

**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, April 6, 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, 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 6:00 p.m., to discuss the following:

CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION
(Subdivision (c) of Government Code Section 54956.9)

Claims relating to Del Mar Undergrounding Litigation

CONFERENCE WITH LABOR NEGOTIATOR
(Government Code Section 54957.6)

Bargaining Units: Tiburon Police Association; SEIU
Negotiators: Town Manager and Director of Administrative Services

CLOSED SESSION ANNOUNCEMENT, IF ANY

Mayor Slavitz said that no action had been taken, and that the session would reconvene at the end of the regular meeting.

ORAL COMMUNICATIONS

Mayor Slavitz opened the meeting with a moment of silence to honor and reflect upon the untimely passing of District 3 Supervisor Charles McGlashan at age 49, on March 27. He

expressed his condolences to Charles' widow, Carol Misseldine, who was in the audience. Slavitz then opened the hearing to the Council and the public, who eulogized the supervisor for approximately 30 minutes.

McGlashan's many accomplishments and leadership in promoting a sustainable future were praised, among them the Marin Clean Energy program, the plastic bag ban, and the SMART train. Each member of the Council spoke of their personal relationship with Charles, having worked with him on the aforementioned programs, or on other boards, such as the Richardson Bay Regional Agency. They noted his strength of character and commitment to causes, and his ability to hear what people had to say, even in opposition.

McGlashan's loss was deeply felt and expressed by the public, including resident Barbara Tomber, Planning Commissioner John Corcoran, attorney Riley Hurd, Marin Conservation League representative and former mayor, Karen Nygren, Last Chance Open Space committee representative Jerry Riessen, aide Leslie Alden, Don Matthews, and Nonna Dennis.

Mayor Slavitz announced that a memorial service for Charles would be held at the County of Marin on Saturday, April 9.

CONSENT CALENDAR

1. **Town Council Minutes** – Adopt minutes of February 16, 2011 Meeting (Town Clerk Crane Iacopi)
2. **Town Council Minutes** – Adopt minutes of March 2, 2011 Meeting (Town Clerk Crane Iacopi)
3. **Town Council Minutes** – Adopt minutes of March 9, 2011 Special Meeting (Town Clerk Crane Iacopi)
4. **Town Investment Summary** – Accept February 2011 report (Director of Administrative Services Bigall)
5. **Tiburon Tourism Business Improvement District (TTBID)** – Adopt ordinance amending Chapter 7A of Title II of the Town Code to increase TTBID assessments (Town Attorney Danforth)
6. **Town Audit for FY 2009-10** – Accept and authorize filing of Independent Auditor's report for fiscal year ending 2009-10 (Director of Administrative Services Bigall)
7. **Bay Trail Gap Closure** – Adopt resolution approving acceptance of ABAG grant for study of extension of Bay Trail in the vicinity of Greenwood Beach Road (Director of Public Works/Town Engineer Nguyen)

8. **Marilyn Kessler Retirement** – Adopt resolution commending Marilyn Kessler for a long and illustrious career as editor/publisher of the Ark newspaper upon the occasion of her retirement (Town Clerk Crane Iacopi)

The Council removed the following items from the Consent Calendar—Nos. 4 and 7, for discussion. Prior to discussion of these items, Mayor Salvitz asked for a motion to approve the remaining items on the calendar.

MOTION: To approve Consent Calendar Item Nos. 1, 2, 3, 5, and 6, as submitted.
Moved: Fredericks, seconded Fraser
Vote: AYES: Unanimous

Mayor Slavitz then presented a framed copy of Item No. 8 – Resolution commending Marilyn Kessler, to the retiring Ark editor/publisher. A member of the public related a humorous story about one of Marilyn’s first jobs, as editor of the PTA newsletter, in Reed Union School District. Ms. Kessler thanked the Council and her “terrific staff” for their years together at the Ark newspaper.

4. **Town Investment Summary** – Accept February 2011 report (Director of Administrative Services Bigall)

Councilmember O’Donnell asked why the February 2011 investment summary did not reflect the transfer of funds to the Lyford Drive parking project, as well as the allocation of funds to the Marin Housing Authority. Director Bigall said that the Council took action on these matters in February and March and said that the transfers would be reflected in the March and April 2011 summaries.

7. **Bay Trail Gap Closure** – Adopt resolution approving acceptance of ABAG grant for study of extension of Bay Trail in the vicinity of Greenwood Beach Road (Director of Public Works/Town Engineer Nguyen)

Councilmember Collins asked about the \$85,000 grant. He said it appeared that there was already pedestrian and bicycle access that was widely used along Greenwood Beach Road. He questioned the efficacy of accepting such a grant when money might be spent on programs to help people during these difficult economic times. He said the timing seemed poor.

Director Nguyen said that the monies were part of the Association of Bay Area Government’s program to extend the Bay Trail and that the grant would study the viability of actually creating a striped bikeway or a pathway with decomposed granite, for instance, in some portion of the right-of-way along Greenwood Beach Road.

Councilmember Fredericks said that acceptance of the grant could be viewed as “forward-thinking” in that it would create jobs if the project was determined to be viable.

Councilmember Collins asked who would pay for the trail extension, if a project ensued. Nguyen said that ABAG might provide funding in concert with the County of Marin and State matching grants.

Councilmember O'Donnell noted that there were other areas where it was difficult to connect to the Bay Trail along the entire length Tiburon Boulevard, from Highway 101 to Greenwood Beach Road.

While it was noted that much of this was in the County unincorporated area, Director Nguyen said that the proposed study would extend its evaluation of the connection into this area at the behest of ABAG. Mayor Slavitz said that this was a great idea and that this problem area had been discussed many times when he served on the Bicycle-Pedestrian committee. Councilmember Fredericks said that improvements in the unincorporated area would ultimately make the Tiburon portion of the path safer, as well.

MOTION: To approve Consent Calendar Item Nos. 4 and 7, as submitted.
Moved: O'Donnell, seconded by Fredericks
Vote: AYES: Unanimous

ACTION ITEMS

1. **Lyford Drive Parking Project** – Review of project, discussion and request for direction to Staff (Town Manager Curran/Director of Public Works/Town Engineer Nguyen)

Director of Public Works/Town Engineer Nguyen updated the Council on the project and sought direction. He said that since the last report, the Town had received comments from CalTrans, as well as further refinements of the undergrounding component from PG&E. He said that staff believed the CalTrans comments could be incorporated into the final design at an estimated cost of \$12,000, which was substantially less than originally anticipated. He also said that PG&E's net estimate for the Rule 20B undergrounding project was \$276,000, somewhat higher than its original quote of \$215,000 but still within range, according to the Director.

Council discussed the outstanding issues of whether or not CalTrans would allow the Town to charge for parking at the proposed lot, and how construction parking would be regulated. It also discussed timing of the project, in conjunction with the other large project coming on-line in the coming year—Del Mar Undergrounding and concomitant street rehabilitation, and the Ned's Way Joint Recreation project. Staff recommended moving forward to complete the engineer phase of this project, which is 95% complete, and position itself to be ready to go to bid if Council gave its authorization in January 2012.

Council also discussed the pro's and con's of allowing construction project parking for Town project at that location. Director Nguyen said that there were few places that were actually useable for this purpose and that the Town faced a challenge with parking when it undertook large projects.

Mayor Slavitz opened the public hearing.

Keri Bosch, Lagoon Road, Belvedere, expressed concerns about the impacts of noise, dust, and visibility from her property. Her husband added that it seemed liked the Town was spending \$1.3 million to allow contractors to stage in that location.

Mayor Slavitz briefly explained that the purpose of the project was not to increase parking, but rather to improve the parking area, regulate and limit construction parking, and improve safety for cars entering and exiting onto Tiburon Boulevard. He also noted that most of the construction parking in that area was for projects in Belvedere, since that city prohibited construction parking on its streets.

Devon Bosh asked if the Town would provide shading and/or screening for the project. Mayor Slavitz directed him to talk to Town staff, along with officials from the City of Belvedere, to see if they would participate in this request.

Mayor Slavitz closed the public hearing.

Councilmember O'Donnell said that while it was unfortunate to have to delay the project, it was prudent under the circumstances, since the bids had not yet come in for the Del Mar and Ned's Way projects, and the Town needed to know its financial position in order to move forward.

Councilmember Collins commended staff for a very thorough report.

Council unanimously directed staff to move forward with the project, as recommended in the staff report, by taking the following steps.

- a. Finalize engineering for the full project with utility undergrounding;
- b. Resolve outstanding issues with CalTrans;
- c. Seek an extension of the TAM grant;
- d. Complete CEQA work on the project and return to the Town Council in June of 2011 for environmental and project approval;
- e. Include funding for the project in the 2011-12 Capital Improvement Projects draft budget;
- f. Return to the Town Council in January 2012 for a decision on whether to proceed with the project.

PUBLIC HEARINGS

1. **Time Extension for Design Review Approvals** – Consider adoption of a Zoning Ordinance text amendment that would provide a one-year time extension for approved, unexpired Design Review permits; Town-initiated application – Introduction and first reading of ordinance (Director of Community Development Anderson)

Director Anderson said that at its February 8, 2011 retreat, Council directed staff to initiate the process of authorizing a one-year time extension for all approved Site Plan & Architectural Review (Design Review) permits that have not expired, in recognition of the impacts of the national recession on property owners.

Anderson said that currently, Design Review permits expire automatically three years after their issuance, unless a building permit has subsequently been issued in connection with the permit, and no time extensions are possible. He said that a permit-holder must file the application anew and pay all processing fees in order to secure [Design Review] permit approval again. According to the Director, the 3-year window of validity for Design Review applications is generous compared to most Marin cities, which typically have 1-2 year terms of approval.

Anderson said there had always been a percentage of Design Review permit approvals that expired without further action. He said, however, that there was anecdotal evidence about the apparent increase in the number of Design Review permits that were expiring, with a common reason appearing to be the current economic conditions and/or the difficulty in securing a construction loan in the current economy.

Director Anderson said that Staff had prepared a zoning ordinance text amendment that would extend for one additional calendar year the validity of all unexpired Design Review permit approvals. The new provision would also allow for additional one-year extensions to be authorized by the Town Council by resolution. He said the ordinance would not be retroactive to permits that had already expired, because that would raise potential legal and fairness issues.

The Director said the Planning Commission held a public hearing on this item on February 23, 2011 and voted to recommend approval of the zoning text amendment to the Town Council. He said that if the Town Council considered making any substantive changes to the draft ordinance, state law would require that the item be returned to the Planning Commission for its review and report prior to being considered for adoption by the Town Council.

Council asked Town Attorney Danforth to address the issue of making the proposed extension applicable to expired permits, which was raised in a "late mail" letter from attorney Riley Hurd.

Ms. Danforth said that the most significant point, if Council wished to pursue the idea, was where to draw the line on expired permits. She asked how far back it would extend and on what criteria the decision would be based. She said there might be constitutional challenges (for equal protection) and that there did not seem to be a strong policy reason for making this finding, especially in light of the fact that in no case had the Town granted an extension to an expired permit.

Councilmember Fredericks asked what the consequences were of starting over with a new application, if a property owner had an expired permit. Director Anderson said there were no penalties to do so, and it required a new application fee, approximately \$2,800 for a new home. He said that staff level review applications cost between \$155 and \$600.

Fredericks raised the question of possibly expediting the review at the staff level. Anderson said that there was no flexibility in this area currently; he said that the zoning ordinance dictates where an application starts based on the nature of the application, be it staff level or Design Review Board.

Councilmember O'Donnell asked if there was an opportunity for singular exceptions. Town Attorney Danforth said that the Council could develop criteria but that they would have to be very clear and have a clear basis for findings.

Vice Mayor Fraser noted that the staff report pointed out that the Town already had a lengthier extension process for permits than most other cities. He also said he did not understand the need for an additional one year extension, as proposed. He said that the three years, under the proposed scenario, could go on for six, seven, or eight years. He also said that it seemed important to require permit compliance to current building codes.

Director Anderson said that the building code requirements were based on the date the building permit was filed, rather than the Design Review approval date.

Mayor Slavitz asked whether other cities had granted extensions retroactively. Anderson said that the Town of San Anselmo and City of Mill Valley had made provisions to do so, but he pointed out that the existing policies in those cities had not been as generous as the Town of Tiburon's.

Mayor Slavitz asked if anyone other than Mr. Hurd's client had requested an extension for an expired permit. Director Anderson said no one had.

Mayor Slavitz opened the public hearing.

Riley Hurd, representing Firuze Hariri, the owner of 9 Burrell Court, said the only way to protect those affected by the current recession was to make the ordinance retroactive. He said that Ms. Hariri had gone through four DRB hearings plus a successful appeal to the Town Council, but had been unable to secure financing for her project. He said that extending the ordinance retroactively was "totally legal" and cited his letter containing case law. He said that amending the ordinance was a way to preserve (rather than take away) the entitlement of the applicants, thereby shielding the Town from the threat of legal challenges. He said a way to "draw the line" to make the findings was to pick a date in 2007 or 2008 when it was widely agreed that the current recession had started. He said that many other jurisdictions had done this and had not been challenged.

Mayor Slavitz asked if Mr. Hurd's client was ready to build her project. Mr. Hurd said she was not, that she was working hard to earn money and obtain financing.

Councilmember Fredericks asked if she had been eligible for an extension. Staff explained that the extension process is only currently available to applicants who have already pulled their building permit, noting that the DRB approval remained valid for the life of that permit.

Mr. Hurd said that there were costs involved in actually preparing to pull a building permit and that one had to show due diligence that the project was substantially underway in order to ask for an extension.

Vice Mayor Fraser asked if 9 Burrell Court was for sale. Mr. Hurd said that he did not know.

Mayor Slavitz closed the public hearing.

Council discussed the pro's and con's of granting extensions retroactively and whether to undertake the process of determining criteria for hardship and the like.

Vice Mayor Fraser said it appeared that the volume of requests for retroactivity was very low and he noted that the Town already had a generous extension policy in place. He said that this generous timeframe sometimes created a great deal of uncertainty in a neighborhood as to the status of a project, whether a house would be bought or sold, or how the ongoing project might affect existing property values.

Councilmember Fredericks commented that anyone could pull a permit at any time, and that the proposed ordinance did not change that fact. She said people would feel unfairly treated, however, if there were any criteria created to determine retroactivity, rather than a fixed date such as the expiration of a permit.

Councilmember O'Donnell said that he was not opposed to extending the ordinance retroactively by one year to help Mr. Hurd's client. Councilmember Collins said that it was difficult, in his mind, to pick one application over another, to "pick one lamb out of a corral."

Mayor Slavitz said that the 19 Burrell Court had been an extremely controversial project and said he would be apprehensive to "change the rules" for it.

Councilmember Collins asked if the Town could seek an indemnification if the applicant was granted an extension, and reapplied. Town Attorney Danforth said that it was a good idea but that there was no mechanism to force a person to reapply.

Vice Mayor Fraser said that if the Town Council were to make the findings for retroactively granting the extension, all current building codes should be incorporated into the permit approval.

Planning Director Anderson expressed concern about creating discretionary criteria for extending the dates retroactively.

Mayor Slavitz said it appeared that the safest approach was to extend the ordinance to unexpired permits only.

Vice Mayor Fraser said that he did not support the extension of the ordinance beyond one year.

MOTION: To read the ordinance, as written, by title only.
Moved: Fredericks, seconded by Slavitz

Motion failed.

MOTION: To read the ordinance, as written, but removing the sentence allowing future extensions by the Council after one year.
Moved: Fraser, seconded by Collins
Vote: AYES: Unanimous

Mayor Slavitz read, "An ordinance of the Town Council of the Town of Tiburon amending Municipal Code Title IV, Chapter 16 (Zoning) to extend the expiration date of unexpired approvals of Site Plan & Architectural review permits by one calendar year."

MOTION: To pass first reading of the ordinance, as amended.
Moved: Fraser, seconded by Slavitz
Vote: AYES: Collins, Fraser, Fredericks, O'Donnell, Slavitz
NAYES: None

2. **Lyford Drive Parking Project** – Consider establishing a streamlined Development Review procedure for the Lyford Drive Multi-modal Parking Lot Project located at the intersection of Lyford Drive and Tiburon Boulevard – Introduction and first reading of ordinance (Director of Community Development Anderson)

The Council waived the staff report.

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

Mayor Slavitz closed the public hearing.

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

Mayor Slavitz read, "An ordinance of the Town Council of the Town of Tiburon establishing review and decision-making procedures for the Lyford Drive Multi-Modal Parking Lot Project and exempting said project from the Tiburon Zoning Ordinance, the Tiburon Encroachment Ordinance, and from applicable encroachment permit policies."

MOTION: To pass first reading of the ordinance, as written.
Moved: Fredericks, seconded by Fraser
Vote: AYES: Collins, Fraser, Fredericks, O'Donnell, Slavitz
NAYES: None

TOWN COUNCIL REPORTS

None.

TOWN MANAGER'S REPORT


None.

WEEKLY DIGESTS

- Town Council Weekly Digest – March 11, 2011
- Town Council Weekly Digest – March 18, 2011
- Town Council Weekly Digest – March 25, 2011
- Town Council Weekly Digest – April 1, 2011

ADJOURNMENT - *to a meeting of the Tiburon Redevelopment Agency (see separate minutes).*

There being no further business before the Town Council of the Town of Tiburon, Mayor Slavitz adjourned the meeting at 9:54 p.m., in memory of Charles McGlashan, District 3 Marin County Supervisor.



JEFF SLAVITZ, MAYOR

ATTEST: 

DIANE CRANE IACOPI, TOWN CLERK