

**TOWN COUNCIL  
MINUTES**

**CALL TO ORDER**

Mayor Slavitz called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, January 19, 2011, 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, Director of Administrative Services Bigall, Director of Community Development Anderson, Planning Manager Watrous, Police Captain Hutton, IT Coordinator Monterichard, Town Clerk Crane Iacopi

Prior to the regular meeting, the Council met in closed session, beginning at 6:15 p.m., to discuss the following:

**CLOSED SESSION** – (6:15 p.m.)

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
(Subdivision (a) of Government Code Section 54956.9)

Case No. TIB0900003

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
(Subdivision (a) of Government Code Section 54956.9)

*Menzel v. Town of Tiburon*

**CLOSED SESSION ANNOUNCEMENT, IF ANY**

Mayor Slavitz said that no action was taken in closed session.

**ORAL COMMUNICATIONS**

Mayor Slavitz welcomes and acknowledged the members of Boy Scout Troop 48 who were in attendance to earn their Community Citizenship merit badges.

Jerome Bernal, Spanish Trail, asked whether it would be possible to have some steps installed down to the beach in front of the Donohue Building on Innisfree [Shoreline] Park. He said this would assist kayakers and others from having to climb down the rocks to access the water. Mayor Slavitz referred Mr. Bernal to Town Staff for further discussion of his suggestion.

### **CONSENT CALENDAR**

1. **Town Council Minutes** – Adopt minutes of January 5, 2011 regular meeting (Town Clerk Crane Iacopi)
2. **Amendments to Building Code** – Adopt ordinance amending Title IV, Chapter 13 (Building Regulations) of the Tiburon Municipal Code (Director of Community Development Anderson)
3. **Town Monthly Investment Summary** – Accept December 2010 report (Director of Administrative Services Bigall)

MOTION: To approve Consent Calendar Item Nos. 1 through 3, as written.  
Moved: Fredericks, seconded by Fraser  
Vote: AYES: Unanimous

### **ACTION ITEM**

1. **Tiburon Tourism Business Improvement District (BID)** – Consider adoption of resolution to increase assessment to lodging establishments within the Tiburon BID and set public hearing date (Town Attorney Danforth)

Town Attorney Danforth gave the report. She said that the Town had formed a Tiburon Tourism Business Improvement District (TTBID) in 2007 in response to a request from the Town's two hotels, the Lodge at Tiburon and the Water's Edge Hotel. She said that the TTBID imposes assessments on lodging establishments within the Town, equal to one percent of their gross revenues. Danforth said the Town uses the proceeds to participate in the County's tourism-promotion program, which is funded by the Marin County Tourism Business Improvement District (MCTBID) and is operated by the Marin County Visitors bureau ("Visitor's Bureau").

The Town Attorney said that the Board of Supervisors modified the MCTIB last Fall to increase its assessments to two percent of gross revenues. Subsequently, the Lodge at Tiburon and the Water's Edge Hotel asked the Town to also modify the TTBID, to fund an expanded program to promote their business establishments, according to Danforth.

Danforth said the Council was being asked to adopt a resolution declaring its intention to similarly modify the TTBID and set a time and place for a public meeting and subsequent public hearing to adopt the ordinance. She said that a representative from MCVB would be at the

public meeting, scheduled for February 16, 2011, to answer any questions. Danforth noted that adoption of the resolution did not obligate the Council in any way to adopt or move forward with the proposed assessment.

In response to questions from the Council, Danforth said that the two lodging establishments in town were strongly in favor of the proposed assessment increase. She said that the assessment was in addition to the 10 percent hotel occupancy tax, so that the total tax paid by visitors staying at either of the lodging establishments would total 12% instead of the previous 11%.

MOTION: To approve the resolution, as written.

Moved: Collins, seconded by Fredericks

Vote: AYES: Unanimous

### **PUBLIC HEARINGS**

1. **2312 Spanish Trail** – Appeal of Site Plan and Architectural Review Approval for construction of a new, detached, two-family dwelling with a detached two-family dwelling exception and variance for reduced front yard setback – (Planning Manager Watrous)

Assessor Parcel No. 059-201-23

Owners: William and Joy Norris

Applicant: Roger Hartley

Appellants: Jerome Bernal, Shelley Brown, Celia and Ann DeMartini, Robert Harrison, Wallace Quinn, Dennis and Terry Schwakopf, Sue Zimmerman

Planning Manager Watrous reviewed the history of the project and grounds of the appeal as detailed in the staff report. He said that this was the first time an application had been filed which tested the Town's ordinance, adopted in 2003, concerning detached two-family dwellings in the R-2 zone.

Mayor Slavitz opened the public hearing.

Sue Zimmerman, Terry Schwakopf, and Shelley Brown made the report on behalf of the appellants (a copy of appeal is included in the staff report). Ms. Schwakopf detailed "who we are and why we care" as neighbors of the project and neighborhood representatives. Ms. Zimmerman provided a powerpoint presentation (copies are available at Town Hall) and also presented a detailed model (dubbed "strawman") of a possible one-unit solution. Ms. Brown said that her view would be greatly impacted by the approved, two-unit project.

Jerome Bernal spoke about inconsistency of Town regulations as applied to parking structures; complained about the process he had been required to go through to create a parking structure on his Spanish Trail property; asked that consistency be applied to this application.

Attorney Paul Smith and architect Roger Hartley spoke on behalf of the property owners. Smith said the DRB "got it right" and had interpreted the Town's ordinance correctly. (A copy of his letter is included in the file as "Late Mail".)

Mr. Hartley detailed all the changes and concessions that had been made to the project over the course of four Design Review meetings. He said he had considered a one-unit solution but that it resulted in more negative impacts to the neighbors' views, and parking, and created more bulk and mass than the two-dwelling solution. He also said the detached-dwelling plan was preferred by his client.

Mayor Slavitz opened the hearing to members of the public:

1. Design Review Boardmember Lou Weller explained how the DRB had reasoned its way through the Town's ordinance that allows detached unit duplexes in R-2 zones and how it reached its unanimous (5-0) decision to approve the project;
2. JJ Wintersteen, Paradise Drive, spoke in favor of his neighbors' appeal but said it sounded to him like another DRB hearing [Councilmembers Fredericks and Collins said that it was, indeed, a de novo hearing on the application];
3. Richard Wodehouse, current resident of the Whittingham property, noted that while he would be inconvenienced by the construction, said he strongly favored the two-dwelling project approval and that a single unit would obstruct his view, the primary reason for his living there;
4. Gene Aureguy said that his two-dwelling duplex had been approved under the Town's ordinance; said that one of the appellants (Wally Quinn) had complimented him on the outcome of the project; said that he had offered not to condominiumize the project to avoid de facto substandard lot splits that were of concern to the neighborhood; said he supported the Norris project, as approved by the DRB;
5. Jeff Brown, Spanish Trail, 40 years, said he has watched the neighborhood develop over the years; said that he was in favor of the Norris project and that it would enhance and increase the value of homes in the neighborhood;
6. Scott von Stein, neighborhood resident and Southern Marin Fire District Director, spoke in favor of the Norris project; he said he liked the carport design because it would facilitate movement of emergency vehicles on the Town's and County roadways;
7. Gary Glover, Spanish Trail, 18 years, also supported the Norris project, as approved, for all the reasons stated above.

Sue Zimmerman spoke during rebuttal. She disputed Mr. Hartley's remarks about the "appearance" of creating a four-story house in the 'strawman' model and said she based her elevations on his elevations. She said that staff had done a fabulous job of educating the DRB in how to make findings, but that findings should be "facts", not assertions.

Ms. Zimmerman said that she hoped the Council did not approve the project, as approved by the DRB, but if it did, she would like certain design features to be included, such as extending the hedge down the entire length of the property line.

Mr. Norris spoke during his rebuttal. He thanked the Council for walking the property. He said that the Whittingham property was the only one with a primary view adjacent to his project, and that the current resident supported the project. He said that DRB had deliberated long and hard and that one member said that he had put more effort into deciding this application than any other one that had come before the board. He said that he took pride in restoring old homes and listed some examples; he said that second unit was modest, under 1,000 square feet, and that the project would improve the property, while a single unit would detract from it.

Mayor Slavitz closed the public hearing.

Council deliberated and concluded, in summary:

- Councilmember Fredericks said that the DRB failed to make adequate findings to meet criteria Nos. 2 and 3 of the ordinance and said she would vote to uphold the appeal.
- Councilmember O'Donnell thought the DRB had done good job interpreting the ordinance and had made a reasonable decision.
- Councilmember Collins, too, expressed concern about inadequate findings in Section 2.
- Jim Fraser was concerned about the findings for No. 2 but thought the Council might remand the application to DRB.
- Jeff Slavitz was concerned that the DRB did not make the findings in Nos. 2 and 3.

Councilmember Fredericks said that she had considered the issue for a long time, having served on the Council when the amendment to the zoning ordinance allowing a two-dwelling exception in the R-2 zone was adopted. Fredericks reviewed the criteria and said why she could not support the DRB findings to Nos. 2 and 3.

[Section 16-40.020 (F) establishes the following criteria to be used in reviewing a detached two-family dwelling exception:]

1. ***The lot area is adequate to reasonably accommodate two detached units in a functional site layout that substantially meets the land and structure regulations of the R-2 zone.***

Councilmember Fredericks said that the Norris lot met the size criteria under this section. However, she noted that nearly half of the lots in the neighborhood met this 7500 square foot threshold and that many were larger. She also said that many other lots in the R-2 zone were "street to street" lots. She said that while the two-dwelling proposal was an attractive one, it was an incorrect interpretation of the ordinance to allow the two-dwelling exception to become a pattern of development in the neighborhood when other options existed.

2. ***Physical conditions exist on the lot that render impractical or difficult the construction of attached units; or the site planning superiority and land use compatibility benefits of detached units are clearly demonstrated for the lot.***

Fredericks said that with a preponderance of long, narrow lots in the area, and lots that go street to street, the DRB needed more specific examples of what made the one-unit approach impractical and difficult; she said, at best, the impediments were disputed.

Fredericks also said that she was confident that the architect could find a way to address the issue of placing an attached two-unit dwelling on the lot.

3. ***Two dwelling units in two detached buildings would likely reduce visual, environmental, privacy or other impacts as compared to a probable attached two-family dwelling on the lot.***

Fredericks said that she could agree or disagree with the findings of the DRB in this instance; she said that it was a question of land use compatibility and whether the detached unit would reduce the impacts; she said that the DRB had decided that the impacts of the one-unit or two unit-dwelling were about equal in the application.

4. ***The permit history of the lot has been researched and provides no evidence of self-created hardship, self-created nonconformity, or other pattern of activity that would act to circumvent the purpose of this Section.***

Fredericks said that this information could be viewed in different ways.

5. ***All vehicular access shall be convenient, shall comply with industry standards for ingress and egress, and shall not result in adverse impacts on neighboring properties and/or streets.***

Fredericks said that vehicular access seemed adequate in both designs.

Fredericks said that the burden was on the applicant to convince the deciding body that all of the above criteria had been met; she said that they had not all been met, in this application.

Councilmember O'Donnell presented an opposing view. He said that he had served on the Design Review Board and that in its deliberations, the board sought to apply a "reasonable" standard to achieve the best possible outcome and design. He said in this instance, the DRB did a superlative job in reducing the impacts to the neighborhood and that the detached unit design was a better design with fewer impacts overall.

O'Donnell said the small, detached cottage was a better solution than a single, attached unit, and the way it was sited, and the fact that the applicant had lowered the roof and made other

concessions, made sense and complied with the Town's guidelines. He commended the DRB for the idea of creating a parking deck on Spanish Trail as a solution to alleviate congestion in an already congested neighborhood.

O'Donnell said that it was not fair to characterize the application as a de facto lot split. He noted that the "Old Tiburon" neighborhood had development challenges and that the Town's ordinances had been "dropped on" the neighborhood after much of it had been built out. Nevertheless, O'Donnell said that he respected the viewpoint of the appellants, but that the project would vastly enhance the neighborhood and improve the property without creating a precedent.

Councilmember Collins thanked the parties and the Design Review Board. However, he said that it was not an issue of property value or attractiveness because the Town had an ordinance that controlled land use, and that in this instance, the purpose of the ordinance was to discourage detached units in the R-2 zone.

He said that in some of its meetings, the DRB said the site didn't meet the "impractical" findings and even a so-called "superior" design did not meet the land use compatibility findings of the ordinance.

Collins wondered if there might not be a way to make the building "cascade" down the hill. He said that while he was sympathetic to the applicant, he could not make the findings required by the Town's ordinance based on what information was provided in the record.

Vice Mayor Fraser also acknowledged the DRB and everyone involved for their time. He said it was easy to understand why the DRB and the neighbors had struggled with the issues. Fraser said that he, too, struggled with exception criteria No. 2. He said that the appellant's model and the Hartley diagrams were examples of how a single building with two units could be created on the lot; he said that he was puzzled by the approved design which looked, to him, like two separate houses on the lot.

Fraser said that while he respected Mr. Norris' desire to restore his home (and create a second, separate unit). However, he said he was not convinced that an attached unit could not be created, possibly excavated, and be in symmetry with the main building.

Mayor Slavitz agreed; he said the second unit in the approved DRB application was lovely, but the Town's zoning ordinance prohibits detached second units in the R-2 zone unless all the criteria could be met. He said that the findings for criteria #2 and #3 could not be made; that an attached second unit would be possible and that the detached unit would impact views and appear more massive. He said the view from the Whittingham residence would not be harmed by a single building because that residence would look over the new building.

Slavitz noted that there were good examples of attached units around town; he said that this application did not demonstrate the superiority of a detached unit. He said that he would vote to

uphold the appeal but he was uncertain whether the action would include remanding the application to the DRB.

Town Attorney Danforth said that in the past, the Town Council had, in some instances, chosen to uphold an appeal, deny an application without prejudice, and/or waive re-application fees for one year.

Vice Mayor Fraser said that it was important to help the applicant in this instance.

Councilmember O'Donnell agreed, and stated that it was not cheap to prepare for and attend these hearings, and that the applicant had gone through four different DRB hearings, in addition to this meeting.

Planning Manager Watrous said that it would be important to provide direction to the applicant if the Council denied the application without prejudice. In other words, was the direction from Council that the applicant not re-apply with another detached two-unit design, and to re-apply only with a attached two-unit design. Council concurred that its direction was for an attached two-unit design.

**MOTION:** To uphold the appeal and direct staff to return to Council with a resolution of findings, and to waive further reapplication fees by the property owners if they submit an application for an attached dwelling for consideration by the Design Review Board.

**Moved:** Fredericks, seconded by Collins

**Vote:** AYES: Fraser, Fredericks, Collins, Slavitz

NOES: O'Donnell

**2. Draft Housing Element** – Introduction and review of preliminary draft Housing Element of the Tiburon General Plan (Director of Community Development Anderson)

Director of Community Development Anderson gave a brief report and turned the meeting over to the Town's consultant, who reviewed the draft in more detail. He said that the new element built strongly on the adopted General Plan Housing Element.

Council discussed the issue of affordable housing and asked how it would be possible to provide incentives to landowners to reach the state-mandated goals. Councilmember O'Donnell also said that it would be important to clarify language in the draft element pertaining to second units, in light of the discussion at the appeal hearing.

Direction was given to staff to proceed with the draft, as written, with possible additional written comments in the next couple of days from Councilmember Fredericks, and possible input on the second unit discussion at the upcoming Town Council/staff retreat.

3. **Ned's Way Recreation Facility** –Review site plan and architectural drawings for the Ned's Way Joint Recreation Project at 600 Ned's Way, AP No. 058-151-27; consider adoption of Mitigated Negative Declaration – (Director of Community Development Anderson) – *item has been continued without hearing to the February 16, 2011 meeting*

### **TOWN COUNCIL REPORTS**

Councilmember Fredericks said she had participated in one-way conference call with other cities (through the League of California Cities) which consisted of an analysis of the Governor's proposed budget program.

Councilmember Collins said that the Marin Energy Authority had reached a milestone in retiring public debt (for its start-up costs) and obtaining private financing. He said that Supervisor McGlashan had handed a check for \$650,000 to the Board of Supervisors last month to repay its debt to the County of Marin.

### **TOWN MANAGER'S REPORT**

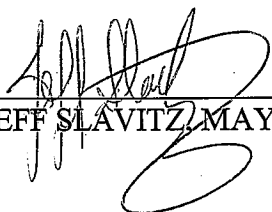
Town Manager confirmed the cancellation of the February 2 meeting; however, she noted that the Town Council/Staff retreat would take place at the Lodge at Tiburon on February 8.

### **WEEKLY DIGESTS**

- Town Council Weekly Digest – January 7, 2011
- Town Council Weekly Digest – January 14, 2011

### **ADJOURNMENT**

There being no further business before the Town Council of the Town of Tiburon, Mayor Collins adjourned the meeting at 11:15 p.m., in memory of Fran Mayberry, Tiburon Town Council, 1986-1990.

  
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JEFF SLAVITZ, MAYOR

ATTEST:

  
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DIANE CRANE IACOPI, TOWN CLERK