

**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, September 7, 2011, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

**ROLL CALL**

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

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, Chief of  
Police Cronin

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

**CLOSED SESSION**

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
(Subdivision (c) of Government Code Section 54956)

*Claims of property owners at 120 Round Hill Road and 10 Tara View Road*

**ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY**

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

**ORAL COMMUNICATIONS**

None.

**CONSENT CALENDAR**

1. **Town Monthly Investment Summary** – Accept report for month ending July, 2011  
(Director of Administrative Services Bigall)

2. **COPS Funding** - Adopt resolution approving an expenditure plan for the utilization of Supplemental Law Enforcement Funds (COPS) monies received in fiscal year 2011-12 (Chief of Police Cronin)
3. **Endorsement for MCCMC Appointment** – Recommendation to endorse appointment of Councilmember Alice Fredericks for Marin County Council of Mayors & Councilmembers (MCCMC) appointment to the Golden Gate Bridge, Highway & Transportation District Board of Directors (Mayor Slavitz)
4. **Del Mar Valley Utility Undergrounding Assessment District Construction Project** – Project approval and award of contract (Director of Public Works/Town Engineer Nguyen)

MOTION: To approve Consent Calendar item Nos. 1 through 4, as written.  
 Moved: Fredericks, seconded by Fraser  
 Vote: AYES: Unanimous  
 ABSENT: Collins

**ACTION ITEMS**

1. **Appointments to Boards, Commission & Committees** – Appointment to fill vacancy on Design Review Board (Town Clerk Crane Iacopi)

Town Manager Curran said that the Council had interviewed Greg Johnson for the vacancy on the Design Review Board created by Lou Weller’s appointment to the Planning Commission.

Vice Mayor Fraser said that Mr. Johnson brought talent, background and expertise to the position. Mayor Slavitz agreed that he was an excellent candidate.

MOTION: To appoint Greg Johnson to the Design Review Board.  
 Moved: Fraser, seconded Fredericks  
 Vote: AYES: Unanimous  
 ABSENT: Collins

**PUBLIC HEARINGS**

1. **Wireless Communication Facilities Amendment** – Consider amendment to Title IV, Chapter 16 (Zoning) of Tiburon Municipal Code to create an additional exemption from the Conditional Use Permit Requirement for Wireless Communication Facilities (WCFs) – (Planning Manager Watrous) – *Introduction and first reading of ordinance*

Director of Community Development Anderson said that the Town began regulating wireless communication facilities (WCFs) in 1997 and had amended its regulations several times over the years to remain consistent with state and federal requirements in this ever-changing field of communications. He said the Town’s regulations are currently codified in the Municipal Code

Chapter 16 (Zoning Ordinance), in Section 16-42, and require among other things a conditional use permit to install or operate a WCF in Tiburon. However, he said that subsection 16-42.030 contains a list of WCFs that are exempt from the provisions of Section 16.42 and do not require a conditional use permit. Anderson said that exemptions include FCC-licensed amateur (ham) radio installations, certain types of satellite antennas under a certain diameter, and television antennas subject to certain criteria.

Director Anderson said the Tiburon Fire Protection District (“District”) had proposed to install a low-wattage antenna to enhance inter-agency communications during an emergency on an existing wooden pole on the MMWD water tank site on Sugarloaf Drive. He said that both the City of Belvedere staff and Town of Tiburon staff supported the proposal.

Anderson said that staff believes the antenna would have no impact on the surrounding neighborhood and should not require a conditional use permit as do most new wireless communications facilities. Accordingly, he said staff proposes adding a new exemption to subsection 16.42 of the Zoning Ordinance that would apply to a low-wattage antenna owned and operated by a public agency and used exclusively for public safety purposes, provided that the following are met:

- a) The antenna must be located in the Public-Quasi-Public (P/QP) zone.
- b) Owned and operated by a public agency and used exclusively for public safety purposes.
- c) The wattage does not exceed 200 watts at full power.
- d) The antenna is located on a pre-existing structure.
- e) The antenna (not including its pre-existing support structure) shall be a whip-style antenna and shall not exceed 25 feet in height.
- f) The proposed wireless communication facility has a valid FCC license on file with the Town.
- g) An electrical permit for the installation shall be secured from the Tiburon Building Division.
- h) The structural attachment/anchoring method for the antenna shall be approved to the written satisfaction of the Tiburon Building Division.
- i) Compliance with OET Bulletin 65, or any successor document thereto, shall be demonstrated by a qualified radio frequency engineer.

Director Anderson said that staff believes that these specific criteria would create a very narrow exemption that would have negligible potential for impact on any surrounding uses or residents. Nevertheless, he said that neighborhood residents have raised concerns that the installation of the new antenna would potentially give rise to an “antenna farm” by creating an entitlement for commercial entities to install wireless communications antenna on the tower.

Anderson said that the Town Attorney concluded this would not occur for several reasons. First, he said the status of the site would not change because it already supports a tower for wireless communications antennas. More importantly, Anderson said that state law only affords co-location entitlements under narrow circumstances that would not be satisfied by a commercial proposal at this site. He said that Section 65850.6 of the California Government Code creates such an entitlement only where the co-location complies with the local jurisdiction’s requirements. According to the Town Attorney’s analysis, the Town’s Zoning Ordinance only allows co-location on commercial properties.

Mayor Slavitz asked if the new Fire District antenna would help ameliorate communications problems within the Marin Emergency Radio Authority (MERA) system. Fire Chief Rich Pearce said that was a separate issue, unrelated to the antenna application.

Mayor Slavitz opened the public hearing.

Brian Lantier, Sugarloaf Drive, said that while he was completely sympathetic to the Fire Chief’s request, his only regret was that when the Planning Commission made its decision it was not aware of a [recent] FCC decision relating to the City of Irvine’s issuance of a “legal, non-conforming” permit for a commercial antenna, and that it included differences between “shared location” and “co-location.” Lantier said that if it such a permit had been issued by the City of Irvine, it could happen here, as well. He pointed out that the “Sprints of the world had tried before” to install commercial antennae at 145 Sugarloaf and would no doubt try again. He said he hoped these issues could be more fully addressed for the good of the town, and still allow the Fire District to get what it needed, as well.

Mayor Slavitz asked the Town Attorney whether she would like to address the issues raised by Mr. Lantier.

Town Attorney Danforth said that consideration of the zoning ordinance amendment did not “open up a can of worms” as suggested by Mr. Lantier. She said that there have been antennae in the Sugarloaf location for decades (MMWD and Fire District antennae). She noted, however, that the process going on before the FCC was a very interesting one and that she had read all the materials referenced by Mr. Lantier very carefully.

Danforth said that the City of Irvine’s situation was quite different from the facts associated with this application. She pointed out that the City of Irvine annexed the site in question after the tower was built; the City did not grant the CUP. She said the City had merely designated it as legal, non-conforming after annexation. This is not an avenue open to the Town, whose

jurisdiction already includes the site. Danforth said the PCIA lobbying group that wrote the document mentioned by Mr. Lantier was aggressively trying to limit discretionary control of antennae siting by Irvine and other cities, and would continue to do so.

Vice Mayor Fraser asked whether this meant that if a commercial applicant came to the Town and wanted to co-locate an antenna alongside an existing antenna, would that applicant have to go through the CUP process. The Town Attorney said that they would. Vice Mayor Fraser also asked if allowing the proposed antenna would give rise to any entitlements in future. The Town Attorney said that the site would retain its current character and allowing the antenna would not give rise to any new entitlements; however, she reiterated that there were legal changes all the time in this field.

There being no more public comment, Mayor Slavitz closed the public hearing.

Vice Mayor Fraser said that he was on the Planning Commission with Councilmember Collins when the standards regulating Wireless Communications Facilities had last been updated. He said that he understood and agreed with the neighbors' legitimate concerns about antenna farms. But he said he understood the Zoning Ordinance amendment to be very tightly crafted to allow only low wattage antennae for public service agencies. The Town Attorney agreed, adding that "no one in Tiburon was interested in creating antenna farms in our residential neighborhoods."

Council concurred with the staff recommendation on the basis that the amendment was narrowly crafted and was not associated with other uses, such as telephone towers. Council also noted the proposed Fire District antenna would be a benefit for the citizens in Belvedere and Tiburon.

MOTION: To read ordinance by title only.  
Moved: Fredericks, seconded by O'Donnell  
Vote: AYES: Unanimous  
ABSENT: Collins

Mayor Slavitz read, "An Ordinance of the Town Council of the Town of Tiburon amending Title IV, Chapter 16 (Zoning) of the Tiburon Municipal Code to exempt certain Wireless Communications Facilities from the Conditional Use Permit Process."

MOTION: To pass first reading of ordinance.  
Moved: Fredericks, seconded by O'Donnell  
Vote: AYES: Fraser, Fredericks, O'Donnell, Slavitz  
ABSENT: Collins

- 2. Water Conservation Ordinance** – Consider amendments to Title IV, Chapter 13E (Water Efficient Landscape) of the Tiburon Municipal Code to incorporate latest Marin Municipal Water District (MMWD) regulations (Director of Community Development Anderson) – *Second reading and adoption of ordinance*

Director of Community Development Anderson said that the Council had passed first reading of the ordinance on August 3, 2011. He said that there was no comment from the public at that meeting.

Councilmember O'Donnell expressed his continuing concern and hope that homeowners would not get caught up in any confusion or conflicts between the Water District and Fire District regulations.

Director Anderson noted that progress had been made in resolving any discrepancies. He said that MMWD was attempting to make its regulations consistent with those of local fire districts, especially with regard to wildland urban interface areas, and other new regulations.

Mayor Slavitz opened and closed the public hearing. There was no public comment.

MOTION: To read ordinance by title only.  
Moved: Fredericks, seconded by Fraser  
Vote: AYES: Unanimous  
ABSENT: Collins

Mayor Slavitz read, "An Ordinance of the Town Council of the Town of Tiburon Amending Title IV, Chapter 13E (Water Efficient Landscape) of the Municipal Code and Adopting by Reference Marin Municipal Water District (MMWD) Ordinance No. 421 regarding Water Conservation."

MOTION: To pass second reading and adopt the ordinance.  
Moved: Fredericks, seconded by Fraser  
Vote: AYES: Fraser, Fredericks, O'Donnell, Slavitz  
ABSENT: Collins

### **TOWN COUNCIL REPORTS**

None.

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

Town Manager Curran noted the upcoming HOA Summit on Tuesday, September 13 at 6:30 p.m., at Town Hall.

### **WEEKLY DIGESTS**

- Town Council Weekly Digest – September 2, 2011

**ADJOURNMENT**

There being no further business before the Town Council of the Town of Tiburon, Mayor Slavitz adjourned the meeting at 7:55 p.m. in honor and remembrance of all people involved in 9/11 tragedy.

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JEFF SLAVITZ, MAYOR

ATTEST:

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DIANE CRANE IACOPI, TOWN CLERK