

**TOWN COUNCIL
MINUTES**

CALL TO ORDER

Mayor Fredericks called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, September 16, 2009, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

PRESENT: COUNCILMEMBERS: Berger, Collins, Fredericks, Gram, Slavitz

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, Town Clerk Crane Iacopi

Prior to the regular meeting, the Council met in closed session, beginning at 6:30 p.m., to discuss the following:

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Section 54956.9(a))

Martha Company v. Town of Tiburon
Bonander, et al. v. Town of Tiburon
Town of Tiburon v. All Persons Interested, etc.
Mostyn v. Town of Tiburon et al.

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

Mayor Fredericks said there was no action to report.

ORAL COMMUNICATIONS

None.

CONSENT CALENDAR

1. **Appeal of Design Review Decision – 166 Rock Hill Road** – Adopt resolution denying appeal of site plan and architectural review approval for construction of a new single family dwelling, with an added condition of approval; Willem and Julia Robberts, Owners/Applicants; Thomas and Ann Lacey, Appellants; Assessor's Parcel No. 039-151-22 – (Planning Manager Watrous)
2. **Seismic Standards** – Adopt resolution endorsing and authorizing use of Seismic Strengthening Standard Plan Set A for applicable residential seismic retrofit projects (Director of Community Development Anderson)
3. **Zelinsky Playground** – Accept project as complete and authorize filing of Notice of Completion (Director of Public Works/Town Engineer Nguyen)

MOTION: To adopt Consent Calendar Item Nos. 1-3, as written

Moved: Berger, seconded by Slavitz

Vote: AYES: Unanimous

ABSTAIN: Gram, Item No. 1 (Absent from September 2, 2009 meeting)

DISCUSSION ITEMS

1. **Discussion of Proposed Settlement Concept for *The Martha Company v. Town of Tiburon* Litigation**; Review of status of Martha Company 43-lot development currently pending before the County of Marin; Proposed reduced development EIR alternative (Director of Community Development Anderson)

Mayor Fredericks said that the discussion would focus on a proposed alternative to the development pending approval before the County of Marin that was the result of a federal court judgment. She said that a discussion of the EIR itself would not be the focus of the evening.

Councilmember Gram, who along with Mayor Fredericks comprise a Council subcommittee to study the Martha application, said that no action would be taken tonight; rather, he said the purpose was to present the alternative to the entire Council and the public and to listen to feedback. He reiterated that it was not a scoping session for the Martha Company EIR.

Gram said that the Reed family had owned the Martha property for 100 years; he said that the development process had started in 1974 with an application to the County of Marin. In 1976, Gram said that a stipulated judgment, agreed to by both parties, had been reached concerning the property. He said the Town was not a party to this agreement.

Councilmember Gram said that more litigation ensued between 1976 and 2007, along with various iterations of projects. In 2006/07, additional litigation was filed by the applicants to restate that the 1976 judgment still applied, according to Gram. He said that the Town, the County and the applicants all participated in this litigation which resulted in another stipulated judgment. The Town did not agree with that judgment but might be bound by it. He said that the neighbors had subsequently filed an application with LAFCO to annex the property into the Town of Tiburon.

According to Gram, the current Martha Company development application would allow 43 lots on minimum one-half acre sites, including 13 homes going up the primary ridgeline of the property. He said that the County is processing the EIR based upon this application and that it was bound the federal court judgment to approve an application by February of 2010.

Gram said that the Martha Company was not required to provide affordable housing or in-lieu fees as a result of the judgment, which normally would be required by the Town. He said that the only changes the County could legally make to the application would need to be based on health and safety issues alone.

Councilmember Gram said that two or three months ago, the Town had been contacted by a representative of the Reed family requesting a meeting. He said that the Town was willing to sit down to discuss any issue of importance to the community. He said that he, Mayor Fredericks, and members of town staff had conducted four meetings with the Reeds, three meetings with the Last Chance Committee, and one or more hours with the County of Marin to discuss the issues.

Gram said that the Town had developed a list of priorities for the discussions:

- No homes on the primary ridge;
- No construction traffic through Old Tiburon on its "substandard" streets;
- Clustering/density of homes and keeping clusters as far apart as possible;
- Maximize open space and access to open space;
- Protection of views and views from both the top and bottom of the property;
- No fencing on lots except within building envelopes and landscape envelopes;
- No fencing on "private" open space.

As a result of the meetings with the Reeds, and a lot of give and take, Gram said that the alternative proposal was what was currently "on the table". In his opinion, Gram said he thought the Reeds were negotiating in good faith, however, he noted that that nothing holds them to agreeing to an alternative project. He reiterated that the County must complete its approval of the project by February 2010.

Director of Community Development Anderson described the current 43-lot application and pointed out various locations on the map. He said there were three lots off Mountain View Drive; 27 lots off an extension of Ridge Road, including 10 on the "nose" of the property; three lots on a new roadway off Paradise Drive opposite Mar Centro; and 10 lots off an existing MMWD

roadway from Paradise Drive. He said there would be a temporary construction road connecting the new water tank to the existing water tank road, which was the same road shown in the 43-lot plan. He confirmed that the application included homes on the primary ridgeline. Anderson said that the average home size would be 6,900 square feet, not including garages or accessory buildings, which would increase the total square footage to 7,500.

The Director of Community Development then presented the 32-lot alternative proposal consisting of 16 lots off Ridge Road (nine on the "nose" of the property); four lots off a new roadway opposite Mar Centro; 10 lots off of Paradise Drive using the MMWD water tank road; and one lot off a separate new driveway at the northern corner of the Martha property. He said that the primary ridgeline would be clear of homes and that a person would still be able to walk on open space from Old St. Hilary's Open Space Preserve all the way to the "founder's rock."

According to Director Anderson, the alternative plan would preserve 75% of the property in open space, with approximately 54% offered as public open space and 21 % as private open space within lots. He said the house sizes would average between 8,000 and 8,200 square feet, not including garages and accessory buildings.

Vice Mayor Berger asked for a description of the topographical features of the property as it pertained to the alternative, for example, where the oak woodlands were located, the elevations of the lots, etc. Anderson pointed these out on the map. He noted that the "founder's rock" was at about 510 feet of elevation and that the closest homes would be about 50 vertical feet below that elevation. Vice Mayor Berger said that a 25-foot home would still be about 30 feet below from the perspective of a person standing at the rock.

Councilmember Collins asked the Director to address the issue of slides on the property. Anderson said that there were numerous landslides on the property, and that the goal of both plans was to avoid building on those areas and to repair them only as necessary.

Anderson said that all construction traffic would enter the development via Tiburon Boulevard and Paradise Drive, and not through Old Tiburon on streets such as Solano and Diviso.

In response to a question from the audience, Councilmember Gram said that there had been some "tweaks" to the alternative since their last meeting, specifically to Lot Nos. 5 and 8, and that Lot No. 9 would possibly be restricted to one-story to preserve views. He said that there were other issues to consider, as well, such as transitioning the house sizes in order to maintain the character of the existing neighborhood.

Councilmember Gram said that the Last Chance Committee had subsequently proposed construction access from Straits View Drive to some of the new homes. He acknowledged that access using Paradise Drive would be difficult for construction vehicles.

Gram also said that the proposed water tank would be in a conspicuous location at the top of the ridge. He said that if the tank could be moved just over the property line into the Old St. Hilary

Open Space Preserve, it could be buried into the hillside. He noted that this would require approval by the County (the agency that owns and maintains the Old St. Hilary Open Space Preserve).

Mayor Fredericks opened the hearing to public comment.

The following people commented:

- **Bill Lukens**, former Lyford's Cove/Old Tiburon Homeowner's Association president, expressed concern about the construction road going through the middle of the open space which he said contained the most sensitive ecology and topography. He said it would cause irreparable damage and traded one problem (traffic in Old Tiburon) for another. He suggested coming up with another solution. Lukens also suggested a "radical idea," that is, for the disparate interests to submit to mediation, arrive at a financial value for the property, and negotiate some sort of sale. He said that LCOTNA would be willing to participate in this process.
- **George Landau**, resident, said that a purchase of the property was possible, citing the successful acquisition of the Old St. Hilary's open space. He asked if story poles could be erected to show graphically where the proposed homes and their elevations would be. He asked for an explanation of public versus private open space. He also asked if the trails would be protected and recognized as "official trails" (Mayor Fredericks said that this was under discussion); and where the water tank would be moved if it was relocated.
- **Tom Moffat**, Lagoon View Drive, asked that an existing running trail that parallels Mountain View Drive be preserved; he said it looked like it would be in the same location as some of the homes in the alternative plan.
- **Genny Chapman**, Paradise Drive, said that she and her husband built their home in the middle of the Reed's property 45 years ago so she was familiar with the land and where the slides were. She asked how the slides would be mitigated. Ms. Chapman said she was concerned about the road going along the top of the ridge because of the slides and because of the steep slope. She also expressed concern about the increase in traffic on Paradise Drive, the number of trucks, and the danger to bicyclists; she asked if a widening of Paradise Drive was contemplated to accommodate this increase.
- **Barry Wilson**, asked about the composition of the "temporary" road and the duration of its existence. (Councilmember Gram said that it would be "semi-paved," not asphalt or concrete.) (Mayor Fredericks said that construction phasing would be addressed in the EIR and was not part of the Town's discussion at this time.) Wilson asked how one could differentiate regular traffic from construction traffic. He also asked why there had been a reduction of the number of lots on Mountain View. (Mayor Fredericks and Councilmember Gram said there was an endangered plant in that area.) Wilson asked

about the “last lot” being held for development by the Reed family and whether it could be subdivided. (Gram said that it was a single lot.) Wilson asked about comparable lot sizes in the two proposals. Director Anderson said that an average 6,900 square foot lot size could be used as a figure in the existing [43-lot] application and the 8,200 square foot house size was proposed in the Martha Company alternative.

- **Art Giovara**, pondering the binding nature of the judgment, asked why the Martha Company would talk to the Town. Mayor Fredericks said that the neighbors had filed for annexation, which the Martha Company objected to. She said this would inevitably bring the Town into litigation and that the Martha Company sought a settlement to avoid more protracted litigation. Councilmember Gram added that he did not know all of the reasons; he acknowledged that they could walk away from the negotiations at any time.
- **David Barker**, Lagoon View Drive, asked if a settlement was reached, would the Martha Company apply for annexation to the Town. Councilmember Gram said that any settlement would be subject to the EIR and any issues in it would have to be dealt with. He said that any settlement therefore would be a “conditional” agreement. However, he said that either way, the property would come into the Town through the annexation process eventually because of LAFCO (state law). Gram said that the Town’s Design Review Board would review the home designs under either alternative. Barker said that he appreciated the efforts of the Town to undertake this negotiation which he said represented movement forward.

Vice Mayor Berger added that the agreement that was contemplated sets forth an upper limit of 32 units on the property. Mayor Fredericks noted that an agreement would give the Town control over the number and placement of units on the property.

- **Joanna Kemper**, Co-Chair of the Last Chance Committee, thanked the Council and the representatives of the Martha Company for coming together to discuss the issues and resolve them for everyone’s benefit. She said that she would state the obvious interests of her committee for fewer lots, more open space, public or private, affordable housing, and slide repair. She said that she was “thrilled” that there would be no houses on the ridge in the 32-lot alternative and said that while removing construction traffic from the Hillhaven neighborhood was admirable, having it run through the open space was not, and no longer made sense if there were no homes on the primary ridge. She said that because the alternative proposal featured “clusters” of homes, each adjacent neighborhood should shoulder its own burden of traffic. She asked the Town not to allow a road to be built through the open space. She said that a simpler solution would be to allow fewer lots to avoid the need for extensive roadways.
- **Sandra Swanson**, Seafirth Drive, said that three large properties would be developed in the area at the same time: Martha, Rabin, and Swahn, which would have a huge impact on Paradise Drive traffic. She said that it was important to obtain an estimate of this

traffic. (Mayor Fredericks said that it would be a question for the EIR; Director Anderson said that these projects were known to the County and would be analyzed in its EIR process.)

- **Maxwell Drever**, Paradise Drive, said that he was concerned about the safety of bicyclists with the increased construction traffic. He also thanked the Council for its efforts.
- **Ed Lynch**, Paradise Drive, said he calculated more than 20 projects had been built in this area in that last few years which had accommodated construction traffic; he questioned the analysis of the streets in Old Tiburon as “substandard;” he said that there had never been a construction-related accident in the Hillhaven area but that there had been lots of accidents on Paradise Drive. Lynch (who is also a Tiburon Fire Protection District Battalion Chief) said that the 25% grade of the temporary construction road posed an “extreme risk;” he said that Tiburon Fire required no more than an 18% grade (for roads and driveways). He said that from a Fire District perspective, it would be better to have traffic go in one way and out another way. Lynch said that it (Martha) was not really that big of a development project but he said that the issues should be addressed now because “we’ll have to live with it for a long time.” He cited that example of the Gilmartin Drive area which is still being built out over 20 years.

Councilmember Slavitz asked Lynch what could be done to enhance bicycle safety. Lynch suggested making Paradise Drive one-way to follow the largest shoulder around the peninsula. Mayor Fredericks suggested not limiting one-way traffic to weekdays because weekends had heavy bicycle traffic, as well.

- **John Pilsier**, Ridge Road, expressed concern about “life safety” if ingress and egress was limited in the Hillhaven area during construction, or for that matter, if there was a firestorm. He said that there did not appear to be any good egress for the new development and noted that the streets in Hillhaven had not been improved since its development. (Mayor Fredericks said that the EIR would address the impacts to this area.)
- **Jerry Riessen**, Ridge Road, also said that he appreciated the Council’s efforts. He said that because he was not a lawyer, he could say that he did not think the Town was bound by the stipulated judgment. He agreed with the previous remarks about road safety; he also said that the Town should consider “sunsetting” the life of the construction road so that it would not become permanent. Riessen said that his primary interest was to preserve the ridge and the open space and to ensure that it be returned to its current form. He said that this would be best accomplished by phasing the project. He also said that carpooling should be required to minimize construction parking in the Hillhaven area.

- **Karen Nygren**, resident, said that the construction road should not be graded so that the topography could remain unchanged; she said that it would be important to add language concerning house size that would set an “up to” limit for square footage for the purposes of design review; she asked whether all the houses on the “nose” of the property might be limited to one story; and she said that in addition to safety concerns, someone should pay for the wear and tear on Paradise Drive and that it should be brought back to its same standard. Ms. Nygren also said it would be useful to get a fair market appraisal of the project for the purposes of negotiation. She said that this is how the St. Hilary Open Space acquisition had started; she said that failing that, she suggested obtaining an appraisal of just the homes on the “nose”.
- **Mark Goldstein**, Paradise Drive, said that as a bicyclist who commuted to work in different areas of the county, a one-way designation would not be workable. He agreed that a third party appraisal of the property would be useful, along with mediation. He said that in the current economy, it costs more to build a house than buy one; he said that might be one reason by the Martha Property representatives had approached the Town. He said that one speaker’s estimate of the value of the property at \$50 million was probably much lower at this moment in time. He thought the Town should pursue the purchase of the property.

Mayor Fredericks clarified that the Town of Tiburon had not purchased the Old St. Hilary open space but rather, the citizens of Belvedere and Tiburon are paying for it through a bond issue.

- **Sue Quinn**, resident of old Tiburon, said that while she appreciated the efforts of the Town, more work needed to be done to resolve the traffic issues; also, that the Town should “step up” and say that the project could not go forward until the streets in Old Tiburon were upgraded to accommodate the traffic. She agreed that an “up to” size should be established for homes in the project; and that construction traffic on Tiburon Boulevard would affect everyone in the community. Ms. Quinn said that “her favorite place in the whole world” was the founder’s rock; she said that she would like to see it protected and surrounded by 5-10 acres of open space to preserve the rock and seasonal vernal pools. Finally, Ms. Quinn asked that the new homeowners not be allowed to plant trees in the open space that would certainly block current and future views.

Mayor Fredericks closed the public hearing.

The Mayor thanked everyone for their thoughtful and helpful comments.

Councilmember Gram also thanked the public for their input and said that he had developed a list of points discussed. He reiterated that the Town would not be undertaking this process if it were not facing a deadline set by the stipulated judgment; he said that there were more meetings and discussions to be had.

Gram recommended that the item be agendized for the October 7 Town Council meeting where there would be a continuation of the discussion and possible action by the Council.

Mayor Fredericks concurred and asked whether it was the consensus of the Council to direct staff to prepare a settlement agreement for Council's consideration. The Council concurred and had the following comments:

Vice Mayor Berger thanked the council subcommittee and the staff for their hard work and the community for their input. He said that the hearing was a reminder to him of what a great community we live in.

Councilmember Slavitz echoed his comments, noting that his fellow Council members did not receive salaries and yet they were motivated to work very hard on a matter that what was considered of importance to the community. He said that the proposed alternative was a great improvement on what had been mandated by the courts. He said that he was reminded again that litigation was not the best way to plan a project.

Councilmember Collins thanked the Council and staff for their hard work. He said he had learned from listening to the public and that he agreed that the important issues were public safety and roads, traffic studies, etc. He said that the EIR would help greatly to address these issues and to provide mitigation measures. He thanked the public for attending the meeting.

TOWN COUNCIL REPORTS

None.

TOWN MANAGER'S REPORT

Town Manager Curran gave an update on the conclusion of the Caltrans' Tiburon Boulevard and Town's street overlay projects. She credited the efforts of the Public Works and Police Department in successfully resolving problems and ensuring that the projects went as smoothly as possible. She said that the Reed Ranch and Ridge Road overlay projects, funded through federal stimulus dollars, would be underway soon.

WEEKLY DIGESTS

- Town Council Weekly Digest – September 4, 2009
- Town Council Weekly Digest – September 11, 2009

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Fredericks adjourned the meeting at 9:27 p.m.


ALICE FREDERICKS, MAYOR

ATTEST:


DIANE CRANE IACOPI, TOWN CLERK