approval required that a complete engineering assessment be prepared and submitted prior to issuance of the building permit that would ensure the safety of the two homes.

Councilmember O’Donnell asked whether the Town commonly asked for performance bonds to guarantee the safety and successful completion of the work. Mr. Watrous said that this was an uncommon situation but that it could be required.

Councilmember Fraser asked if the second homeowner would have to consent to the detachment. Watrous said that they would have to consent to the structural work and the exterior finish of their own home but because the Town could not necessarily prohibit the application on this basis, it might become a civil matter. He said that it was a question to be explored by the Town Attorney.

Mayor Collins said the Town would want to require a performance bond or some mechanism that would indemnify it in the event that if allowed Party A went onto Party B’s property and something happened. Watrous commented that the Town always makes sure the applicants mitigate or repair any damage that might occur before it finalizes a project.

Councilmember Fredericks asked why the homes on that street were not townhomes. Watrous said that they were recorded as legally separate lots with zero lot line homes. Director Anderson said that this was a very unusual circumstance in that they were not developed as a common interest subdivision.

Vice Mayor Slavitz asked about the work at 1470 Vistazo West. Watrous said that he was not familiar with that application; Anderson said that the applicants had only reinforced the home’s foundation and not made any application to detach from the adjacent home.

Mayor Collins opened the public hearing.

Appellant Carl Straub gave a power point presentation which covered the grounds of he and his wife’s appeal. He said that the 1962 subdivision had been built with the homes set back to ensure

the views and privacy from the decks. He showed in his slides how the views and privacy of his home would be impacted by the proposed dwelling. He said that the applicant's promise to plant or allow remaining trees to provide for screening was unrealistic. He said that the DRB did not address the unique features and characteristics of the neighborhood in its approval, and that it made an incorrect assumption regarding their privacy by allowing the angle of the house to be realigned.

Mr. Straub said the applicants' plans to detach their home raised a number of legal issues. He also said that the application called for the existing drainage easement to be relocated. He provided copies of the CC&Rs to the Council which stated that no buildings or structures would be located on the other side of the existing easement. Straub said that the current application would violate their CC&Rs.

Mr. Straub also noted the deterioration of the house because the applicants had not lived there for five to eight years. He said that mold had gotten into the house and threatened the adjoining structure. He asked whether the Town was in a position to condemn the dwelling.

Mr. Straub said that many of these issues were unresolved and needed to be resolved prior to approval of any application. He asked the Council to overturn the DRB approval and require the applicants to preserve the existing footprint, view corridors, and neighborhood character.

Mayor Collins opened the hearing to the applicant.

Architect Carrie Shores, representing the applicants, gave the Council an update on the mold issue. Ms. Shores said that it had been completely remediated. She said that all that remained was a report from the air quality board.

Ms. Shores said that the structural issues had been addressed and that a new frame system was proposed in order to meet seismic codes. She said that because the underlying structures of the homes were interconnected, they were not being completely separated. She said that the floor levels were consistent with the neighboring houses. She provided various drawings and handouts to the Council.

Ms. Shores said that they had met with the Bernheim/Straub and Sears' families to discuss their issues. She said that there was only 17% glass facing the Bernheim/Straub residence and that the living room could not be seen from their residence.

Vice Mayor Slavitz asked Ms. Shores if she had drawings that showed the "updated" views and sight line impacts. Ms. Shores said that she did not.

Ms. Shores said that the new location of the drainage easement would allow the Sears' family to access their meters and underneath their home. In addition, the separation would allow them to shore up the carport wall and encase and support the exterior wall. She said that the Sears' views would be increased by the proposed separation of the structures.

Mayor Collins asked if the existing walls acted as shear walls now. Ms. Shores said that she did not know to what extent they were shear. The Mayor asked about skylights; Ms. Shores said the existing skylights would be replaced by clerestory windows. She also discussed other design features, such as the wood siding and stucco exterior of the proposed dwelling, which she said would match the stucco of an uphill residence.

Landscape architect David Thorn also spoke on behalf of the applicants. He reviewed which trees would remain and which would be removed. He said that they had met with the Bernheim/Straub family to discuss their concerns and make improvements to the plan.

Councilmember O'Donnell asked the applicant, Mr. Shadduck, about the guarantees he was making to the other two [attached] units and whether he had worked out the cost estimates for securing and seismically upgrading his home.

Mr. Shadduck said that he could comply with the Town's rules that the project leave the surrounding areas no worse, or better, than before. He said that only the upper walls of the structure needed to be upgraded and that the main steel structure would be left in place. He said that while some of it would have to be cut, mostly they would take the same steel structure and reinforce it.

Councilmember O'Donnell said that it seemed to him to be an enormous undertaking without knowing the costs and exactly what the project would entail. Mr. Shadduck said that he estimated \$50,000 - \$100,000 in engineering work. Mr. Shadduck also said that the easement was a private easement never accepted by the City [sic] as a dedicated easement.

O'Donnell asked Mr. Shadduck why he had let the property deteriorate. Mr. Shadduck said that he had lived there since 1985 but that he was not comfortable after about five years with the seismic condition of the house. He commented that most 50-year-old houses needed to be upgraded.

Town Manager Curran asked Mr. Shadduck whether he was willing to indemnify the Town in order to move forward with the project. He said that he was not prepared to comment on that subject.

Mayor Collins opened the hearing to interested members of the public.

Chuck Reite told the Council that he thought the core issues were being given short shrift in this application. He provided a letter to Council stating his points. He said that while his privacy and views would be impacted, the bigger issues, such as moving the drainage easement, were far greater. He said that the DRB seemed "cavalier" in their review of this totally unique situation. He said they especially missed the mark in their review of neighborhood character. Reite said that on the other hand, the owners of 1470 Vistazo West had improved the seismic condition of their home as well as adding square footage, without adversely impacting the adjoining homes.

Steve Sears, homeowner directly adjacent to the Shadducks, said that he and his family would be hugely affected by the project in many ways, including a long period of construction. While he said that the Shadducks and their architect had been very cooperative, Sears noted that they had let the property run down over the last five years. Sears said that the Shadducks had declined to participate in placing a new roof over the three connecting units which had led to the mold problems in their home and the Sears' home. He said if they couldn't afford a new roof, how could they afford to undertake such a large, complex project?

Sears expressed concern that the DRB had "kicked down" the structural assessment to the Building Division; he said that any structural assessment would have to be to the satisfaction of the Sears family, as well. He said that he would like to see the structural reports.

To address these issues, Sears said that he would like to have a performance bond and revolving letter of credit assigned to the project. He said he would not be in favor of the project until all these protections were put in writing. In addition, he said that he would like to be indemnified.

Holly Hooker said she was dismayed by what she had heard tonight. She said the questions far outnumbered the answers. She said she did not understand the reason for separating the structures. Ms. Hooker said the photo montages of the new structure made it look massive, look like a three-story apartment building rather than a home that would fit in with the neighboring homes.

Maureen Mickle said that the new development featuring lots of glass seemed incompatible to the neighborhood. She said that the trees would not survive the moving of the drainage inlet and that there would be difficulties in accommodating construction parking at the end of the street which bordered on the County open space. She said it also raised questions for her as to possible encroachment onto the open space by the new, larger structure.

Mayor Collins asked for the appellant and applicant rebuttals.

Carl Straub said the hearing clearly demonstrated the lack of information available about the project. He said that when he had a 22 x 40 foot deck built, he needed more structural drawings than were even available tonight. He said that the Vistazo West development was unique in California and should be maintained rather than allowing a "Walmart" to be built in the neighborhood. He said the [appellants'] view corridors could be protected by allowing fewer windows and less reorientation of the house. Finally, Straub said if the home was left attached, it would not affect he and his wife at all. As an attorney, Straub also recommended third-party agreements and other documentation, such as new CCRs, would be required if the project was approved.

Mr. Shadduck agreed that the house had run down and that the deck was corroded and needed replacing. He said that Mr. Sears needed to do the same. He said that he and his wife planned to get the project going but needed to know whether they had Council approval before spending

any more money on drawings or studies. He said that the owner of 1470 Vistazo West needed no agreements with his neighbors to upgrade his home seismically; Shadduck said that “we’re just trying to get more steel into ours.”

Mayor Collins closed the public hearing.

Councilmember O’Donnell asked for reports or letters from a structural engineer to address some of the issues raised. Mr. Shadduck said that he had talked to three structural engineers who said the project design was feasible. Planning Manager Watrous noted that structural assessments were not required at the DRB level.

Councilmember Fraser asked whether the 1470 Vistazo West project had to separate any walls. Mr. Shadduck said that they had chosen not to.

Councilmember Fraser said that the entire project was difficult to understand and extremely incomplete.

Councilmember Fredericks said that there seemed to be unknown consequences of the proposed project, and many disputes. She continued to express concern that the Town was also at risk.

Town Manager Curran said that the Town clearly needed to be protected in this instance in order not to be drawn into any disputes between the neighbors; additionally, she urged the Council to seek an opinion from the Town Attorney that the Town would be protected if they chose to approve the project.

Vice Mayor Slavitz commended Mr. Shadduck on wanting to improve the property. However, he said the proposed structure clearly seemed out of character with the neighborhood; he said he would love to see the two sets of three identical houses remain in place, and that the materials should match the existing wood, not stucco, as proposed. In addition, Slavitz said that 200 square feet of glass exacerbated the privacy concerns and that the necessity of getting neighbors to agree to the separation of the structures seemed to complicate everything.

Councilmember O’Donnell said he agreed with the concerns expressed by Vice Mayor Slavitz and the appellants. He said that while the DRB normally does a great job, they “got it wrong” this time.

Councilmember Fredericks concurred with Slavitz and O’Donnell. She said that while she thought the house design was attractive in and of itself, by placing it in that location, oriented in that way, it became disruptive and had a collateral affect on the privacy of the bedroom and decks of one neighbor. She said the existing trees would not do much to ameliorate this. She said that privacy could be defined, in this case, as the delta between the amount of glass in the existing house and the proposed house.

Councilmember Fraser said that he was an advocate of a homeowner’s right to improve their

property and that he applauded owners who did so. He said that the Town of Tiburon was “lifted up” by this process. However, he said he was puzzled by the new issue of separation of the buildings in this application. He said it would impact the entire neighborhood, and possibly, the CCRs. He said that the applicant had placed the cart before the horse because of the outstanding questions concerning engineering, easements, and neighborhood harmony.

Mayor Collins said that the DRB did a good job for the Town but agreed that they “missed this one.” He said that it was always nice to gain the consensus of the neighbors when you rebuild or remodel a home. The Mayor said that the glare of the windows, the orientation of the building, the drainage and easement questions, and the consent in writing from the adjacent neighbors, all must be addressed before the applicant could move forward. In addition, the Mayor said he agreed that an agreement must be reached with the Town regarding indemnification.

MOTION: To direct staff to return with a resolution granting the appeal and denying the application; to be presented at the next Council meeting.

Moved: Fraser, seconded by Slavitz

Vote: AYES: Unanimous

2. **Ned’s Way Joint Recreation Project Site Streamlining Ordinance** – Introduction and first reading of an ordinance establishing a streamlined development review procedure for the Belvedere-Tiburon Joint Recreation Committee’s Ned’s Way project and exempting the project from certain Town regulations (Director of Community Development Anderson)

Address: 600 Ned’s Way

AP No. 058-151-27

Council waived the staff report.

Mayor Collins opened the public hearing. There was no public comment. Mayor Collins closed the public hearing.

MOTION: To read ordinance by title only.

Moved: Fraser, seconded by Slavitz

Vote: AYES: Unanimous

Mayor Collins read: “AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF TIBURON ESTABLISHING REVIEW AND DECISION-MAKING PROCEDURES FOR THE BELVEDERE-TIBURON JOINT RECREATION COMMITTEE PROJECT AT 600 NED’S WAY AND EXEMPTING SAID PROJECT FROM THE TIBURON ZONING ORDINANCE (TITLE IV, CHAPTER 16 OF THE MUNICIPAL CODE), THE TIBURON ENCROACHMENT ORDINANCE (TITLE V, CHAPTER 19 OF THE MUNICIPAL CODE) AND FROM THE ENCROACHMENT PERMIT POLICY ESTABLISHED UNDER TOWN COUNCIL RESOLUTION NO. 16-2010 AND ANY SUCCESSORS THERETO

(ASSESSOR PARCEL NO. 58-151-27).”

MOTION: To pass first reading of the ordinance.

Moved: Slavitz, Fraser

Vote: AYES: Collins, Fraser, Fredericks, O’Donnell, Slavitz

3. **Cypress Hollow Landscape & Lighting District (LLD)** – Approve resolution continuing the Cypress Hollow LLD assessment in fiscal year 2010-2011 (Director of Administrative Services Bigall)

Town Manager Curran said that this item came before Council annually.

Mayor Collins opened the public hearing. There was no public comment. Mayor Collins closed the public hearing.

MOTION: To adopt resolution continuing the assessment.

Moved: O’Donnell, seconded by Fredericks

Vote: AYES: Unanimous

TOWN COUNCIL REPORTS

None.

TOWN MANAGER’S REPORT

Town Manager Curran distributed a letter to the Town’s elected officials in Washington, D.C. opposing proposed legislation that would divert TOT collected by municipalities to on-line travel service companies. She said that this would result in loss of revenue to local municipalities. She asked for, and received, the Council’s authorization to send the letter under the Mayor’s signature.

WEEKLY DIGESTS

- Town Council Weekly Digest – June 18, 2010
- Town Council Weekly Digest – June 25, 2010
- Town Council Weekly Digest – July 2, 2010

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Collins adjourned the meeting at 10:34 p.m.

RICHARD COLLINS, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK