

**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, July 20, 2011, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

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

PRESENT: EX OFFICIO: Town Manager Curran, Town Attorney Danforth, Director of Administrative Services Bigall, Director of Community Development Anderson, Director of Public Works/Town Engineer Nguyen, Police Chief Cronin, Town Clerk Crane Iacopi

Prior to the regular meeting, the Council met in closed session, beginning at 7:00 p.m., to discuss the following:

CLOSED SESSION

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

Lowenberg v. Town of Tiburon

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

Mayor Slavitz said that no action was taken on the matter discussed in closed session.

ORAL COMMUNICATIONS

None.

PRESENTATIONS

- Introduction of Tiburon Police Officer Justin Kurland
- Presentation of Commendation to Police Office Rob Dehner

- Presentation of Resolution honoring Capt. David Hutton on his 30th anniversary of employment with the Town of Tiburon
- Presentation by Jon Friedenberg, Chief Fund and Business Development Officer for Marin General Hospital

Chief of Police Cronin introduced the newest member of the department, Justin Kurland, who he said was born and raised in Marin County and had graduated from UCSB, and the police academy in Santa Rosa. Chief Cronin said that Kurland had also served the town in the Police Explorer program over the last year.

Next, Chief Cronin spoke of the bravery of Officer Dehner and stated that while police often made the news for shooting or killing people, more often than not, they saved lives, as had Officer Dehner. Fire Chief Richard Pearce concurred, and added his commendation on behalf of his department.

Mayor Slavitz thanked Officer Dehner on behalf of the community and presented him with a commendation. Officer Dehner accepted the commendation, stating that he had relied on his training, and that any one of his colleagues would have acted in exactly the same fashion.

Chief Cronin commended Capt. David Hutton on the occasion of his 30th anniversary of employment with the Town of Tiburon. Cronin said that Capt. Hutton had worked his way up through the department, and had done every job, including acting Chief of Police. He told the audience how helpful the captain had been when Chief Cronin took the reins of the department and that he was an invaluable partner to him.

Mayor Slavitz read and presented the Town Council resolution to Captain Hutton. Hutton said that he could not have done his job without the support of his friends and family, the Town Council and staff, and of course, the Tiburon community. He commended the members of the Tiburon Police Department and said they were the finest that could be found anywhere, and that it was an honor to serve with them.

Mr. Friedenberg gave a powerpoint presentation about the plans for seismic upgrades to the hospital pursuant to SB 1953. He explained how the improvements were necessary and would benefit the community by providing a structurally sound hospital during a disaster, as well as a state-of-the-art facility for the future. Friedenberg said that a bond measure was contemplated in 2013 to raise funds for this \$500 million project.

CONSENT CALENDAR

1. **Town Council Minutes** – Adopt minutes of the July 6, 2011 regular meeting (Town Clerk Crane Iacopi)

Vice Mayor Fraser submitted his revisions to the minutes.

2. **Anniversary of Employment** – Adopt resolution commending and congratulating Police Captain David Hutton on the occasion of his 30th anniversary of employment with the Town of Tiburon (Police Chief Cronin)
3. **Police Department Commendation** – Adopt resolution commending Office Rob A. Dehner on for exemplary service (Police Chief Cronin)
4. **Smoking Ordinance** – Adopt ordinance repealing Title VI, Chapter 28 (Smoking & Tobacco Regulations) and adopting a new Title VI, Chapter 28 of the Tiburon Municipal Code (Director of Community Development Anderson)
5. **GASB 54** – Approve Town Fund Balance Classification Policy pursuant to the Governmental Accounting Standards Board (GASB) Statement No. 54 (Director of Administrative Services Bigall)
6. **Signature Authority** – Adopt resolution authorizing signers on Bank of Marin Account (Director of Administrative Services Bigall)

MOTION: To adopt the consent calendar, as amended.

Moved: Collins, seconded by Fraser

Vote: AYES: Unanimous

ABSENT: Fredericks

ACTION ITEMS

1. **Recreation Needs Assessment** – Consideration and acceptance of report, “Tiburon Peninsula Summary of Findings: Recreation Needs and Existing Conditions Assessment” (Director of Community Development Anderson)

Director of Community Development Anderson said that in June 2010, the Town retained The Sports Management Group (TSMG), a Berkeley-based consulting firm, to prepare a recreation needs and existing condition assessment for the Tiburon peninsula. He said the assessment was jointly funded by the Town of Tiburon and the City of Belvedere, and that a draft report was completed and circulated for public review in May 2011.

Director Anderson said that the primary purposes of the assessment were to chronicle existing conditions with respect to peninsula recreation programs, facilities, and opportunities, and to evaluate the effectiveness of current programming and facilities in meeting the needs and desires of residents. A “gap analysis” was performed to assess the capacity of existing facilities to meet demand and determine whether gaps exist in service or capacity.

To staff’s knowledge, Anderson said this was the first effort to assess community-wide satisfaction with recreation programs and facilities on the peninsula on a comprehensive,

scientific basis. To that end, a statistically valid and projectable telephone survey of 300 adult peninsula residents was conducted by sub-consultant Godbe Research in August 2010 in order to gather public opinion of the state of recreational services on the Tiburon peninsula.

Anderson introduced the consultants who had prepared the report, Lauren Livingston and Brian Godbe. Ms. Livingston gave a powerpoint presentation and Mr. Godbe talked about methodology. Both took questions from the Council.

Ms. Livingston said the survey results indicated that peninsula residents are generally quite satisfied with both recreational programming and facilities available to them. She said that there were no obvious “gaps” in recreational services identified by respondents. The closest any subject came to being identified as potentially deficient was “recreational opportunities for teens”, but the data were inconclusive even on that topic, which is commonly identified as a deficient area in similar surveys for other communities. The survey results reinforced the need to preserve, at existing levels or better, after-school programs for children, and indicated that demand exists for additional facility space for certain types of programming.

Ms. Livingston said that for the size of community, the Tiburon peninsula was rich in programs, both public and private. She said that the community demonstrated environmental stewardship and that the survey showed people wanted to maintain the open spaces. She also said they would be willing to “pay for play”. She said that residents valued recreation, the Multi-Use Path, Open Space, parks and playgrounds, and that they had expressed a high degree of satisfaction with the programs offered by the Jt. Recreation Department, as well as its high level of service provided. She said that the deficiencies might be characterized as a dearth of public facilities, and limited space for sports. She said that a community with a population of 30,000 was about the point at which public facilities were developed for these purposes. She said that Tiburon peninsula residents valued outdoor play areas, outdoor sports fields, and facilities for after-school programs. She said an interest in having a community center was expressed. She said the Council would have to determine the specific components of a center that were important to the community, and assess its willingness to pay for such a facility.

Ms. Livingston also said that the survey had determined that residents frequently used recreational facilities in nearby communities, and that such use between communities appeared seamless. She said in some instances, there was a lack of awareness of local programs. As a result, she recommended the addition of flexible space for Jt. Recreation programs, and for revenue enhancement.

Ms. Livingston said that the trend in recreation was for programs for baby boomers and older adults, and that long-term planning should incorporate multi-generational design practices and integrate informational, art and social programs.

Mr. Godbe described the questions in and results of the telephone survey completed between August 16-20, 2010. He said that the survey was 15 minutes long and that 300 interviews had been completed. Godbe said that the telephone interviewers had probably called 10,000 numbers

and had spoken with 1800 people overall. He said the survey showed a high satisfaction rating with the current recreational programming, as noted by Ms. Livingston.

Councilmember Collins asked if teens had been interviewed in the survey. Mr. Godbe said that they were not, as it was not legal to interview persons under the age of 18 without parental consent.

Ms. Livingston added that it was difficult to define teens and for many people that mean “tweens” between the ages of 12 and 14 and “pre-drivers”. She also commented that parents often had a different idea of what kinds of programs should be available compared to the activities favored by the teens or “tweens” themselves.

Mr. Godbe said that one way to get participation from teens is to conduct focus groups in schools or government classes. He also noted, however, that 30% of the population on the Tiburon peninsula was 60 years old or more.

Councilmember O’Donnell asked the consultants whether the survey took into account the geography of the peninsula and whether the fact the population was spread out over many different areas and neighborhoods might be a hindrance. Mr. Godbe said that the survey represented the entire population, but that adding a geographical layer to the survey would have been costly and beyond the scope of work.

Councilmember O’Donnell said that the fact that Tiburon did not have a high school also limited its ability to provide services and programs to teens. He said he thought that this was more of a regional issue.

Vice Mayor Fraser asked whether newer technologies, like e-mail, were utilized in surveys to get a broader representation. Mr. Godbe said that e-mail-based surveys were still unproven as being random and representative as compared to telephone surveys, but were improving and might be viable within a few years

Mayor Slavitz commented that the survey results did not seem to match the feedback from the Jt. Recreation Committee in its report to Council about the downturn in revenues from camps and the like.

Mayor Slavitz opened the public hearing.

Jerry Riessen, Jt. Recreation committee member, also commented on the idea of an e-mail survey to reach a broader audience or targeted age group. He said that Jt. Recreation staff was in the process of obtaining this contact information through registration forms, and the like.

Mayor Slavitz closed the public hearing.

MOTION: To accept the report, as presented.
Moved: O'Donnell, seconded by Fraser
Vote: AYES: Unanimous
ABSENT: Fredericks

PUBLIC HEARING

1. **1895/1897 Mar West** – Consideration of encroachment permit applications to construct private improvements on the Mar West public right-of-way adjacent to private properties located at 1895 and 1897 Mar West (Department of Public Works; Department of Community Development)
 - Encroachment Permit Application Nos. 11-51 and 11-72
 - Owners/Applicants: Brian and Joanne McCullough; David Barley
 - Assessor Parcel Nos. 059-121-10 and 11

Director of Public Works/Town Engineer Nguyen gave the report. He said the Town had received two encroachment permit applications requesting installation of private improvements on the Mar West Street public right-of-way adjacent to residential properties located at 1895 and 1897 Mar West Street. Nguyen said that one of the applications requests that a portion of a garage addition be constructed in the public right-of-way, and the second application requests the installation of a concrete staircase, retaining walls, and the replacement of a concrete pad for refuse can storage.

Nguyen said that while the Public Works Director typically approves encroachment permits of a minor or temporary nature, Chapter 19 of the Tiburon Municipal Code requires Town Council approval of any encroachment permit “entailing the construction of buildings, car decks, carports, garages or other long-term improvements of a substantial nature”. He said that staff had concluded that both of these applications were beyond the scope of its authority and would require Town Council action if they are to be approved.

The Director recommended that the Town Council consider 1) approval of the Barley Stairs application (EP 11-72), subject to the imposition of reasonable conditions by Town staff; and 2) approve the McCullough Garage application (EP11-51), amended to eliminate the trellis and provide an open parking space in lieu of the proposed enclosed garage, subject to the imposition of reasonable conditions by Town staff.

In his written report, Nguyen said that in both cases, the proposals represent “long-term encroachments of a substantial nature” and could have a substantial adverse effect on vehicular or pedestrian circulation or on public health and safety, particularly given the narrow rights-of-way that characterize the neighborhood. Therefore, any Town Council approval should be conditioned to include a recorded Memorandum of Encroachment to address revocability, maintenance and other issues, as well as other reasonable conditions to be imposed by Town staff.

Mayor Slavitz asked about other buildings in the neighborhood that had garages built right up to the street. Director of Community Development Anderson said that the last application the Town had received to build a garage in the public right-of-way had been denied in 1998. He said that the examples [on Mar West] cited by Mayor Slavitz had been built in the 1980s or earlier, prior to adoption of more current Town regulations. He noted that the McCullough garage was already a non-conforming structure.

Mayor Collins asked about the application to build a garage on the right-of-way on Spanish Trail that had been denied. Anderson explained that the width of the roadway in that location was similar or less than Mar West Street.

Vice Mayor Fraser asked about the existing sidewalk and vegetation and who had the responsibility for maintenance.

Director Nguyen said that in many cases, the property owners “take ownership” of the right-of-way and maintain it. Town Attorney Danforth clarified, noting that under the Town’s sidewalk maintenance ordinance, the sidewalk is owned by the Town but it is the responsibility of the property owner to maintain it.

Mayor Slavitz asked what the purpose was for a public right-of-way. Town Attorney Danforth said that it had several uses, to maintain a buffer for the opening of car doors and the like, and for the ability to expand or maintain the street.

Director Nguyen commented that in this location, there was not much useful space available [on the road right-of-way] for the public benefit.

Mayor Slavitz asked why town staff recommended approval of the stairway application.

Town Manager Curran replied that it was because one property was accessed via the other property and the stairway would allow more reasonable access over the right-of-way for people to get to their homes. But she warned of “privatization” of the right-of-way in the garage application; she said the Town’s policy was clear that it was impermissible to build an enclosed structure in the public right-of-way.

Councilmember O’Donnell asked whether it was common to have that much right-of-way [in the location of the McCullough garage]. Director Anderson said that it was not unusual to have a 50 feet of right-of-way for a public street, but noted that this subdivision dated to the 1800’s and its surveyors do not appear to have paid much attention to how topography affected street layouts or property lines.

Councilmember Collins asked Staff for an explanation of the 50 feet; he was told it was roughly 30 feet of right-of-way and 20 feet of roadway in this location.

Mayor Slavitz opened the public hearing.

Architect Michael Heckmann, representing the McCulloughs, said that this application was the “final step” in the remodel project for his clients, and that it went further to resolve a number of issues in the neighborhood, such as lack of parking.

Heckmann also said that the stairway would provide a safer, code-compliant way to access the two homes. He said the design was similar to a Raccoon Lane stairway already approved by the Building Department.

Heckmann said that the design of the garage would be in character with the house, and proposed minimizing the height by using a “green” roof.

As for the trellis, Mr. Heckmann said that he was not sure why staff recommended against approval and that all three affected property owners supported the project as presented.

Vice Mayor Fraser asked where the occupants of 1893 and 1895 Mar West parked. Mr. Heckmann said that they parked on the street but that even parking parallel did not allow enough [legal] clearance on the roadway.

The Vice Mayor asked if the proposed additional parking pad would take away one space on the street. Mr. Heckmann said that it would not, that there would still be parking for five cars and that the garage would “get two cars off the street.”

Councilmember Collins asked if one wall would be removed from the existing garage. Mr. Heckmann said that it would be, in order to widen the garage door to accommodate the turning radius into the driveway.

Collins also asked about where the trash receptacles were located for the Barley residence. Mr. McCullough said that they had to bring them across his driveway, which was difficult when a car was parked there.

Councilmember Collins asked if the second parking space could be pushed back farther off the street. Mr. Heckmann said that he was concerned about pushing back which might jeopardize the foundation of the house. He added that the garage was 18 feet off the pavement, while two other garages down the street were just one and three feet off the pavement.

Town Manager Curran said that the Town was protective of its right-of-way and that the genesis of the Town’s policy, adopted in 2010, had been due to illegal privatization of public rights-of-way.

Curran said that while town staff supported the idea of off-street parking, it might be helpful to move off-street parking back and/or create a parking pad [which was allowed under Town policy].

She said that enclosed buildings were prohibited on town right-of-way and that the Town staff saw no way to allow it under existing policy. She also commented that it was important to think of the future public good in making its decision.

Councilmember Collins asked whether creation of a parking pad on Mar West would necessitate the building of a retaining wall. Mr. Heckmann said that it would, and that it would probably have to reach a height of 11 feet in the back.

Vice Mayor Fraser asked for the actual amount of setback required from the street in the Town's regulations, and asked whether a smaller garage could be contemplated, wherein the Town could allow a smaller encroachment, such as two feet, under the policy. Mr. Heckmann said that a 19-foot setback was required by the Town. Director Anderson said that a standard parking space is 8-1/2 by 18 feet. Heckmann added that it made no sense not to build it correctly. Mr. McCullough said that the current [old] garage was not useable because of its size.

Architect Heckmann asked the Council to find some flexibility in its policy and to weigh the merits of the project, and special circumstances, such as topography and location, in its decision. He suggested that the public safety could be served under Section C-5, and that a long-term public benefit could be obtained under Section E-2.

Mayor Slavitz said he thought the application, as presented, was in conflict with what was permissible in the policy.

Mr. Heckmann said that the street parking in that location was not to legal standard now, and that the new garage and stairway would contribute to public safety through better access for property owners, visitors, and public safety personnel.

Applicant Brian McCullough noted that there was a lot of property crime in that area, with three hit and run accidents, vehicles being "keyed" and a bumper stolen. He said that he had made improvements to the area by removing acacia trees which impeded visibility, and added that the Town had not done anything to maintain the vegetation or address the slide problems. He noted that he alone was funding the project, including the stairs, for the benefit of his neighbors, as well as improving the aesthetics. He also commented that it was an overcrowded street for parking because many workers downtown parked there because it was "free" parking.

Mayor Slavitz closed the public hearing.

Town Attorney Danforth recommended that the Town Council apply its encroachment policy to this application. She stated that with all due respect to Mr. Heckmann, who has considerable experience in the community, he had "cherry picked" the parts of the policy to fit his argument.

Danforth noted that section E-2 of the policy allowed encroachments only for the purposes listed under Section C. She noted that parking could be created in another fashion other than the one proposed by the applicant, and that it was not necessary to enclose the garage for public safety or

public benefit under Section E-2. She said that approving the permit, as presented, would result in unnecessary privatization of the right-of-way.

Mayor Slavitz concurred, stating that he saw no way to make findings to create an exception under the Town's policy.

Councilmember Collins asked if this applied to the other application (for the stairway), as well. Town Attorney Danforth said that the stairs could qualify for an encroachment permit under Section C-1, but that the trellis did not qualify. She added that the parking pad would be acceptable under the Town's policy.

Councilmember O'Donnell said that he disagreed with staff's recommendation. He said that in his [Hillhaven] neighborhood, it was a common occurrence for homeowners to make improvements in the public right-of-way. He noted that the McCulloughs had built a beautiful home and had taken great care in maintaining both their own, and the Town's, property.

O'Donnell said that the creation of a parking pad on the street would be an eyesore in the neighborhood, and that the garage would be more consistent with the overall existing character. He said that he did not see the permit as a private taking, rather, a solution to a problem in a unique neighborhood (one of the oldest in the Town), where the property lines were not drawn nor streets built to modern standards or current needs.

Councilmember O'Donnell said that he had to stop twice while driving down Mar West Street in that location in order to let a truck pass. He said that the permit would be a "common sense" approach and has the complete support of the neighbors.

O'Donnell said that he would support approval of both the stair application, as well as the garage application. He also said he thought a gable on the garage would be aesthetically pleasing and would match the house.

Councilmember Collins introduced the idea of modifying the Town's policy before voting for an approval. Town Attorney Danforth said that would be a prudent approach and one where the Council could use this application as a case in point.

Collins also suggested that a separate "cut-out" for parking might be a requirement for approval in order to get a car (or its wheels) off the roadway. Director Anderson said that could be consistent with the Town's policy and a benefit to the general public.

Vice Mayor Fraser said that he knew the street in question very well, having lived in that neighborhood. He said that street was unusual and the neighborhood was unique. He suggested that once in a while, the Council should go back and look at its codes and try to make adjustments for all the right reasons. Fraser said that the applications constituted a well-put-together plan, and that he thought findings could be made that the improvements would also improve public safety in the area.

The Vice Mayor also commented that from the look of it, one would never know that the existing garage was on a public right-of-way because of its setback; he said that permitting it would not constitute a precedent and that he would vote for its approval. However, Vice Mayor Fraser concurred that the approval should be “done properly” by considering changes to the policy.

Mayor Slavitz said that he understood the sentiments of his colleagues but still thought that it appropriate to look at the findings and recommendations in the staff report. He said that he would vote for approval of the stairway improvements but not the garage, because the findings to approve it could not be made under the Town’s policy. He also pointed out that all four staff members present were unanimous in their opinion that allowing the garage was poor public policy and set a poor precedent.

The Mayor said that while everyone says an approval would not set a precedent, voting for an exception in his experience did set a precedent and that before long, other applicants would want similar approvals. He noted that the applicants themselves discussed other garages in the neighborhood. He also said that he would be more sympathetic if there were no other options. The options he saw were to carve out two parking spaces [parking pad], or building an open garage, like other residents had done on Solano Street.

Councilmember O’Donnell said that the Town would probably allow the applicant to re-build the [enclosed] garage if there was a fire, and in any event, he said it was the job of the Council to review applications on a case-by-case basis.

O’Donnell said that “Old Tiburon” is unique, and that the garage was set back so far already, one would never know if was on the right-of-way. He also stated that pushing the garage back would require removal of a “gorgeous tree”.

Vice Mayor Fraser reiterated his opinion that a parking pad was not a good solution. He said it would detract from the neighborhood, and that pushing the garage back even further might jeopardize the property. He said that the alternatives presented in the Council discussion were not good alternatives.

Town Engineer Nguyen commented that it had been asserted but not demonstrated that the parking pad could not be pushed further back on the property, noting “anything can be done” in engineering to achieve a result.

Councilmember Collins again discussed amending the policy; he said that he did not know about these kinds of situations at the time the policy was adopted. He said that bringing back an amended policy to Council would allow an analysis of what an appropriate exception might be.

Applicant McCullough said that getting cars off the center line of the roadway to a legal level might be the exception to the policy.

Mayor Slavitz noted that the majority of the Council wanted to find an exception in the policy in order for its consideration of the [garage] application. Council directed the Town Attorney to return to Council with recommendations for a modified policy.

Item continued to either August 17 or September 7.

TOWN COUNCIL REPORTS

None.

TOWN MANAGER'S REPORT

Town Manager Curran said she had received a request from Battalion Chief Ed Lynch about the possibility of staging a scaled-down version of the Fireman's Ball at the September 23 Friday Nights on Main (FNOM). She said Lynch had requested permission for the music and event to go slightly later (until 10:30 or 11 p.m.) than the usual FNOM end time of 9 p.m. Council concurred with the request.

Curran noted that there would be a report from the MCCMC Committee on Pension Reform at a Council meeting in September, led by Councilmember O'Donnell.

Finally, the Town Manager reported that Town staff had obtained an estimate to remake the public sign at the Cove Shopping Center similar to the new sign at Blackie's Pasture. A brief discussion ensued about the sign at Blackie's and view blockage caused by another (Caltrans) street sign in the vicinity.

WEEKLY DIGESTS

- Town Council Weekly Digest – July 8, 2011
- Town Council Weekly Digest – July 15, 2011

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Slavitz adjourned the meeting at 10:33 p.m.

JEFF SLAVITZ, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK