

**TOWN COUNCIL
MINUTES**

CALL TO ORDER

Mayor Slavitz called the special meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, August 23, 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, Planning Manager Watrous, 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 6:30 p.m., and interviewed a candidate for Design Review Board at 7:15 p.m.

CLOSED SESSION

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

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

INTERVIEW

Design Review Board (One Vacancy)

- Greg Johnson, 541 Comstock Drive

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

None.

ORAL COMMUNICATIONS

None.

CONSENT CALENDAR

1. **Town Council Minutes** – Adopt minutes of the July 20, 2011 regular meeting (Town Clerk Crane Iacopi)
2. **Town Council Minutes** – Adopt minutes of the August 3, 2011 regular meeting (Town Clerk Crane Iacopi)
3. **Town Procedure for Award of Public Works Contracts** – Adopt resolution establishing minimum requirements for filing a protest of proposed award of a major public works contract (Town Attorney Danforth)
4. **65 Reed Ranch Road Appeal** – Adopt resolution partially granting 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)
 - James Parsons and Andrea Hong, Owners
 - Jeffrey Wong, Applicant
 - Dan Mihalovich, Appellant
 - Assessor Parcel Number 038-301-35
5. **2011 Street Improvement Project** – Approve plans and specifications for the Trestle Glen Boulevard and Paradise Drive 2011 Street Improvement Project and authorize solicitation of bids (Director of Public Works/Town Engineer Nguyen)

MOTION: To approve Consent Calendar item Nos. 1 through 5, as written.
Moved: O'Donnell, seconded Fredericks
Vote: AYES: Unanimous
ABSTAIN: Fredericks, July 20 minutes

ACTION ITEMS

1. **November 8, 2011 Municipal Election** – Consider appointment of candidates nominated in lieu of election and adopt resolution cancelling election (Town Clerk Crane Iacopi)

Town Clerk Crane Iacopi reported that at the close of the filing period for the November 8 election, there were two candidates for two seats on the Town Council. She said that the Council had the option of appointing the nominees, Dick Collins and Frank Doyle, or holding an election.

Councilmember O'Donnell said that he had asked the Town Clerk about the costs associated with holding an election and was informed that the cost was between \$1.50 and \$2.00 per voter. With approximately 5,200 registered voters in the Town of Tiburon, O'Donnell said the upcoming election was estimated to cost between \$8,000 and \$10,000, according to the Town Clerk. He said the cancellation of the election would result in a cost savings to the Town.

Mayor Slavitz asked if there was any comment from the public on this item. There was none.

MOTION: To adopt resolution appointing Richard Collins and Frank Doyle to the Town Council and cancelling the November 8, 2011 election.

Moved: Fredericks, seconded Fraser

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

ABSTAIN: Collins

The Town Clerk noted that the appointees would not take office until December 7, 2011.

2. 1895/1897 Mar West Encroachment Application and Resolution Modifying Encroachment Policy –

- a.** Consideration of encroachment permit applications to construct private improvements on the Mar West public right-of-way adjacent to private properties located at 1895 and 1897 Mar West (Department of Public Works; Department of Community Development) – *continued from July 20, 2011*

Encroachment Permit Application Nos. 11-51 and 11-72

Owners/Applicants: Brian and Joanne McCullough; David Barley

Assessor Parcel Nos. 059-121-10 and 11

- b.** Consideration of Resolution modifying Town encroachment policy (Town Attorney Danforth/Director of Community Development Anderson)

Town Attorney Danforth said that the Council had discussed the applications at length at its July 20, 2011 meeting. At that meeting, Danforth said that the Council expressed no objections or concerns about the application for the Barley staircase's general consistency with the Town's Encroachment Policy, adopted in 2010. She said that the application had subsequently received a conditional approval for design review and would be progressing through the encroachment permit process, noting that some redesign, including reducing the size of the proposed stairway, would be required to meet Public Works' conditions.

Danforth said that a majority of the Town Council also supported the garage application at the same meeting, but acknowledged that approving that project would violate the Town's Encroachment Policy for an enclosed structure on the Town's right-of-way. She said that Council directed staff to return with potential revisions to the policy for Council consideration, and that the Council indicated that it would decide the encroachment application after making an appropriate policy change.

The Town Attorney said that Councilmembers favoring the project indicated that the project would improve the substandard street conditions of narrowness and limited sight distance combined with existing on-street parking that was substandard distance from the center line of

the roadway. She said that there was also an unusually deep (25') portion of unused Mar West Street right-of-way abutting the subject parcel and that these circumstances created a situation where the project could materially improve the existing conditions. For instance, Danforth said that a parking "cut out" along the street could provide a material public safety benefit by increasing the distance of parked cars from the centerline of the roadway, thereby enhancing sight distance and reducing centerline-crossing maneuvers.

According to Danforth, these could be substantial and material public safety benefits if properly designed and implemented. She also stated that the maximum garage encroachment of five feet into the 25 feet of unused right of way could be found by the Town Council to be "minimized". The project would also create a new "guest" parking space on the driveway apron leading to the garage addition.

Ms. Danforth led the discussion of which sections of the existing policy should be amended if the Council chose to amend the policy. However, she added that staff was not certain that the circumstances of the application truly fit the definition of public benefit, as it was not obvious that applicant's project would actually achieve the additional, improved parking.

Danforth said that the Public Works Director had evaluated the site to estimate the extent of work necessary to create improved street parking along the street frontage in the vicinity of the project. With the current proposed Barley staircase application, she said there would be only space for a one-car cut-out between the proposed staircase and the McCullough entryway and garage addition. She said it was estimated that an 11-foot high retaining wall would need to be constructed to make this improvement.

Another option would be to create a two-car cut-out and, according to staff, the overall scale of the project and related earthwork would be no greater. Danforth said that it would most likely require revisions to the Barley and McCullough plans to do this. She noted that while creating a cut-out would meet the criterion of public safety benefit, it was unlikely to be easily or inexpensively accomplished.

The Town Attorney said that staff's remaining concerns centered around the purported benefits gained by construction of the garage addition. She said that the existing one-car garage was not used to park a vehicle currently, but instead served as storage or possibly a workshop. She said the owner stated at the July 20 meeting that the garage was not usable for parking because of its size. She stated that the proposed addition was exactly the same size which begged the question of whether there would be a net gain of parking spaces. Danforth said that if the Council did not find that there was a public safety benefit associated with this aspect of the application, the Council might decide to simply allow a modest increase in the size of the existing garage to enhance its suitability for parking.

Councilmember Fredericks asked about the Barley stairway application and which properties it would connect. She noted the intricate path and lane structure in the neighborhoods of "Old Tiburon" and asked whether any properties would be "cut off" by construction of the new

staircase. Town Engineer Nguyen said that none would be.

Fredericks then asked if a third property would lose the right to use the sidewalk as a result of relocating the stairway in the applicant's plans. Town Manager Curran said that the improvements would alter the access but would not cut it off. Town Attorney Danforth said that the sidewalk was owned by the Town and that access would not be disrupted. She added that the access to the third house would appear to be improved by the proposed stairway.

Fredericks also asked if the 25-foot setback for the garage was from the center of the roadway. Mr. Nguyen said that the distance was measured from the edge of the pavement.

Mayor Slavitz asked what the response was to the statement that the application would "only" encroach five feet into the public right-of-way. Town Attorney Danforth said that the public right-of-way was lost in increments and that each structure reduced opportunities for use of improvements to those right-of-ways in the future. She said that it behooved the Council to decide if the encroachment would actually create any new parking before approving the application.

Councilmember Fredericks asked about the encroachment of the existing garage and was told that a majority of the garage was on private property but that a portion encroached onto the Town right-of-way. She asked how often the Town allowed a structure to be built on its right-of-way and then asked for it to be removed. Town Attorney said that it had never been done.

Councilmember Fredericks said that in her analysis, what the applicant sought in their garage application represented a gift of public good to a private property owner. She said that it was difficult at this moment to envision future uses of that right-of-way but that there might be a time in future where it could be used as a site for utility boxes for fiber optic service, for instance, and that once given up, it would no longer be available for public use.

Councilmember Collins asked for more clarification of the number of parking spaces that could be created in a cut-out west of the staircase. Town Engineer Nguyen said that the project, as designed, allowed for one car space but that if redesigned, possibly a two-car cut-out could be achieved.

Councilmember O'Donnell asked whether the stairs could be "re-zigged" or designed differently, to create more parking along the street, as envisioned by Councilmember Collins. Architect Heckmann said that it might be possible but that it would mean a longer or steeper stairway between the two houses. He said that it would make a more "vertical" staircase and that they had planned for a more graceful design.

Councilmember Fredericks asked if a new design [of the stairs] would still require an estimated 11-foot retaining wall in the vicinity. Nguyen said that plans would have to be developed and noted that staff was not trying to tell the applicant "how" to redesign the project [but was offering some ideas regarding solutions to the parking issue].

Mayor Slavitz asked if the applicant would be creating more parking spaces on the street on his own, if this proposal was approved, or whether the Town would get involved with this proposal. Town Engineer Nguyen said that answers to this question had not been addressed.

Mayor Slavitz opened the item for public comment.

Michael Heckmann, architect representing the applicant, expressed surprise at the direction the Council seemed to be moving in. He said that 30 days ago, the Council had indicated its interest in approving the proposed garage addition as a positive step in resolving some neighborhood parking issues, as well as approving the stairway application, as submitted. He said the direction given to staff was that the Town's policy would be amended at the subsequent meeting prior to approval of the project.

Heckmann briefly reviewed the highlights of the garage project and stairway. He said the stairway would provide a new access point; that currently everybody who accessed the stairway walked up the McCullough driveway and accessed the stairs over the McCullough property. He said had met with the Building Inspector and that the stairway, as proposed, met the Town's code requirements. He said he did not think a retaining wall was a good idea and that it would limit the ability to landscape and would result in a big, exposed chunk of concrete wall in that vicinity. He said he was not certain where the discussion of the easement for the garage was headed.

Councilmember Collins asked whether the existing garage could simply be widened by three to four feet. Mr. Heckmann said that the simply widening of the garage would allow the single garage to function better but that it would be a tragedy not to get another parking space out of it, in the process.

In response to questions from Councilmember Collins about moving the staircase in another direction or relocating it, Heckmann said that it would not be possible since the neighboring property owner (Bille) also wanted to apply for a permit to build a garage or a parking space in that location.

Mayor Slavitz asked if the garage could be moved back and possibly dug into the hill. Mr. Heckmann said they had looked at that alternative and had talked to a geotechnical engineer who said it would undermine the foundation of the house.

Councilmember O'Donnell added that it would also mean losing the beautiful palm tree in that location. Town Manager Curran pointed out that the applicants' plans showed removal of the tree. Heckmann said that his clients wanted to preserve it and possibly move relocate it on the property.

Joanne McCullough said that the two-car garage would be a public benefit and would create more parking on the street. She said the design was aesthetically pleasing, and included a "living

roof” on the top. She said that tenants from two other homes crossed their property daily, and that the McCulloughs would like the Barley and Bille residences to have their own access to their homes.

Councilmember Fredericks reiterated her concerns about privatization of the public right-of-way. She also suggested an application for open garage structure would be in compliance with existing Town policy guidelines. She said that a public benefit might be gained if parked cars were farther back from the center line of the street but that overall, she did not see a public benefit in the project, as presented.

Councilmember Fraser said that 30 days ago, a majority of the Council had been supportive of the project but realized that an amended Encroachment Policy, that included exceptions for public safety benefits, would be needed to approve it. He said that Mar West was a very unique, narrow street, and there were hazards to both people and cars when travelling down it. He said the McCulloughs were doing the right thing in trying to manage the area by maintaining and trimming vegetation and sought to address the parking issues on the street, as well. He recommended that the Council allow them to move forward with the project and to work with the Town Engineer and Planning staff on a final, acceptable design to implement the project.

Councilmember Collins said that he had supported the idea of changing the policy at the last meeting but now wondered what the quid pro quo would be to allow the [garage] encroachment. He said that a change in policy for one applicant might results in a change for others. He asked whether an open structure could resolve the issue, or perhaps widening the driveway to create additional off-street parking.

Councilmember O’Donnell agreed with Councilmember Fraser’s assessment. He said that when he looked at the site, he saw that it was a unique situation. He said that dozens and dozens of structures in old Tiburon were in the public right-of-way and that the garage did not represent a taking of public land. He said he could not support the building of a huge concrete wall in that location [to create parking “cut-outs” in lieu of a parking structure]. However, he said he did favor an idea mentioned by the Town Manager earlier in the evening that would enhance the public benefit, that is, an idea that McCulloughs might be able to carve out a shallower space, with a lower wall, in front of their property to create extra parking space on the street. He said this would help satisfy the requirements of an amendment to the policy which would allow an encroachment for improvements to public safety.

Mayor Slavitz said that he saw only private benefit in the garage application, and that there was no guarantee that the new garage would provide additional, off-street parking. He said that there were other options for the applicants, such as a carport. Slavitz said that Town staff supported the stairway application and that a case could be made that it would enhance the public benefit.

Mayor Slavitz closed the public hearing and asked for Council’s direction in the matter.

MOTION: To amend the Town's Encroachment Permit Policy, as proposed.
Moved: Fraser, seconded O'Donnell
Vote: AYES: Fraser, O'Donnell
NAYES: Collins, Fredericks, Slavitz

Motion failed.

Councilmember Fredericks asked if the Council needed to take action to approve or disapprove the entire project, as presented. Town Attorney Danforth said that there were two applications, one for the garage and one for the stairs. The Council should decide each application separately. She said that if the applicant was willing to redesign the garage to comply with Town guidelines, the Council could consider approval subject to conditions. Town Manager Curran said that Town staff had a few ideas about the configuration of the stairs, but that the general concept met the criteria needed for approval. She said that if approved by Council, the [stairs] application need not return to Council for further action.

MOTION: To approve the encroachment permit application for the Barley stairs, subject to final design approval by Town staff.
Moved: Fredericks, seconded by Collins
Vote: AYES: Unanimous

MOTION: To deny the encroachment permit application for the McCullough garage, but to grant staff authority to review and approve a redesigned project that conforms with Town policy.
Moved: Fredericks, seconded by Collins
Vote: AYES: Collins, Fredericks, Slavitz
NAYES: Fraser, O'Donnell

TOWN COUNCIL REPORTS

Councilmember Fredericks said that if anyone on the Council was interested in joining the National League of Cities, and attending an upcoming conference, they should see her.

TOWN MANAGER'S REPORT

Town Manager Curran said a special meeting had been noticed for the Alta Robles project hearing on August 31. She also listed other upcoming Council meetings in September.

WEEKLY DIGESTS

- Town Council Weekly Digest – August 5, 2011
- Town Council Weekly Digest – August 12, 2011
- Town Council Weekly Digest – August 19, 2011

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Slavitz adjourned the meeting at 8:50 p.m.

JEFF SLAVITZ, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK