



RICHARD COLLINS, MAYOR - JEFF SLAVITZ, VICE MAYOR - COUNCILMEMBER JIM FRASER
COUNCILMEMBER ALICE FREDERICKS - COUNCILMEMBER EMMETT O'DONNELL

March 26, 2010

A WORD FROM THE TOWN MANAGER

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Del Mar Litigation: Resolution at Last

With drama befitting such a lengthy and difficult saga, the suspense of the Del Mar Undergrounding litigation ended on the last day of 2009: the First District Court of Appeal issued a long expected ruling, and the Town came out on the losing end. The plaintiffs were vindicated in their assertion that the undergrounding district did not comply with state law as set forth in Proposition 218.

The question then became: was there some way for the Town to pull a satisfactory outcome from this legal and financial setback, that is, one that would minimize cost and also allow the undergrounding to proceed, or was this just going to be a long, painful and fruitless episode for project proponents and the Town?

I'm happy to report that a sustained effort to find a workable solution has proven successful, and the final resolution of this remarkably long journey may be the outcome the residents have been seeking since 2003. Our Council litigation committee, Mayor Dick Collins and Councilmember Emmett O'Donnell, along with Town Attorney Ann Danforth and me, set about crafting a settlement with the plaintiffs' attorneys, Frank Mulberg and Brett Mulberg, who worked cooperatively with the Town to create the opportunity for the undergrounding to finally proceed. The whole Town Council has been involved throughout the process in a series of closed session meetings and two agreements have been approved and signed. Allow me to elaborate.

A Brief History

In 2003, some residents of the Del Mar Valley and adjacent areas, encompassing 221 homes in all, commenced the lengthy process of creating an undergrounding district to rid the neighborhood of utility

Clean Energy



"DID YOU KNOW?"

Did you know that 21% of Marin's morning traffic is school related?

Now you can help alleviate some of this traffic by signing up at schoolpoolmarin.org.

SchoolPool Marin is a web-based trip matching service that connects interested families to carpool, walk, bike or take the bus to school together. SchoolPool Marin is part of *Green Ways to School*, a campaign funded by the Transportation Authority of Marin's Safe Routes to Schools program.



SchoolPool Marin offers incentives to families to register

poles and overhead lines. Undergrounding enhances safety, reliability and aesthetics in neighborhoods, but it is a costly undertaking. To form a district is a complicated process but, simply put, the residents vote to assess themselves and the Town then issues bonds to fund the project, using the assessments for bond repayment, usually over a 20-year period. The Town acts as the middleman on the flow of money, coordinates with the private utilities and engages the contractor through the public works bidding process, all as set forth in state law. All-in-all, it's a pretty complicated process that takes years from start to finish, but can have a very dramatic impact for the better on participating neighborhoods.

In the case of Del Mar undergrounding, the Town formed an assessment district in 2005; within a month, two families sued (*Bonander v. Town of Tiburon* or "*Bonander I*"), arguing, among other things, that the cost of assessments was unfairly distributed across the participating homes and thus not in compliance with state law. Nevertheless, bonds were issued, substantial engineering work was completed by the Town and participating utilities, and the project went out to bid. Project bids came back substantially higher than the available funding, so a second or 'supplemental' assessment was approved in early 2006. This time the Town brought its own validation suit, aimed at gaining the approval of the court for the supplemental district (*Town of Tiburon v. All Persons Interest - Del Mar Valley Undergrounding*). The *Bonander I* plaintiffs, together with nineteen others, filed a cross-complaint (*Bonander II*). Yet a third suit, filed in 2007 by plaintiff Kevin Mostyn (*Mostyn V Town of Tiburon et al*), accused the Town and the Town's legal consultant for the districts, the bond counsel firm of Jones Hall, of various improprieties during the formation process. The Town held off issuing bonds in the supplemental district pending the outcome of the lawsuits.

So it was that three related but distinct lawsuits began their march through the legal process - and a very long march it was. Periodic attempts to settle over the ensuing years were not fruitful. Until last summer, the Town consistently won the critical court rulings, at both the superior and appellate levels. Then, on June 8th of last year, the plaintiffs won the first of two crucial victories. The California Supreme Court ruled in favor of the *Bonander I* plaintiffs on procedural grounds and sent that case back to the lower court for review of the merits. Before that case even came up for a hearing, the Court of Appeal ruled in *Bonander II* that the district's allocation of assessments violated the constitutional

on the website (check out the prizes!), contests between classrooms, and a challenge among all Marin schools to win up to \$2,000 for the most increase in "green trips."

Remember, reducing automobile trips will help us reduce traffic congestion and greenhouse gas emissions.

So, don't delay: sign up at schoolpoolmarin.org.

Keep your ideas and questions coming! Contact Town Clerk [Diane Crane Iacopi](mailto:Diane.Crane@lacopi.org).

provisions of Proposition 218. Although the court had never ruled on the Bonander I district, the likely outcome was clear since that district used the same assessment method.

Why did the Town lose? Despite having used methodology similar to that used by other agencies over the years (plus having the blessing of bond counsel), the court found that the Town's assessments were too high for some properties, and too small for others. In particular, it determined that using the **cost** of undergrounding utilities for any particular parcel was an inappropriate basis for setting an assessment and that only **benefit conferred** could be considered. Because it costs more to underground some properties than others (those with longer frontages require more trenching), the Town's outside engineering firm included cost as well as benefit in its allocations, creating three different cost zones. In its ruling, however, the court determined that cost could not determine the assessment amounts and concluded the larger properties in the Hacienda zone were paying too much and the smaller ones in the Hawthorne zone too little.

The district having thus been rendered invalid, the stage was now set for complete collapse of the effort at significant cost, unless a settlement could be reached to allow a reformed project to proceed.

Settlement

To understand the Town's goals in settling the remaining cases, it is useful to understand the implications of alternative paths. The Town simply crying "uncle!" would not have made everything magically disappear, like waking from a bad dream. Doing so would have meant all previously incurred expenses for items such as engineering and issuance of bonds, would become sunk costs without value. It would also force the Town to unravel the whole district, reimburse all the assessments with interest and pay off all the bonds at a premium. It would have to defend against, or settle claims for, attorney fees, and would still have to defend itself in the third (Mostyn) lawsuit, which claims were not resolved by the court ruling. Finally, it would not get the undergrounding project built. In short, simply unraveling would cost more to accomplish less.

Instead, the Town, at the urging of neighborhood representatives, sought to find a way to amend the district to make it compliant with the court ruling and proceed to build. Since settlement was the only alternative to a complete unraveling, the Town engaged

in discussions with the plaintiffs' attorneys to explore options. A good faith exchange resulted and two settlement agreements were reached that create the opportunity for the undergrounding to proceed. Here are the main points:

- The Town will not appeal the ruling and the supplemental district becomes defunct;
- The Town will pay plaintiffs' attorneys fees of \$605,000 to settle the original district case (to dismiss the case and resolve the matter of attorneys' fees rather than litigating them);
- The original district will be retained, but reconstituted without the Hacienda and Hawthorne zones to comply with the court ruling;
- The Town will reimburse residents in the excluded zones for their previously paid assessments, with 5% interest;
- The residents of the Del Mar Valley will be asked to vote on a new supplemental district (or alternative financing mechanism) at the same assessment level as before;
- The Town will pay the assessments in the new financing district, if approved, for the nine plaintiffs who still live within the reformed boundaries of the district at a cost of approximately \$135,300; and
- The plaintiff Mostyn dismissed his case against the Town and the other defendant, the Town's bond counsel Jones Hall, without prejudice.

To repeat the point of crucial interest to district property owners: if the remaining 164 Del Mar Valley households, those in the "reformed district", vote to support a new supplemental assessment (or alternative financing mechanism), the undergrounding project will proceed at the same total assessment amounts as before. If the vote fails, the Town will unravel the original district, repaying all assessments paid to date with interest, and there will be no project.

Costs and Remedies

As is evident from the numbers presented, these agreements come at significant cost to the Town as it, rather than the district, must bear the cost of settlement. The Town makes every effort to comply with legal requirements, as it did in forming the Del Mar districts. It relied heavily, as municipalities invariably do in these circumstances, on expert advice for both the technical approach and legality of this endeavor. Town officials and staff are evaluating the services and advice it received and will vigorously explore its options to offset the losses to Town taxpayers and to avoid any similar situations in the future. I believe the Town stands to gain some significant measure of financial relief through that

process.

In conclusion, I wish there had been a swifter, less costly outcome to this process. While there might have been a path out of the litigation some five years ago, when the plaintiffs simply wanted to be dropped from the project, there has since been no reasonable exit short of abandoning the whole project at considerable expense. The Town also won key rulings along the way, shoring up expectations that the courts would approve the districts' methodology. But in the end that did not happen, and the plaintiffs were vindicated in their assertion that the assessments did not comply with the law.

At least there is now an end to this seemingly endless litigation, the undergrounding district can proceed if the neighborhood re-votes it in, and a reasonable outcome can prevail. Everyone involved is relieved to see this episode in the Town's history draw to a close. I also look forward, as I know do so many Del Mar residents, to the project moving forward and finally watching those poles and wires disappear from the horizon.

Sincerely,



Peggy Curran

NEWS BRIEFS

"Barking Dog" complaints: Police Department response



In a recent edition of Tiburon Talk, the topic of excessive noise by gas-powered leaf blowers and other tools was addressed. Another common complaint received by the Town pertains to disturbance of the peace by "barking dogs". The Police Department has recently streamlined its barking dog complaint procedure.

If there is a barking dog that is disturbing the neighborhood peace, a resident has only to call the Tiburon Police Department non-emergency line at 789-2800. The call will be directed to the Police Department's Communication Center and a police officer dispatched. The reporting party will be asked to be as specific as possible as to the location of the barking dog.

It is not necessary for the person calling to give his or her personal information to the call taker. Once the call is dispatched to the officer on patrol, he/she will respond to the area to locate the dog.

The officer will attempt to make contact with the animal's owner. If the owner is home, the officer will request that they quiet the dog. If the owner is not at home, a note will be left advising the owner of the violation. In either instance, a police report will be written and forwarded to the Police Captain for review.

The Police Captain will review the Department's records for prior offenses. In cases of first offenses, the Captain will write a warning letter to the animal's owner advising them of the Town's animal control ordinance and requesting that they prevent their dog from creating a barking nuisance in the future. If it is determined that there are prior offenses, the Captain may issue an Administrative Citation to the dog's owner with a fine of \$146 for each ordinance violation.

Forward your questions regarding barking dogs, or any other noise ordinance violations, to Captain Dave Hutton at dhutton@ci.tiburon.ca.us.

Sincerely,

Michael J. Cronin
Chief of Police

VOLUNTEER OPPORTUNITIES

Disaster Preparedness

Saturday, April 17, 10 a.m. - 12 noon
Del Mar Gymnasium, 105 Avenida Miraflores

Would you like to become part of a team that staffs the Medical Triage Center located on the Del Mar School campus?

If so, come to to an orientation meeting on April 17 to get an overview of how the triage center will work in the event of an emergency on the Tiburon Peninsula.

All volunteers are welcome (not just doctors and nurses).

For more information, contact Laurie Gordon, Disaster Coordinator, 435-7386, lgordon@ci.tiburon.ca.us

COMMUNITY EVENTS

27th Annual Wine Festival



Saturday, May 15, 1-4 p.m.

The Tiburon Peninsula Chamber of Commerce brings back this popular event at Pt. Tiburon Plaza - now in its 27th year.

Come support the Chamber and join the fun!

Tickets can be purchased at ticketweb or through the Chamber office at

435-5633.

ART EXHIBITS AT TOWN HALL

March 1 - April 29

Brandon Munley's latest multimedia creations

Gouache, pen and ink

Town Council Lobby & Chambers

1505 Tiburon Boulevard

April 6 - May 27

Reception: April 21, 6-8 p.m.

Del Mar Student Show, "Our Town"

Part art/part Tiburon Peninsula history

Town Hall Community Room

1505 Tiburon Boulevard

ARTIST LAUREATE WORKSHOP

Saturday, May 15 - 10:30 a.m. to 1:00 p.m.

Guest Artist: Jaleh Etemad

Town Hall Community Room

1505 Tiburon Boulevard

Pre-registration is required (see below)

A very creative and gifted local artist, Jaleh Etemad will work with participants to create a collage, using her interesting layering techniques.

Materials needed are a small canvas board, glue, scraps of ribbon and assorted paper, paint, crayon and any small articles that look interesting, e.g. glitter, jewels, photos, feathers, lace, etc.

Preregistration is required - class limited to 20.
Contact marmusalo@aol.com to register and for more information.

BEL-TIB LIBRARY COMMUNITY CALENDAR

For the scoop on events and meetings sponsored by local not-for-profit community and government organizations on the Tiburon Peninsula, visit the Belvedere-Tiburon Library's excellent [community calendar](#).



COUNCIL AND COMMISSION MEETINGS



Town Council: 1st and 3rd Wednesdays, at 7:30 p.m. (April 7 and 21).

Design Review Board: 1st and 3rd Thursdays, at 7 p.m. (April 1 - cancelled; April 15).

Planning Commission: 2nd and 4th Wednesdays, at 7:30 p.m. (April 14 - cancelled; April 28)

Heritage & Arts Commission: 4th Tuesday at 7 p.m. (April 26)

All meetings listed are in the Council Chambers at Tiburon Town Hall, 1505 Tiburon Boulevard.

Sincerely,

Town Staff
Town of Tiburon
435-7373

Editor: Diane Crane Iacopi

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