

**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 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, Planning Manager Dan Watrous

CLOSED SESSION

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

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Subdivision (a) of Government Code Section 54956.9)
Lowenberg v. Town of Tiburon

CALL TO ORDER AND ROLL CALL

Councilmember Collins, Councilmember Fredericks, Councilmember O'Donnell, Vice Mayor Fraser, Mayor Slavitz

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

Mayor Slavitz said the closed session had been cancelled, so there was no action to report.

ORAL COMMUNICATIONS

None

PRESENTATIONS

- Commendation for Carol Rayner – Flower Baskets on Tiburon Boulevard

Mayor Slavitz introduced and thanked Mrs. Carol Rayner, and in memory her late husband, for their generous donation in funding the first five years of the flower basket program. He stated that the three ‘basketeers’, Hazel Carter, Randi Brinkman, and Chuck Auerbach, launched the program and Mr. and Mrs. Rayner responded to the call for funding in a most generous fashion. He presented Mrs. Rayner with a Citizen Commendation. Mrs. Rayner thanked the Mayor and Town Council and described how she and her three friends came together around the civic project. Town Manager Curran then presented Ms. Rayner with a bouquet of flowers, thanking her and noting that she is the first recipient of the newly designed commendation by the Town’s Artist Laureate.

CONSENT CALENDAR

Mayor Slavitz stated that minor changes have been made to the resolution for Item 5 A & B contains under Section 7, which was before the Council for consideration.

MOTION: To approve Consent Calendar items, as amended.
Moved: Collins, seconded Fredericks
Vote: AYES: Unanimous

1. **Town Council Minutes** – Adopt minutes of the June 7 special meeting (Town Clerk Crane Iacopi)
2. **Town Council Minutes** – Adopt minutes of the June 15 regular meeting (Town Clerk Crane Iacopi)
3. **Town Investment Summary** – Adopt report for month ending May 31, 2011 (Director of Administrative Services Bigall)
4. **Annexation Agreement** – Approve future annexation agreement for property located at 4970 Ranch Road, AP No. 038-041-39; Kenneth and Charlene Ip, Owners and Applicants (Director of Community Development Anderson)
5. **FY 2011-12 Budget Resolutions/Employment Contracts** – Approve and adopt the following: a) Management compensation program resolution, *as amended*; b) Mid-management compensation program resolution, *as amended*; c) Service Employees International Union (SEIU) contract; d) Tiburon Police Association (TPA) contract (Director of Administrative Services Bigall)
6. **Solid Waste Ordinance** – Repeal and adoption of a new Chapter 26 of the Town Code, Ordinance Governing Solid Waste Storage, Collection and Disposal (Town Attorney Danforth)
7. **Creation of Building Code Appeals Board** – a) Adopt ordinance amending Chapter 13

(Building Ordinance) of the Town Code to reference a Building Code Appeals Board; b) rescind Resolution No. 31-2011 and adopt revised resolution creating the Tiburon Building Code Appeals Board (Director of Community Development Anderson)

8. **Claims Ordinance** – Adopt new Chapter 3B of the Town Code, Ordinance Governing Claims against the Town (Town Attorney Danforth)
9. **Sam Chapman Monument** – Update on proposed monument for Sam Chapman at Point Tiburon Plaza (Director of Community Development Anderson)

PUBLIC HEARINGS

1. **Smoking Ordinance** – Introduction and first reading of an 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)

Director of Community Development Anderson gave the staff report, stating the Town adopted its smoking regulations 20 years ago and second generations of stronger smoking ordinances are now being adopted by local governments across the nation. He stated that in 2010 the Council appointed Vice Mayor Fraser and Councilmember Fredericks to a subcommittee to advise staff on the update and in October 2010, after preparing a complete re-write of the existing regulations, staff brought forward a draft ordinance which strengthened the existing ordinance in several ways. Following public testimony, the Council believed that the ordinance did not go far enough to regulate smoking primarily in apartment units and at certain public places or during open air events and directed staff to return with a stricter ordinance.

Staff and the subcommittee then reviewed some of the more recent and stringent ordinances adopted and reached the conclusion that the approach most beneficial to public health would be to eventually ban smoking in all apartment units of 4 or more units rather than to try and work out a solution whereby non-smoking units would be clustered away from smoking units. There would be an option for landlords to establish an on-site smoking area with certain limitations and restrictions.

Director Anderson noted the other primary change was that the prohibition has been extended to outdoor events. The prohibition on smoking in apartment units would be written such that as of the effective date of the ordinance, any new lease or extension of an existing lease would be required to have the non-smoking clause folded into the lease. He said also included is an exception for up to three (3) years for existing tenants, but any lease after July 1, 2014 will need to contain the new non-smoking provisions.

Director Anderson described staff's substantial outreach efforts including mailed notices to those residing in apartment units and copies of the ordinance to landlords. In response, staff has received only two emails, both in support of the ordinance. In terms of fiscal impact, staff does not believe additional resources will be required except possibly an increase in enforcement time

by police to respond to complaints.

Staff recommended the Council hear from the subcommittee, hold the public hearing, consider testimony and following deliberation, introduce the ordinance's first reading and waive all future readings.

Councilmember Fredericks gave a brief subcommittee report and described their findings of significant second-hand smoke exposure, serious health impacts and illness, and notably higher morbidity rates to affected residents in multi-family dwellings. She reported that a study was done in children living in non-smoking multi-family and single-family dwellings. Children were tested for the amount of Cotinine, which is an alkaloid found in tobacco and is also a metabolite of nicotine. Cotinine is used as a biomarker for exposure to tobacco smoke, and while found in most people, results show that for children who live in multi-family dwelling units, levels were 25% to 35% higher than those living in detached single-family non-smoking homes.

Vice Mayor Fraser echoed comments of Councilmember Fredericks and recognized Director Anderson for his work in assisting the subcommittee. He stated the subcommittee modeled the proposed draft ordinance from the City of Novato's ordinance, and pointed out that the grace period through 2014 is appropriate because it allows those affected to have some time to rid themselves of the smoking habit or allow time to find a new place to reside.

Councilmember Fredericks requested an amendment to one of the findings that supports the ordinance; that Cotinine is actually a **metabolite** and not a 'metabolic'.

Mayor Slavitz opened the public hearing and invited public comment.

Robin Curley, 101 Esperanza, Apt. #6, said the construction of her building is such that smoke is infiltrated through the walls and attic spaces from residents below her and two doors down. She voiced displeasure with the 3-year grace period and asked for an amendment that requires the property owner to complete structural mitigation to address the second hand smoke. She also questioned whether or not the ordinance prohibited smoking in attached patios or decks and asked that the Council address smoke coming from them, as well.

Mayor Slavitz clarified that the ordinance does not call for structural improvements and that smokers are required to be 25 feet from affected buildings.

Barbara Warren, 101 Esperanza Way, described smoke coming from a deck 25 feet away from her that drifts in while her doors and windows are both open and shut. She said smoke also travels up from the floor below through her heater, into her apartment, and also from a nearby bus stop. While she realizes that nicotine is very addictive, she asked the Council to reduce the 3-year exception period because of health issues.

Gary Richardson, 101 Esperanza, echoed comments of Ms. Curley relating to decks and patios

which would also alleviate problems of someone trying to interpret the number of feet one could smoke from a building. Tenants below him chain smoke daily from 10:00 p.m. through to 4:00 a.m. and the smoke travels into his unit. He also relayed the difficulty he experienced in getting the landlord to install a screen door to his unit and asked that such improvements also be contained in leases.

Bob Curry, Smoke Free Marin.com, thanked the Council and staff for work into strengthening the Town's ordinance, reported on their organization's cessation programs and directed interested parties to www.smokefreemarin.com. He noted that the ordinance includes balconies and patios and offered their agency's assistance in anything the Town needs for the ordinance's educational outreach.

Vicky Tuorto, Ned's Way, questioned and confirmed with Town Attorney Danforth that subsidized housing was not exempt from the ordinance's regulations, in the absence of federal regulations forbidding localities from regulating smoking.

Ms. Tuorto referred to pages 9 through 11 of the ordinance applying to apartments and smoking in cars and said she lives above a parking lot where people smoke in their cars. Smoke travels up, over and into apartment units, which she said defeats the purpose of the ordinance.

Director Anderson clarified that Section 28-8 does not prohibit smoking in private vehicles. He added that most parking lots within a multi-family complex are considered common area and landlords can designate common areas for smoking to be allowed. If not designated, smoking will not be allowed.

Town Attorney Danforth suggested amending Section 28-8(2) to read, "private vehicles **not located in the common area of a multi-unit residence**" to address this issue.

Mayor Slavitz closed the public hearing.

Councilmember Collins referred to Section 28-5(c) on page 7 of the ordinance: "Smoking is prohibited in all public events, and at the events or functions for which the Town Manager has issued a Special Event Permit." He asked it be amended to read, "...events or functions for which **a Special Event Permit has been issued by the Town,**"

Councilmember Collins stated there are a few locations in the ordinance which refers to "lease renewal" but not "lease extension" which he said is different. He asked staff to add the words "**lease extension**" in all instances after references to "lease renewal".

Councilmember Collins questioned and confirmed that public transit watercraft and/or ferries are outside of the Town's jurisdiction for smoking regulations.

Councilmember O'Donnell commended the work of the subcommittee and staff. While he

agreed with personal liberties, smoking is a scourge on our society and he is happy to be able to limit its health impacts on others.

Councilmember Fredericks added that the ordinance is not intended to be punitive but rather to protect the health of non-smokers, especially children. One provision in the ordinance is a promise by the Town to provide educational materials, which will be easily accomplished through such groups as Smoke Free Marin.

Mayor Slavitz agreed, thinks this is a momentous occasion, and said the ordinance relates directly to health.

Mr. Richardson clarified that the ordinance covers anything that anyone burns to put into their lungs and is combustible, such as tobacco-like product, spice, other plant or burnable materials.

Councilmember Collins commended the work of the subcommittee, staff and Attorney Danforth for their work on the ordinance.

MOTION: To read the ordinance by title only, as amended, as follows:

- Section 28-8(2) to read, “private vehicles **not located in the common area of a multi-unit residence**”
- Section 28-5(c) on page 7 of the ordinance to read, “Smoking is prohibited in all public events, and at the events or functions **for which the Town has issued a Special Event Permit,**”
- Add the words “**lease extension**” in all instances after references to “lease renewal”.
- Cotinine is actually a **metabolite** and not a metabolic.

Moved: Fraser, seconded Fredericks

Vote: AYES: Unanimous

MOTION: To pass first reading of the Ordinance amending Title VI, Chapter 28 (Smoking and Tobacco Regulations) of the Tiburon Municipal Code, waiving all further readings

Moved: Fraser, seconded Fredericks

Vote: AYES: Collins, Fraser, Fredericks, O'Donnell, Slavitz

2. **65 Reed Ranch Road Appeal** – Consider appeal of Design Review Board approval of a site plan and architectural review for construction of additions to an existing single-family dwelling at 65 Reed Ranch Road (Planning Manager Watrous)
 - AP No. 038-301-35
 - James Parsons and Andrea Hong, Owners
 - Jeffrey Wong, Applicant
 - Dan Mihalovich, Appellant

Planning Manager Watrous gave the staff report, stating the project involves request for construction of an addition to an existing single family dwelling at 65 Reed Ranch Road, demolition of an existing attached garage at the northeast corner of the lot, and construction of a new, two-story addition. The lower floor will include a new, 3-car garage and workshop space to the rear, and the upper floor will include a guest bedroom and a model train room.

The application was first reviewed at the March 17, 2011 DRB meeting. At that time, the addition was located further to the west and closer to 67 Reed Ranch Road. The owners of that property, [appellants] raised objections to the project regarding the proximity and visual mass and bulk of the proposed addition, along with the potential noise and privacy impacts. The Board shared many of the concerns, particularly regarding the visual mass of the building and its proximity to the home at 67 Reed Ranch, suggested that the height of the addition be reduced, for the applicant to consider a less sensitive location for the addition, and to be more properly attached to the main building.

The applicant submitted revised plans which relocate the addition over to the east away from the home at 67 Reed Ranch Road. This revision was reviewed at the April 21, 2011 DRB meeting at which time the Board felt the project was generally responsive to the previous concern, but still had issues with the overall height and mass, particularly the monitor section above the upper floor addition. The Board continued the hearing to allow the applicant time to re-design the addition.

The re-designed project was then reviewed at the May 19, 2011 DRB meeting. The applicant submitted revised plans which narrowed and reduced the height of the monitor section of the upper floor addition. The consensus of the Board was that the applicant had adequately addressed the Board's concerns and also assured the Board that the walkway leading to the front entry would be properly screened from the home at 67 Reed Ranch Road. The Board added two conditions requiring that grading be minimized to preserve the existing trees along the western side and that 2, 36" box native trees be planted to screen the top of that walkway. The Board voted 4-1 to conditionally approve the project, and on May 31, 2011 the Mihalovichs filed a timely appeal of the decision.

The appeal is based on 4 separate grounds:

1. *The bulk, height and overall size of the project design are excessive for this property.*

The subject property includes a portion of the old Northwestern Pacific Railroad right-of-way at the rear and the total size of the lot for purposes of calculating FAR and other zoning regulations includes both the size of the original lot and the railroad lot. The Board discussed the issue of the total floor area, but felt that overall, the size of the project was a reasonable relationship between the size and scale of the improvements and size of the property. The existing house and addition are sited on the original lot of the property with the old railroad right-of-way left open as a rear yard. Although this design does not necessarily represent an

overbuilding to the front of the property, each project design must be reviewed on its own merits and the Board compared the visual size and scale to other residences in the vicinity and found it was consistent with the visual pattern of other homes in the surrounding neighborhood.

2. *Adequate information was not presented regarding excessive grading required for the project.*

The floor level of the new garage would be approximately 3'3" lower than the level of the existing 2-car garage and therefore, staff believes the amount of grading necessary to accomplish these elevation changes would be minimal and should not be characterized as excessive. At the May 19th meeting, the Board added the condition of approval that grading be minimized to preserve existing trees along the western side of the property to screen the addition from the appellant's residence.

3. *Adequate information was not presented regarding changes to the walkway and driveway on the site.*

The existing front entry of the house is accessed by a series of stairs leading up to a raised landing in front of the front door, and this front entrance would remain unchanged but the landing would be reconfigured with a new stairway that would lead from the western side of the raised landing and curve to the north. The appellant has raised concerns that the new retaining wall might be necessary or that an existing berm might be removed, but the DRB emphasized that retention of the mature screening trees rather than the berm would protect the appellant's privacy.

The appellant has requested additional story poles for this walkway, but the Board noted that the front entry of the house would remain unchanged with the raised landing at the same level and the same general location of the current landing. In general, the Board felt the potential privacy impacts from the entry stairways would be relatively minimal. Staff notes the entry stairs are generally used less heavily than other outdoor areas like decks or patios and not considered to be an area where there are considerable privacy concerns as a general rule. The proposed entry stairs would be approximately 26 feet from the appellant's house and the Board required not only to preserve the existing landscaping but 2 other native box trees be planted to screen this walkway.

4. *Existing and proposed landscaping would be inadequate to provide privacy.*

The Board took actions to protect landscaping to protect the appellant's privacy and at a very first meeting, moved the addition further away from the property to protect this privacy.

In conclusion, Mr. Watrous stated that staff believes the DRB acted appropriately in applying the guiding principles for the site plan, architectural review for protecting privacy impacts of the neighbor, and for reviewing the relationship of the size and scale of improvements with other

buildings in the vicinity. The Board felt it had adequate information to make an informed decision on the application. Staff recommends the Council take testimony on the appeal, indicate its intention to deny the appeal, and direct staff to return with a resolution for adoption at the next meeting. He noted that DRB Boardmember Emberson is present, and provided a brief overview of the appeal hearing procedures.

Mayor Slavitz questioned and confirmed with Mr. Watrous that there are hillside guidelines that talk about general placement of structures on properties, but none for heavily loaded garages in the front. Mr. Watrous explained that the issue of whether the project was front-loaded was discussed by the DRB and they looked at other areas beyond the immediate surrounding area. They found a number of newer homes with similar front facing garages, particularly in the Preserve area.

Councilmember Fredericks said what she noticed in particular, about the houses on that side of the street and different from houses across the street, is that they are narrow and long and there is not as much of a front yard setback. She asked if there are any existing 3 car garages on that side of the street, and Mr. Watrous said he was not sure whether there are in that immediate stretch of road.

Councilmember Fredericks asked if there were other projects before the DRB that include lots with newly acquired railroad right-of-way. Mr. Watrous stated yes; there are a few lots in Bel Aire that ended up with a piece of the old railroad right-of-way because it had to go through zone changes. The Council made a specific requirement for these lots that the right-of-way would not be used in the overall calculations for floor area. They did not think, particularly in Bel Air, that it would make sense to have much larger houses on those smaller pieces. In other applications around the town it has been factored into the overall FAR calculations.

Councilmember Fredericks questioned whether this was because of the constraint and characteristics of the Bel Aire neighborhood. Mr. Watrous said it was because the Council had an opportunity to act on this specific item; this is unusual with the railroad right-of-way pieces, but there are other properties that have acquired land as part of lot line adjustments, and they have always been calculated as part of the overall lot size for purposes of calculating FAR.

Councilmember Fredericks said this is a peculiar configuration of the lot, as it is narrow and long, which she thinks constrains the addition. She asked if there were any projects in that area with this sort of configuration. Mr. Watrous said most of these homes were built in the 1970's and 1980's and there are only a handful of properties that have this additional railroad right-of-way.

Director Anderson added that this particular property and a few like it in the vicinity had acquired the railroad property as soon as it became available in the early 1970's, and there was no real Town opportunity to have any input on zoning limitations of any kind for the former railroad portions. He said the Bel Aire neighborhood acquisition was much later and the Town was able to have some control with what happened.

Mayor Slavitz opened the hearing and asked for the appellant's presentation.

Dan Mihalovich, 67 Reed Ranch Road, appellant, said he is speaking on behalf of his family and shared interests of some neighbors, as well. He thanked the Council and DRB members for taking the time to review correspondence on file, for coming to his house and to view the story poles together. He thanked the Parsons' legal counsel for drafting their letter to the Council of June 28, 2011 which helped him articulate his response regarding the appeal, which supplements his presentation tonight. He set forth the following 7 points about the appeal:

1. He is not anti-development or opposed to Parsons proceeding with a tasteful renovation.
2. While everyone will take a fresh look at the proposed project, some disputes have lasted months, and he questioned why there is opposition. He said certain neighbors are opposed to the massive scale and looming design at the street front of Reed Ranch Road. He does not believe the proposed scale is necessary, appealing or consistent with the community. The applicant is trying to push through the design and construction of a 2 story shop and part of a 3 car 'garage' which is uncharacteristic of any home in the neighborhood facing the street of similarly sized lots.
3. The other main component of the new structure is the large train room and he questioned why neighbors must be imposed upon by such a large structure. Numerous zoning ordinances will be violated, and he articulated the list of such ordinances in his memo to the Council.
4. As a condition for the Council to deny the project, he asked the Council to confirm why he must prove that the DRB made a mistake or its decision based on faulty or incomplete information. Mayor Slavitz responded that this is a de novo hearing and the Council is forming its own opinions.
5. As late as last night, Mr. Mihalovich said he was finding errors in the architect's drawings which he was unaware of during visits by the Council around the property. He feels the architect's drawings are misleading and incomplete, and should not serve as the basis for approval, but only for denial. On final review, he found that the story poles were not accurately placed by a significant margin.
6. The architect's drawings do not describe the cut in the earth required for the project nor appropriately portray elevations after the cut is made. Elevations after the cut are not shown in the area of the walkway from the new front stairs. He noted that after the DRB voted to approve the project, it now contains reference to the specific size of the cut as 3'3" and, "any future retaining wall would be less than 42 inches in height." He stated these two metrics were not available to DRB members at the third session when the project was approved.
7. If the drawings submitted and representations by the architect are found in error, he asked how the Council will you trust the applicant's information going forward. Regarding the story poles, he noted the architect's drawings are at 1/4" scale unlike the drawings received from staff. He referred to the site plan showing the measurements of the height of the story poles, stating that the tallest set of story poles is at 119'9-1/4". He pointed out on the plans the elevation of the flat roof above the monitor. The plans before the

Council show the architect's north elevation with a new garage level as listed at 99.15'. The architect's measurement for the highest roof level is at 23' 10.5" above the garage floor and therefore misstated the elevation. It should not be 120.03' but rather 123.02' which is 3 feet higher and well below the story pole constructed at 119' 9-1/4".

Unlike the street view version submitted by the Parsons' architect, the more complete version still shows the dashed lines to indicate the curb, but more accurately now portrays the cut in the earth required and its impact on the existing trees and neighbors' lots.

The new garage height measures 17' tall, 1 foot taller than what he indicated in the appeal and memo he sent. At this height, one could create 2 stories, and indeed, he feels this is a 2-story tall garage.

Regarding elevations, Mr. Mihalovich said on the revised proposed north elevation drawing, he has taken the existing grade shown by the architect and sketched it in heavy dashed lines. The architect erred in this drawing, since the correct measurement using a 3.2' cut shows the dashed line below his. The elevations also prove that once the cut is made, all mature Chinese Elm trees in the cut area will have to be removed unless the Parsons construct a 3 foot retaining wall which has never been shown in the drawings. He said one can begin to discern that the grading and proximity of the proposed walkway at about 10 feet from the Chinese Elms, and said this is precisely where the Parsons' original expansion was proposed to take place and where every DRB member instructed the Parsons was not the place to build improvements, as it represented an invasion of his privacy. The building is too close to his property, as well as the walkway.

Regarding mass of light, he said it is not just the mass of the development at the front of the house that is offensive. Given the scores of windows both in the 17' tall garage shop area and the rest of the structure, the building addition will pollute them and neighbors with light. If light is needed in the garage, he asked to require interior light fixtures and reduce the windows to 1 or 2. He said there are now 26 windows facing his property, 7 of which are from the garage, plus the garage side door which should be removed, as there are already 3 doors assigned plus the 3 front doors facing the street. The 5 windows that face his house at the same ground level only serve to light an interior corridor behind the new front stairs which will also add to light pollution towards their bedrooms. The proposed east elevation is in contention for the most offensive light pollution. This is the view most of the public will see whenever driving down Reed Ranch Road, and he believes there is far too much mass and light. He feels it is ironic that the Town heavily restricts exterior lighting while at the same time, considers allowing construction of such a polluter.

Regarding resolution of what should be, while not attempting to redesign the Parsons home Mr. Mihalovich suggested an expansion as unanimously recommended by the DRB

to be spread between the front and rear of the home. The Parsons should continue to develop their plan starting with the relocation of the existing garage so it aligns as per the current plans with the existing house. The 2 car garage should remain and have normal garage height built on current grade. Expanding it to the front would allow the front entry stairs to remain in their current location. Assuming all construction at the front of the house remains on current grade, the Parsons could maintain their current garden, trees, and not spend additional funds on engineering, grading, drainage, and retaining walls. Efforts should be made to remain within the envelope of the current house. A variance may be needed to expand the house to the rear, but it would be accepted much more favorably by neighbors and would be more fitting in the community.

Another more elaborate idea would be that since he knows the project is all about the shop and 3 car garage, he suggested the Parsons move out for awhile in favor of tearing down most of the house, rebuild with a setback 3 car garage and train room on the lower level and main house upstairs and to the rear. This would enhance views of Mt. Tamalpais and maintain the front garden as is.

Commissioner O'Donnell asked for clarification on height discrepancies. Mr. Watrous deferred to the architect, stating his review of the story poles indicate that they are at 123.1' and elevations show a high roofline of 123.1'. He added that as a policy, the Town does not require story pole certification by a surveyor for additions; only for new homes.

Jeffrey Wong, Architect, recounted how he arrived at the approved project, stating that the original proposal planned to keep the existing garage intact and to construct an addition, including a new garage, at the westerly side yard setback. After much discussion with the DRB at that first hearing and, in light of concerns expressed by the appellant, they revised their proposal. They returned to the next meeting with a completely new proposal to address concerns. The new design came about after the Parsons agreed to significant concessions toward the overall design, specific features and details, the manner in which they would be able to use their completed home, their view of Ring Mountain, and other concessions. They were respectful of input by the DRB and, accordingly, he made changes to the proposal.

The plan relocated the proposed addition as far to the other side of the 75 foot wide property as possible from the westerly side yard setback to the easterly side yard setback. This would require additional expense, demolition of the existing garage, and loss of views. They presented the new version and it was agreed that the appellant's issues had been addressed and only a couple of minor concerns remained.

At their third and last DRB meeting where there was no other public comment they presented some final design adjustments, including a shorter and narrower roof monitor. They agreed to accept landscape screening and tree protection and were able to arrive at a design good for the DRB, the community, and the Parsons.

Regarding the appeal, Mr. Wong pointed out that the grading required in their approved proposal

accomplishes a lower garage floor level 3 feet lower than the existing garage. The site and landscape plans presented at each of the DRB meetings showed clearly their intention and ability to grade for the new garages without harming the 6 existing Chinese Elms which the Parsons have nurtured for years. The elms will anchor the new front yard landscaping and their professional land surveyors, Larry Stevens Associates, have verified they will be able to execute their agreement to the DRB condition to safeguard the trees.

Regarding assertions that the story poles are not correct, Mr. Wong said the same surveyors have verified locations and heights of the story poles. The rows on the east and west facades are glass blocked to provide natural light to the interior while minimizing spillage. He said the pathway is 25 feet from the western property line and 35 feet away when adding the setback of adjacent neighbors.

Lastly, on the north elevation, Mr. Wong pointed out the line of the existing curve of Reed Ranch Road, stating that whereas now the existing driveway slopes upwards, after grading the new driveway will slope down to the new garage level. The widths of the proposed curb cut where the new driveway will meet the street is 5 feet narrower than that which exists now, allowing a wider planting area to further screen the house from the neighbors and screen the neighbor's homes from the applicant. He then pointed out existing trees and the wider planting area, said visual screening, privacy, and nighttime illumination all are issues that have effects both ways, and noted that the Parsons also have a vested interest in these issues, as well.

Riley Hurd, III, legal counsel for applicant, directed the Council to the Town's code in addressing calculation of floor area ratio, noting it is clear that the applicants are allowed to use all of their lot. He said the appellant expressed concerns about a precedential effect of gigantic lots; however, the Council established a maximum house size in this zone. Floor area ratio is a guideline and not a guarantee, and the DRB still found it to be a project they could approve. They could have made it smaller, but they approved the project. Also important to note is that the garage will be further away from the street as opposed to what is there now. The path is not in the setback but in the actual building envelope, and the appellant's home does not meet the current side yard setback requirement as it is in 5 feet of the Parsons' property, and therefore, they only have a 10 foot setback where 15 feet is required. This non-conformity was exacerbated when the appellant decided to build a second floor in this encroaching area, add living space and windows facing the Parson's property. His clients have had to work around this non-conformity by sacrificing their own time and money to push it away from the appellant's own encroachment.

Mr. Hurd then referred to vegetation and privacy and said it is the applicants who have been, and will continue to be, responsible for providing all screening between the two properties. He stated that the appellant has not one screening plant or tree in the area between the two homes, and the Parsons vegetation is being used for the benefit of both. However, they are happy to provide this benefit. Regarding the walkway and stairs, this is a single family dwelling and the intensity of use is extremely low. Also very important is that in the new design, there is now interior access from the garage to the home, requiring less people using the pathway. In closing, he noted the DRB heavily modified the project in response to the appellant and he asked that the Council

uphold the decision of the DRB and deny the appeal.

Vice Mayor Fraser cited the fact that there is a clear difference of opinion, perception, or reality with respect to story poles. He feels there are compelling arguments on both side, and asked how the Council can be convinced in what they saw is correct and what is represented in the drawings is correct. Mr. Wong stated that, while not required, they had Larry Stevens Associates survey the property to verify locations of the story poles and provided a certified document.

Councilmember Collins had the following questions to which he received confirmation from Mr. Wong:

- The size of the glass blocks is 8x8 and 12x12.
- Light will come in and go out of the glass blocks, which are fairly thick.
- The size of the floor area under the roof monitor is approximately 140 square feet.
- The purpose of the roof monitor is that it allows the integrity of the interior post and timber design of the existing house to be maintained and to add an 8 foot high box next to a room would destroy the character of the interior of the home.
- The height of the roof monitor is 12 foot ceiling height over the hobby room.
- There is one existing window at the top of the existing roof monitor.
- There is no retaining wall proposed in the project.
- The total height of the interior of the garage varies; it is 8 feet over the rear portion considered the workshop area, 11 feet over the second garage, and 15 feet along the L-shaped area.
- The dimensions of the entry deck are about 10 feet long, curved, by about 7.5 feet.
- The two panel doors facing the west coming out of the garage are solid wood with raised panels.
- There is an interior closet on the ground level.

Councilmember O'Donnell questioned the need and necessity for a 3-car garage, as he did not see many in the neighborhood. Mr. Wong replied that when he presented the project to the DRB, within ¼ miles there were 10 properties that had more than 2 car garages, mostly on Indian Rock which are newer homes.

Councilmember O'Donnell questioned where the connection will be between the garage and the newly created living space, and what the total square footage of the proposed garage is. Mr. Wong pointed out the garage space and interior space on the lower level, and Mr. Watrous confirmed that the total square footage of the living space and garage is 1436 square feet, 600 square feet of which is separate with the remainder going towards the FAR. He confirmed it was the full usage of the 600 square feet. Councilmember O'Donnell confirmed with Mr. Watrous that the resulting FAR would be 3,867 square feet, plus the 600 square feet for the garage.

Councilmember Fredericks requested Mr. Wong address the windows on the west side that face the appellant's bedrooms, and asked if there was a way to mitigate the light pollution into the appellant's home. She said there was an appeal a few years ago and an architect on the Council

at the time felt interior lighting design can go a long way to reduce light pollution. She confirmed with Mr. Wong the location of glass blocks versus windows in the plan, and the applicant's desire to create visual interest and fenestration of the facades. In adding up all square footage on each façade, each has between 30 and 50 square feet which is the size of an average patio door.

Councilmember Fredericks suggested the possibility for interior lighting and cited the new technologies directing down lighting that minimizes light pollution. Mr. Wong said illumination will not go beyond the building. He agreed that recessed lighting can specify direction to restrict light to the domed area, and added that the windows on the side are garage windows and are only minimally used during the night. The hobby room will be the most utilized because it is part of the family room.

Mayor Slavitz said once in the garage, one level up is the guest bedroom and model train area. He clarified with Mr. Wong that the floor level for the guest bedroom was below and behind the fenestrations and is nested down into the garage to break up the plane. He stated that if the guest bedroom and the model train area are on the same floor level and the monitor is only at the model train room, he asked why it was needed at all. Mr. Wong said sooner or later, the design will run into the existing roof and they will need to resolve how that works from the exterior design. Mayor Slavitz clarified that the ceiling height is 9 feet in the guest bedrooms going up to 12 feet in the model train area. Mr. Wong described their specific reasoning to do this so as not to make the renovation look like an add-on and require rafters.

Councilmember O'Donnell stated the guest bedroom is nestled down in behind the garage, yet the front of the garage it is rising up to almost 15 feet. He questioned why the architect could not integrate the bedroom or a window looking out into the street so as not have such a large garage, which would also require less grading. Mr. Wong said at the various DRB discussions, they tried to reduce the apparent volume of the building envelope. They chose to step it in an array pattern to minimize any angle that one could see it from any wall. If they brought the guest bedroom forward, there would be a two-story high street frontage rather than what would appear as 15 feet tall and stepped back.

Councilmember O'Donnell suggested a normal garage height and a graduated slope up to a guest bedroom above the garage. What he said the architect could have done to break up the massing and to eliminate a lot of light pollution in the front is to create a slope from the top of the garage up until the bedroom. Mr. Wong agreed, but noted this was the style his clients were seeking.

Vice Mayor Fraser verified that the top monitor is above the train room and a portion of the existing family room, which exists now.

Mr. Hurd stated that in addressing Councilmember O'Donnell's point, the DRB said politely to the owner that the main residence is unattractive and they asked him not to match that style again.

Councilmember Collins referred to the lower level and the windows facing the west and clarified

that the windows are 2 feet wide. The reason for having them there is to capture as much light as possible to light the hallway. Councilmember Collins suggested installing lighting in the hallway, and Mr. Hurd said the Parsons want a net zero energy impact and build as green as possible.

Mayor Slavitz stated that because the windows are smaller, they may add up to the number of normal sized windows in other homes in the area. He asked staff to comment on the amount of glazing. Mr. Watrous noted staff does not usually calculate the amount of glazing as a percentage of a wall. The DRB looks at it on a case-by-case basis. There are some areas where if windows do not face any neighbors, it is solid glass. In other areas, if it is a privacy or light pollution issue, they have asked that windows be lowered or eliminated. He said the applicant did adhere to reducing the number of windows as requested by the DRB by the second and third meetings.

Vice Mayor Fraser referred to 3 car garages and asked if the Town has seen this number of garages in new homes or modifications with these number of light boxes or windows. Mr. Watrous stated staff does not calculate them but is seeing more attention being paid to trying to maximize passive lighting approaches with green building principles.

Mayor Slavitz said, in recognizing that the final decision of the DRB was not unanimous, he asked DRB Member Emberson to comment on the project.

DRB Member Linda Emberson explained that Boardmember Kricensky who is an architect, was concerned about mass of the front of the structure and thought that by stepping it back it mitigated some of the large mass. Originally the entire addition was next to the neighbors. The DRB asked that it be moved to the other side which also mitigated privacy issues. Boardmembers drove around the neighborhood and found large houses right on Reed Ranch Road, but the DRB concurred that the applicant was not asking for an exception. They looked at both sides of the issue and arrived at what they thought was a happy median.

Mayor Slavitz questioned whether there was discussion regarding number of windows. Boardmember Emberson said she was not at the second meeting but by the third meeting the number of windows had been reduced. The Board also agreed that the windows allowed passive light and reduced energy usage.

BREAK

Mayor Slavitz called for a brief recess/break at 9:21 p.m., and the meeting then reconvened at 9:26 p.m.

Mayor Slavitz opened the public comment period. There were no public comments, and Mayor Slavitz asked for rebuttal by the appellant.

Mr. Mihalovich reiterated that he believed it was productive to have the Council receive a copy

of the correspondence from Mr. Hurd and for him to have the ability to articulate, in writing, the concerns as part of his appeal. He noted that the DRB instructed the Parsons to avoid massing of the entire project at the front of the house at the first meeting, which was precisely what they did not do by the second or third meeting, and there is still relatively the same mass of the project in the front. In speaking concurrently about this drawing and about the dissenting vote, Boardmember Kricensky's concern was that the scale of the project was not fitting for this site and the neighborhood. He asked the Council to verify that the measurements in the plan are correct which are taken from the architect's drawings. He has proven that the story poles are not in the right place. In fact, he said the building will be 3 feet taller than the story poles now indicate.

Regarding 3 car garages, Mr. Mihalovich said he doubts there are 3 car garages for lots of this size facing the street in the Reedlands, but acknowledged there are in the larger lots in Indian Rock and other parts of Ring Mountain. Regarding the need for a 3 car garage, the applicant wants the Council to believe the Parsons are quiet empty nesters, but said children move back and sometimes people sell their houses after the project is approved and built. He voiced concern with the Council having to approve a 3 car garage just because the Parsons have 4 cars for 2 people. Regarding the surveyor, if the Council is not convinced with the height and bulk of the project, he questioned why the surveyor was not present. And, such a report would contradict the architect's drawings.

Councilmember O'Donnell referred to the height of the top of the roof monitor and pointed out that elevation is different than height. The architect has indicated that the elevation is 120'. The height from the ground is at 23'10.5", and he questioned the discrepancy. Mr. Mihalovich clarified that the difference between 99.15 and 120.03 is 3 feet. The story poles are at 119'9 1/4" which is on the architect's drawings. Mr. Watrous pointed out that staff shows the corner point at 123.1' and the appellant most likely has an outdated drawing.

Mayor Slavitz stated that regardless of the height of the story poles, Mr. Mihalovich would like a 2 car garage and not a 3 car garage. Regarding the guest room and train room, he clarified that it was not a question of where it should go but the height and bulk of the project and the fact that it is sitting out and towering at the front of the building. He added there are other neighbors who have written several times voicing the same opinion.

Councilmember Collins confirmed with Mr. Watrous that the reduction of the height was at the request of the DRB at the second meeting.

Mayor Slavitz called for the applicant's rebuttal.

Riley Hurd, counsel for the Parsons, referred to the grading diagram which he said is a bench cut and not a grading plan., and a topographical survey was done. They are not grading within 9 feet of the Elms on the other side of the property and this is the data Boardmember Kricensky was looking for which is usually presented at the building permit phase. However, they have presented it in order to address it in the appeal. Another important issue is the windows. While it

is right to be concerned about light pollution, in this case there will be a giant wall of vegetation screening. He pointed out that the east facing windows coming from the appellant's house into the applicant's property include a second floor office, guest bedroom and two bathroom windows, and on the first floor, bedrooms and a bathroom. There have been no complaints from the Parsons since they have lived there from the standpoint of the appellant's home. Finally, the DRB never asked them to go to the back of the property because there is a sewer easement and also because of the slope of the lot. Mass would be added directly overlooking the appellant's backyard and private spaces. Lastly, he thinks the 4-1 vote is telling and they have addressed the one 'no' vote through the topographical survey.

Councilmember Collins questioned and confirmed that the reason there is no retaining wall is because the slope of the street is going in one direction and it is not needed. Mr. Hurd added there is no grade change at either property line.

Mayor Slavitz asked whether the front of the garages were at the same line as the existing garages. Mr. Hurd replied that they will be further away from the existing garages and much further away than the appellant's nearest improvements. He clarified they are about 30" further back and wider on the right by another garage bay.

The public hearing was closed.

Councilmember O'Donnell stated he was on the DRB for several years and this is the most difficult project he has seen. Part of his concern is that he does not like the design itself, as it seems the design builds a mini-castle in front of another house. He also recognizes a person's right to build and the fact that no variance is needed. Regarding the specific 4 points of the appeal, he sees privacy as a complete non-issue because privacy is a two-way street. Both parties can make accommodations for changes on their own property in a positive and negative way. Regarding the issue of walkway and driveway, he does not see much of a problem or impact. He also does not see any issues with grading. He does struggle somewhat with bulk and height, and thinks it is odd to have a 15 foot garage in front of the house with so many windows, noting there are 47 windows excluding the parapet at the top. He understands the DRB is trying to break up mass and bulk but thinks the design feels like it creates two separate residences. He said he would have stepped it back somehow above the garage into the bedroom area and limit the 15 feet interior garage height.

Councilmember Fredericks said that in the back of the home, height is determined by the Parsons' desire to match the interior design of the roof beam. The trade-off is if the first element is made lower, there will be more of a height jump to the second element. She agrees this is one of the more difficult appeals because of the complexity of the design. She thinks lighting on the west side can be taken care of by thoughtful choice of the kinds of lighting fixtures that beam down and do not scatter light. Regarding the 3-car garages in front lots she saw none, but she did see rather large structures close to the road along that side along Reed Ranch Road which were very well screened by trees and vegetation. She thinks this is something people in this neighborhood pay attention to, and given the proposed tree screening, even with a 3 car garage it

will have its mass mitigated. She also thinks the curve of the roadway will be a screen for part of the height of the structure.

Councilmember Fredericks said she recognizes there are many windows; however, the glazing on the front windows is at an angle to the neighbor across the street which similarly has a monitor design. Therefore, aside from a condition to limit the lighting fixtures inside the house, she feels the DRB got this absolutely right.

Councilmember Collins stated that philosophically, he believes an owner not asking for a variance or FAR exception has a right to develop their property as long as it does not infringe on somebody else and fits within the character of the neighborhood. He did not believe this design fits the character of the neighborhood but is persuaded by the fact that owners should have a right to do what they want to do. He could not vote to change the plan for a 2 car garage, but would like to see considerable mitigation with the downstairs hallway windows. He asked if the stairway could be shielded in some way without losing the square footage and without losing what the living room is intended for. He would like to see the size scaled down and some mitigation to make it fit better within the neighborhood.

Vice Mayor Fraser said that in looking at grounds for appeal, he thinks the privacy issue is a non-issue. He thinks the applicants have demonstrated their willingness to screen to whatever degree necessary, and he expects the appellant can do the same thing. He thinks the walkway and driveway are sufficient. He had been somewhat concerned about the grading issue and story pole heights, and in moving forward the Council should condition the project to require the surveyor's report as part of the record since it is a controversial point. Given the massing and bulk, he agrees with Councilmember O'Donnell's comments about not liking the design. One area he is troubled with is with lighting and windows and feels many homes approved over the last decade pollute the sky and neighborhood. He agreed with comments as stated by Councilmember Collins regarding the hallway that, while dark without windows, interior lighting could be installed. Given the close proximity of neighbors, sensitivity should be given to the amount of light in the evening, and he recommended the garage window area be minimized more with respect to lighting.

Mayor Slavitz said he agrees with what has been said, especially Councilmember O'Donnell's comments in that the brand new addition looks like two separate houses. The addition actually emphasizes the mass and bulk of the addition, as the 3 garages and wall right above it is all the same plane vertically. An alternative would be to step it back to make it look less massive. The new monitor complicates the design and adds to the bulk. He would remove the windows, meet the roof and simplify the design to remove some of the mass and bulk. He believes that the 3 car garage is not compatible with the neighborhood and suggested stepping one back to look less massive and more acceptable for the neighborhood. Regarding privacy, while green building is encouraged, the downside is that too many windows create light pollution.

Councilmember Collins noted that the third garage is a workshop and if used at night, its lights

will be on. Mayor Slavitz agreed and questioned whether Councilmembers wanted the project sent back to the DRB or not.

Councilmember Fredericks stated that given what the applicant is asking for and the problems that it caused in bringing forward the appeal, she thinks the DRB acted appropriately. She also has concerns with controlling lighting that faces bedrooms.

Councilmember O'Donnell noted there are 9 large windows are right above the garage which he feels are unnecessary. He likes the top roof monitor, thinks a linear plane has been created in front of the house, and suggested the design step back a bit and be reduced down. The massive design also takes the full FAR plus adds the 3 car garage and puts a large house on a narrow lot. He thinks it should be redesigned to eliminate the mass, bulk and height issues. He did not have a strong preference for or against the 3 car garage, but suggested eliminating the 15 foot ceiling with a slope to break up the mass.

Vice Mayor Fraser said he thinks the applicant clearly responded to the direction given by the DRB. He suggested and confirmed with Mr. Watrous that the Council could direct the applicant to further tweak the project and return to the Council. If the Council feels there is specific direction, it could ask the applicant to eliminate the hallway windows and/or the top row of the larger windows along the garage to address lighting and window issues. Mr. Watrous added that applicants have limited lighting in certain areas to down light fixtures on the interior and there is the ability to address specific additional conditions of approval which could be included in the resolution. If there are other more detailed revisions to the design, and the Council would like to see them, direction could be provided to the applicant, the hearing could be continued and revisions brought back.

Mayor Slavitz suggested that the Council could also give specific enough direction and have the revisions reviewed and approved by staff. Mr. Watrous agreed but asked for more clarification in the form of a motion so staff has adequate direction for compliance at the building/plan check process.

Councilmember Fredericks said she was comfortable with staff reviewing the lighting, but she thinks a longer discussion would be prompted if the structure is changed to be scaled back, especially given the varying heights inside the garage area.

Councilmember O'Donnell suggested slanting the varying height from the top level to where the garage doors are so the 15 windows become 4 windows, similar to a dormer.

Ms. Danforth offered that eliminating windows on the west side would be helpful in mitigating impacts on neighbors at 67 Reed Ranch Road, which could be simple fix as could be the lighting design condition described by Mr. Watrous. If something more is required to reduce the actual size of the garage addition, she would be hesitant to have the Council elaborate on it tonight unless the architect describes something the Council could sign off on. Otherwise, the most

effective thing to do would be to continue the meeting and return the project.

Mr. Watrous approached the Council and provided an example to reduce down the 15 foot section of the garage and angle it.

Mayor Slavitz offered that the project could be continued to the next date certain, which is August 3, 2011.

Mr. Watrous clarified with the Council their desired changes to the project; the taller garage roofline to be brought down to meet the second lower plane. Instead of it being flat, it could slope up. Councilmember O'Donnell suggested also decreasing some of the lower windows and increasing the upper window in the guest area to capture views.

Councilmember Collins noted there are 4 windows facing the west in the garage. He suggested these be eliminated and moved to face the east on the blank wall. He also stated there are 2 windows in the guest bedroom. If these were pushed out and reversed to the front side, the west side would be mitigated dramatically.

Mr. Watrous confirmed the direction of the Council to recommend that the applicant: 1) modify the garage roofline, 2) move windows on the west side of the addition to the east side; 3) eliminate the west-facing bedroom windows or move these windows to the front of the bedroom; 4) eliminate the hallway windows; and 5) design interior light fixtures to shine on the floors and stairs and not onto windows.

The Council asked that the revisions be made and returned to the Council at its August 3, 2011 meeting.

MOTION: To continue the public hearing to August 3, 2011.
Moved: Fredericks, seconded O'Donnell
Vote: AYES: Unanimous

3. Mill Valley Refuse Service – Further consideration of the proposed Mill Valley Refuse Service rate increase (Town Manager Curran; Director of Administrative Services Bigall) – *continued from the June 15 regular meeting*

Director of Administrative Services Bigall gave the staff report, stating the item was continued from the Council's June 15, 2011 meeting wherein the Council received a presentation and considered a proposed rate increase by Mill Valley Refuse Service (MVRS). She said the application is prepared by April 1st for a July 1st effective date and based on MVRS's projection of revenues and expenditures a 13.61% increase is requested to provide MVRS with a fair rate of return. At the June 15th date, the new franchise agreement was not in effect, which calls for some other services and an increase to the agreement the Town receives. Therefore, the effective [prorated] increase becomes 15.88%.

The Council requested MVRs return with several items, which she outlined:

- Exhibit 1 through 4 include 4 years of audited financial statements;
- Exhibit 5 is a quick comparison she prepared comparing those 4 years of audited financial statements which shows that MVRs averaged a 1.7% net profit for those 4 years. MVRs has an in-house accountant, an outside certified auditor, and auditors and CPAs are present tonight to answer questions;
- Exhibit 6 is MVRs's detailed rate application increase. For MVRs to achieve a fair rate of return which is 110% of allowable costs plus pass through costs, it would require the increase of 15.88%;
- Exhibit 7 is a request for further information on loss revenues as a result of migration; people going from a larger can to a smaller can. MVRs has provided a spreadsheet indicating that over the last year they lost \$33,500 due to this migration;
- Exhibit 8 is Councilmember O'Donnell's specific request regarding revenues received from the sale of MVRs's salvage, co-mingled recyclables. MVRs receives \$20/ton for the co-mingled single stream recyclables and their contract with Waste Management allows this \$20/ton to go up as high as \$40/ton based on the composite market of those commodities. She added that the Town receives credit for 19% of the salvageable revenue they do receive, and this is proportioned out to other jurisdictions;
- Exhibit 9 is a portion of their contract with Redwood Landfill which outlines the increase of disposable rates which take effect July 1, 2011;
- Exhibit 10 is MVRs' contract with Royal Petroleum for diesel fuel which provides a fixed rate, averaging 4.66 cents per gallon through September of this year;
- Exhibit 11 is a letter from MVRs' insurance broker which indicates that, based on their modification experience and market conditions, their Workers' Compensation rates will increase by 25% to 35% on October 1, 2011;
- Exhibit 13 is a Council requested comparison of rates for 32-gallon cans in the flat areas. Tiburon is at the top one-third percent, but somewhat competitive with other Marin County jurisdictions. She said each agency has varying requirements through each of their franchise agreements.
- Exhibit 14 is the resolution that would approve the rate increase effective July 1, 2011, and before the Council is a revised resolution which includes the fact that the Council held a hearing on June 15, 2011 which was continued to this date.

Ms. Bigall stated MVRs has held off on their July through September billing pending adoption of the new rate increase. If the increase is not approved and it is determined that a September 1st date is a different rate, staff will change the proration from 12 months to 9 months, which will change the percentage to a 21.1% increase.

Councilmember Fredericks questioned and confirmed that franchise fees and pass-through costs in the past have driven rates.

Councilmember Collins questioned the existence of MVRs' profit and loss statement. Ms. Bigall responded that MVRs' projections are based on revenues and expenditures and the amount they

are short to realize a return, and she clarified it amounts to \$318,000. Councilmember Collins questioned and confirmed that a 10% mark up represents \$230,000.

Vice Mayor Fraser confirmed that MVRS is able to provide detailed information and request a rate increase every year, and that every 3 years, the Marin County contracted agencies have an independent analysis completed. This analysis was last done in 2009 when a 3.1% increase was requested. The cities' independent auditor opined that MVRS could have asked for a higher increase. Ms. Danforth clarified that MVRS can request a rate increase every year and go through the entire process; however, for the 2 years following a formal rate increase, they can ask for an automatic cost of living rate increase up to and not to exceed 3%. Therefore, MVRS only has to ask for an increase every 3 years, but has the ability to request one more often.

Councilmember Fredericks questioned what is reviewed by the independent consultants in justifying the rate increase. Ms. Bigall said in attempting to make it as consistent as possible, the increase is determined by each agency's individual contract.

Vice Mayor Fraser stated the Town has a cost plus contract with MVRS and MVRS revenues are declining. He questioned MVRS' projection for the next 5 years.

James Iavarone, MVRS, responded that MVRS does not make 5 year projections. If they continue with the rate structure they have, revenues will continue to go down because people will continue to migrate from larger cans to smaller cans. He explained the economy is causing a lot of problems now, as many businesses are reducing or eliminating service, as well as residential, but trends show a leveling out.

Vice Mayor Fraser said it looked as though revenues peaked in 2007, declined in 2008 and 2009, were up in 2010, and projected to be less in 2011. This year dump fees were up 37% and he questioned whether these would rise over the next 5 years. Mr. Iavarone indicated MVRS just signed a new contract and dump fees will rise with the CPI for the next 5 years. He could not estimate what will occur after 5 years. He discussed how they must lock in their fuel price, noting at that time, it was predicted gas would go to \$5/gallon; however, things changed.

Vice Mayor Fraser referred to the workers' compensation increase of 29%. He questioned whether this was attributable to claims and asked how MVRS could further offset the company's exposure. He believes such increases will only cause increases to the consumer and costs will continue to incrementally increase year after year. He also asked Mr. Iavarone how MVRS could reinvent itself and said he is troubled by the fact that the Town has initiated a cost plus contract with a fair rate of return that exposes the consumer. The person at the 'end of the line' is subject to MVRS' declining revenue while at the same time is being asked to be more responsible with the environment. As a result, consumers are paying more, i.e. making up the difference in declining revenues for MVRS.

Mr. Iavarone stated the services MVRS provides are due to the direction from the State to recycle more. People will always have garbage that needs hauling, and one way to reduce fuel

costs is through efficient routing. He said they have done route consolidations for years. Fewer routes equals less fuel consumption and hybrid trucks are also coming out. He described the costs of workers' compensation insurance and noted their broker worked with them to reduce their experience modification through safety programs. In addition, if they get people to take food out of the garbage and into the green can, they could pick up cans biweekly and not weekly.

Councilmember O'Donnell said he understands MVRS is a private company and taking a profit, but the Council is responsible for investigating numbers and working to achieve a fair rate for its constituents. He discussed in detail the issue of migration and loss in revenues, voicing disagreement with how the loss of \$33,000 was justified. He disagreed with loss of revenue figures reflected in combining the additional 50 customers with shifts from 32 gallon to 20 gallon cans, migration, and customers added and subtracted on and off hills and said if 110 customers were taken multiplied by \$4/can multiplies by 12 months a year, it does not come anywhere close to the figures provided by MVRS.

David Button, Armanino McKenna, LLP, said the migration schedule shows migration amongst all customers in Tiburon for a certain period of time. Two customers may have 45 gallon cans at the rate applied. If they move to one 20 gallon can versus 2 at 45 gallons, there is a loss. The revenue projected for the year is reflected accordingly. Councilmember O'Donnell believed this to be faulty because MVRS would have to measure the exact number of additional new customers versus loss of sales, or a true migration. Mr. Button said the model takes this into account where there is a decrease as well as an increase. This migration cost might be offset by having fewer drivers, but having one additional customer on the hill does not make much difference.

Councilmember O'Donnell said his point is that the figure does not just represent migration; it also represents pluses and minuses in business activities. Mr. Button noted for this schedule, there was a loss of customers and a gain of one customer, but the majority of the loss of revenue was \$1200 per month.

Councilmember O'Donnell said he thinks MVRS is using figures to their own advantage and to the disadvantage of the ratepayers, especially when it sent out a sheet indicating the amount of migration loss. The figures given today which have been reduced down to \$33,000 does not just represent migration but how the business model has changed. He confirmed that based on the report, "Recyclable related revenues account for 2% of MVRS' revenue." He referred to the 2009 audited financial reports under Exhibit 4, recycling revenue for 2009, line 2, which is a totally different figure and states that MVRS garners approximately 10% of its overall revenue from recyclable products.

The MVRS Accountant, Claudia Hayes, said the recycling revenue includes both charges for service and for salvaging sources because it is a cost combined effort. A portion of the garbage collection is allocated for recycling revenues for pick up services. Included in the line 2 are salvageable sources and income they receive from outside companies. Councilmember O'Donnell objected to the figures being mixed together.

Bill Browsey, Armanino McKenna, LLP, said from a GAF standard, there is no requirement to break out recycling from salvage with what MVRS is getting from collection. It could be an internal decision to track it. If it were contractually required, they would show it. Ms. Bigall added that the resolution breaks out the base rate and the recycling rate as charged to the customer. Councilmember O'Donnell questioned why it was not broken out, as revenue is being reflected from recyclable materials. Mr. Browsey said from a GAF standpoint, there would be no requirement to do so, but he acknowledged the question from a jurisdictional standpoint.

Councilmember O'Donnell said he noted in the last meeting that claims for workers' compensation insurance were reduced yet the letter from the broker indicates they have increased. Mr. Iavarone stated their modification experience rate was reduced from 100 down to 77, but premium rates have increased.

Regarding fuel, Councilmember O'Donnell questioned MVRS' business rationale for its fuel contract rate. Mr. Iavarone explained they must make a rate application based on the figures in April and did the best they thought they could at that time. He discussed three years ago when they lost a significant amount of revenue because of the increase in fuel.

Councilmember O'Donnell said this is the largest increase the Town has had, and there is no incentive to keep costs down with a cost plus contract. MVRS simply passes down all increases to the consumer. Mr. Iavarone reiterated that they must make a rate application in April and not in July which is based on what the price is then, and they are stuck with it. They do not have a chance to return to the contract agencies if their price is too low, as there are no mid-year adjustments.

Councilmember O'Donnell said the problem he sees is that the base rate grows. Then, MVRS requests a CPI increase because of a high fuel price for the next year. Mr. Iavarone disagreed and said when the 3-year independent audit was done they did not get to recover the old price and they lost a lot of money that year which is what protects the towns.

Councilmember O'Donnell reiterated there is no incentive for MVRS to keep costs down, as costs can be passed down to the consumer while MVRS still makes a 10% profit, and this is why the ratepayers get angry.

Ms. Curran commented that she understands the logic being argued, but there is no evidence that this has, in fact, resulted in excessive profits to MVRS. Councilmember O'Donnell noted that he does not believe that profit and losses reflected for the company were accurate. Similarly, if a higher workers' compensation premium must be paid, it is simply passed down to the ratepayers and there is no incentive by MVRS to reduce costs or increase recycling revenues. Mr. Iavarone referred to comments regarding incentives, and said they have consistently gone through route consolidations. If they did not care about their costs, he would have more drivers working.

Councilmember O'Donnell pointed out that based on the prior meeting MVRS was going to see

what they could do to keep prices low because it was working on a rate consolidation and on an independent plan to bring costs down. However, the rate consolidation is being done after the contract is signed. He noted the dump will agree to a 5-year CPI with MVRS, and he asked Mr. Iavarone if he would agree to a 5-year CPI with the Town based on the rate increase.

Mr. Iavarone said he could not accept this without the additional safeguard of having it reviewed to see if the CPI kept up with operating costs for a garbage company operation. He suggested the RRI as a better measure because it is designed to look at operating costs. He argued that he did not reject this concept, but instead mentioned it late in the process, which would have required more negotiation in how it would work. There is a real desire for an RRI model, as well as a full blown rate analysis with an independent consultant afterwards, at which time the contract could be amended.

Ms. Danforth said she was hearing a general concern about future costs being lower than they are represented. The contract does give MVRS the right to return next year and request an automatic cost of living adjustment, but because of the pending audit being done by MCCMC and their own internal analysis, if the Council agrees with the resolution, she suggested it be accepted with the proviso that instead of requesting an automatic cost of living adjustment next year, they would do another full blown application for any rate increase. Mr. Iavarone said this is already the case, as towns have already indicated they will want a full blown rate review.

Vice Mayor Fraser said he would want to see what the company is going to do differently and is opposed to a cost plus contract, as all the risk is on the Town and the consumer. He asked how MVRS plans to work on how the industry can change so that costs will go down.

Ms. Curran summarized comments, stating that if the contract is approved by the Council, a portion of the Marin Managers served by MVRS intend to request an audit, paid for by the company, between now and the next rate increase application. Included in this concept is to look at rate structure itself, particularly with the base can rate and migration to smaller cans to possibly arrive at a more sensible way to structure rates. She noted that if the audit shows rates are too high, that they would need to be lowered, and asked Mr. Iavarone to confirm this would be the case.

Mr. Iavarone agreed, adding that they have never had any choice in the matter. If the outside independent analysis shows the rates should be lower, they must agree with it.

Ms. Curran questioned whether Mr. Iavarone was amenable to the concept of CPI caps in increases in years 2 and 3 despite the finding of the audit as was implied by Councilmember O'Donnell. Mr. Iavarone replied no, as they are working according to the structure of the contract and must abide by the auditors conclusions.

Ms. Curran noted that per the contract, what the auditor comes up with should govern as opposed to an arbitrarily agreed upon number, and that by definition this should be the fair and accurate

rate. She also pointed out that the Town can help select and participate in this process with the auditor.

Councilmember O'Donnell said he still sees this as beneficial to the company and not the ratepayer.

Mr. Browsey said he has worked with various garbage companies and consultants for years that look at rate applications. He understands the concerns on costs, but said what will happen is that the auditor will compare costs to industry standards, so it is not strictly based on costs but other factors.

Councilmember Collins said governments have cost plus contracts like PG&E and all utilities and if not honest, they quickly go out of business. He hoped that the company stays honest and that the Council's concerns can be addressed. Mr. Iavarone described the company's care to keep costs down through route consolidation and safety programs that have improved operational costs.

Councilmember Fredericks voiced the importance of an independent auditor, recognized there are fixed costs, and that a loss in customers results in higher rates. She believes an industry shift is a wonderful idea and vision but would not make it a condition, and supported the resolution.

Mayor Slavitz opened the public hearing.

Robin Hurling, 101 Esperanza #6, asked that educational materials and information [in pictures] be provided to customers so that they properly place items in correct cans. She also described a positive customer service experience by MVRS.

Mayor Slavitz closed the public hearing.

MOTION: To adopt the resolution authorizing an adjustment in regular rates of 15.88%.

Moved: Fredericks, seconded Slavitz

Vote: AYES: Collins, Fredericks, and Slavitz

NOES: Fraser and O'Donnell

TOWN COUNCIL REPORTS

- Report from TAM delegate Alice Fredericks

Councilmember Fredericks reported that TAM has been asked to make an \$8 million contribution to the SMART shortfall for the initial operating system of the railway. The 2008 Expenditure Plan acknowledged that projected revenues and costs would have to be updated annually, but a surprise was the effect of economic meltdown which led to increased costs, and reduced revenue and availability of funding, which then led to a proposal to stage the project.

She explained that the first delivery is the Initial Operating System (IOS) running from Santa Rosa to downtown San Rafael. SMART asked MTC for funding for the IOS shortfall, and MTC reviewed all projections and received some documentation in a December 2010 report. As a consequence they deferred some of the elements, revised projections, and adopted the current configuration in April 2011. MTC reviewed the revised projections. The April configuration of the IOS that was adopted has a total cost of \$400 million and is a \$54 million shortfall in revenues and financing for it. MTC had previously committed \$22 million to the IOS and commissioned an additional \$11 million on Marin and Sonoma matching contributions. What MTC has offered is \$21 million plus \$11 million for the shortfall.

TAM was asked to contribute \$8 million to the shortfall and if TAM fails to make this contribution, a \$32 million contribution from MTC would go away.

She brief MCCMC on the issue about how the shares are apportioned and the considerations arrived at. The issue came before TAM and they voted 8-6 to contribute the \$8 million after a vote to reconsider their initial vote. The reconsideration vote was legally valid, but TAM decided they would reconsider the second vote on the motion to reconsider in deference to the public who had already left after the motion was made. The councilmember from Larkspur had initially voted not to contribute the \$8 million because of an overcrossing for a Larkspur Station that takes bikers and ferry riders over Sir Francis Drake to the ferry and bike paths beyond. However, in thinking about it, the Councilmember realized that the project was in the SMART right-of-way and if SMART did not get the \$8 million contribution all other contributions fell through and the path would not be built anyway. The subsequent vote came out 8-6 in favor of TAM providing SMART with \$8 million in funding.

At the next TAM special meeting, the vote taken will either pass or fail. If the approval should stand, the Board will then vote on adopting the conditions discussed and reprogramming funds to make this money available.

Councilmember Collins questioned and confirmed with Councilmember Fredericks that the \$8 million TAM contributed is a grant and from funds that do not currently affect funded projects. The grant money that backfills the project will go to other projects and not for TAM projects.

Councilmember Collins said he has a philosophical problem with voters getting something different than what they voted for, as (they) do not get to decide now whether or not they want to continue the sales tax or not. Councilmember Fredericks likened it to cutting back the size of some of the parking spaces in capital projects. Before engineering is done, sometimes there are issues with undergrounding, sometimes estimates are high and low, and they are affected over the length of the cost of the process by changes in the economy and cost of materials. She believes voters are not getting a different project but rather a staged project.

Vice Mayor Fraser questioned and confirmed with Councilmember Fredericks that a condition restricts SMART from returning to taxpayers for more money; however, they can go to other

agencies. She recognized there are risks not only for future segments not being built right now but for the existing segment, as well.

Councilmember O'Donnell said he supports Councilmember Frederick's position. He originally voted against the project but it was overwhelmingly supported by voters and he thinks there is an obligation that a supermajority wanted the service to be put in and paid for by tax dollars. He said everybody has recognized that the economy shifted and he thinks this is the right thing to do.

Mayor Slavitz agreed and recognized the expenditure and efforts to date. Councilmember Fredericks added that SMART still has the right-of-way which could be used for one-way bus traffic. She noted that Highway 101 has reached the limit of how it can be expanded and congestion is predicted from population increase from the north.

Councilmember Collins questioned if there was talk of this going back to the voters as modified. Councilmember Fredericks stated RepealSMART is attempting to get 40,000 signatures for a ballot measure, although they must also overcome the more positive voter support in Sonoma.

On a separate subject, Councilmember O'Donnell said he asked for pension reform to be agendized, noting that the Town of Belvedere adopted a resolution, and he suggested Council's review of its language. Ms. Curran noted that staff was in receipt of Belvedere's report and resolution and will agendize the matter for Council's review.

TOWN MANAGER'S REPORT

- Marketing and Communications Task Force Interview Process

Ms. Curran said the Downtown Vibrancy Report called for a Marketing and Communications Task Force. She recommended and the Council agreed that the Downtown Committee, comprising of Vice Mayor Fraser and Councilmember Collins, interview candidates and develop a list of recommendations for Council's consideration.

Ms. Curran noted that in the past the Town provided \$2,000 each year to the Art Festival to help it get launched, but had stopped doing so this year. However, in response to a request from Councilmember O'Donnell and herself, she said that the Joint Recreation Committee was adding a new component to the Festival, a Plein Air competition. She requested that Council concur with the allocation of \$1,000 from the Town's contingency budget on a one-time basis for this purpose, to which the Council agreed.

Mayor Slavitz confirmed with Ms. Curran that the Town provides in kind police support for Friday Nights on Main. Manager Curran confirmed that two events, the Friday Nights on Main and Art Festival, receive no-cost police support from the Town and that all other non-profit events are required to pay for this service.

WEEKLY DIGESTS

- Town Council Weekly Digest – June 17, 2011
- Town Council Weekly Digest – June 24, 2011
- Town Council Weekly Digest – July 1, 2011

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Slavitz adjourned the meeting at 12:00 p.m. midnight.

JEFF SLAVITZ, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK