

**TOWN COUNCIL
SPECIAL MEETING and REGULAR MEETING
MINUTES**

CALL TO ORDER

Vice Mayor Fraser called the special meeting of the Tiburon Town Council to order at 7:15 p.m. on Wednesday, February 3, 2016 in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

PRESENT: COUNCILMEMBERS: Doyle, Fraser, Fredericks, O'Donnell

ABSENT: MAYOR: Tollini

PRESENT: TOWN ATTORNEY: Stock

CLOSED SESSION

- 1) CONFERENCE WITH LEGAL COUNCIL - ANTICIPATED LITIGATION Significant Exposure to litigation pursuant to paragraph (2) of Subdivision (d) of Section 54956.9: One potential case

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

No action taken.

ADJOURNMENT – to regular meeting at 7:30 p.m.

TOWN COUNCIL MEETING
MINUTES

ROLL CALL

PRESENT: COUNCILMEMBERS: Fraser, Fredericks, O'Donnell, Doyle (7:45)

ABSENT: COUNCILMEMBERS: Tollini

PRESENT: EX OFFICIO: Town Manager Chanis, Town Attorney Stock, Police Chief Cronin, Director of Community Development Anderson, Director of Administrative Services Bigall, Associate Planner O'Malley, Minute Clerk Hennessy

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

Vice Mayor Fraser announced that no action was taken.

ORAL COMMUNICATIONS

Bruce Abbott, Greenwood Beach Road, addressed the Council regarding a dangerous and intolerable situation on Greenwood Beach Road that began 10 years ago, due to the heavy increase of usage by bicyclists when the San Francisco Bay Trails Project diverted traffic into Greenwood Beach Road. The residents consider it dangerous and they are determined to do something about it. Mr. Abbott noted they have attended Parks, Open Space and Trails Commission meetings and they are convinced they are not being listened to; consequently they have put together a petition signed by nearly everyone on the street asking this issue be brought to the Town Council and resolved. The residents are asking for an Ad Hoc Committee to review this situation for an evaluation. In the meantime, the only beneficiaries of this route, which was designated without public hearings, basically are the bicycle rental companies from San Francisco. Mr. Abbott said the residents want their petition read, seriously considered; and accept that they are deadly serious and will do whatever they need to do to solve the problem. The residents feel the current situation is unsafe for both residents and those using the street.

Vice Mayor Fraser noted the Council is unable to discuss this matter tonight as it is not on the agenda.

Councilmember Fredericks asked Staff whether this issue will be discussed by the Town's Parks, Open Space, and Trails Commission (POST) reviewing the Bicycle and Pedestrian Master Plan document. Director Anderson stated the Plan is in the early stages of discussion; will be heard by POST, the Planning Commission and eventually the Town Council, which is the only body that can adopt it.

INTRODUCTION OF NEW EMPLOYEES

Police Chief Cronin introduced the new employees of the Police Department: Russell Stiverson, Police Officer, Daniel Andersen, Police Service Aide and Chris DiCarlo, Police Service Aide. Each expressed their appreciation for the opportunity to serve the Tiburon community and looked forward to years of service.

Councilmember Doyle arrived at 7:45 p.m.

PRESENTATION

Water Supply and Rate Restructuring –Marin Municipal Water District General Manager Krishna Kumar

Mr. Kumar presented a slide show reviewing the history of MMWD, which was founded in 1912. He reviewed historically low water use from 2004 to the projected numbers of 2017. He explained revenue is down \$7.6M; depletion of reserves; rates unchanged for the past 4 years.

Increasing capital needs are estimated to be \$62M to upgrade treatment plants; \$44M to upgrade/replace worn storage tanks. He used pie charts to show the approximate fixed costs of 80% and variable costs of 20%. He stated the new district rate structure went into effect 12-3-15, which includes a new rate structure increase in bi-monthly service charges, adding a new bi-monthly watershed management fee, and adjusting the tier rates for all customers. He stated that an additional 4% increase in service charge and tier rates will occur on 5-1-16. He stated the total increase for single family homes is approximately \$113.39. He stated there is a bi-monthly special assistance program for low income customers with income levels of \$44,300 or less for two person households.

In response to Councilmember O'Donnell, Mr. Kumar stated MMWD reduced fixed costs by eliminating staff by 18 persons over the past 4-5 years, and their two year budget process has not had any adjustments over the past 5 years. Every new hire needs to be approved by the Board. He stated that 60% of fixed costs are staff and 20% is equipment.

In response to Vice Mayor Fraser, Mr. Kumar stated projected future costs would be capital improvement costs. The District invests \$20M a year, and added \$5M a year. In response to Councilmember Doyle, Mr. Kumar stated the District would save \$150,000 if it stopped adding fluoride to its water; however, State law allows them to discontinue this additive only under limited circumstances. He noted two local ballot measures require the District to add fluoride, and that a new ballot measure would be required to pass before the District could stop adding fluoride per local mandate. Mr. Kumar also noted that 75% of the District's water supply comes from local rainfall and 25% from the Russian River. There is no reliance on the Sierra snowpack or the Bay Delta for water in Marin County.

CONSENT CALENDAR

1. **Town Investment Summary** – Adopt report for month ending December 31, 2015 (Director of Administrative Services Bigall)
2. **Medical Marijuana** – Consideration of Resolution clarifying prohibitions related to medical marijuana as a result of changes in State Law (Town Attorney: Ben Stock)

MOTION: To approve the Consent Calendar, as submitted
M/S: Fredericks/Doyle
AYES: Unanimous
ABSENT: Tollini

Vice Mayor Fraser announced he would accommodate the audience by moving Item 2, the Appeal of the Planning Commission's decision regarding Sam's Anchor Café Restaurant, in front of the other public hearing item.

PUBLIC HEARINGS

- 2. 27 Main Street**– Appeal of Planning Commission’s approval to install a 920 sq. ft. canopy on a portion of an exterior deck for an existing restaurant (Community Development Department)

Owner/Applicant: 27 Main Street, LLC (Sam’s Anchor Café)
Appellants: Waters Edge Hotel
Assessor Parcel No. 059-151-35

Associate Planner O’Malley summarized the written staff report, which outlined the review by the Planning Commission and staff, the grounds of appeal, and the appeal procedures.

Director Anderson addressed the Council and stated he would like to clarify the staff report section that discussed Town limitations of conditions in other areas of the restaurant use not directly limited to the canopy. There are limitations on conditions that the Town may impose of areas of operation outside the canopy, but they are not absolute. If the Council concludes, based on evidence in the record, that the project would create new or intensify impacts such as noise, it could impose conditions beyond the canopy area to ameliorate those impacts. It would be important to have a connection between the impact and the condition imposed, and the condition should be reasonably related to the impact that was found to be created or intensified. He stated Condition 5 of the Planning Commission Resolution is an example of that type of condition.

Vice Mayor Fraser opened the hearing to the appellants.

The appellant, Mr. Justin Flake, General Manager of Waters Edge Hotel, stated he wished to speak to the issue of amplified music first. Being able to serve at night on one portion of the deck would mean large numbers of people on the deck, a lot of drinking into the night, and if the condition states the amplified music only applies to the newly covered portion of the deck, a band could easily set up on the other side of the deck and the people under the canopy could listen to that music. He asserted that if the intent is to limit amplified music after 9:30 p.m. as a condition of the use permit, it should apply to the whole deck.

He noted that when he listened to the Commission deliberate on the impact of service noise and the hours that it would have an effect on the neighborhood as a whole, from what he understood the Commission made no real distinction between alcohol and food. It seemed to be a complete given that alcohol was part of the discussion and not just food. If alcohol ends at 9:30 but serving drinks continues, ending the food has no impact on the level of noise. In fact, he asserted the noise increases more with drinking than with food service. If this canopy structure being built is going to be the nicest place to sit, it is going to be the place where everyone is going to want to be to go drink, and it happens to be literally right next door to the hotel, right under the guest room windows.

Mr. Flake noted it is true that historically, weather controls closing time of the deck. He says it has been a problem over the years; sometimes wedding brings people out on the deck drinking and carousing, creating noise late into the night and causing the hotel to lose clients. He said that

the hotel sometimes get bad reviews on the internet, which also causes the hotel to lose potential revenue. He asserted that instead of weather determining closing time, the Council and Commission would now control it based on their operating limitations for the canopy.

Mr. Flake stated that the noise consultant simulated 90 decibels on Sam's deck and measured 50 decibels in the hotel rooms; 90 decibels is the measurement of someone shouting. Mr. Salter stated that the decibel reduction with a roof on the canopy would be 10 decibels (the report stated 20); so that makes 40 in the room; he suggested closing some gaps, which would reduce another 5 decibels which gets them to 35 decibels. According to the noise consultant, 35 decibels is considered basically the threshold of a complaining versus non-complaining guest. This is a study only and there's room for error; the noise might be lower or higher than the simulation.

Mr. Flake said he was not suggesting the canopy should not be built. The hotel wanted to support the project and they have generally been good neighbors, but they have conflicting interests. The hotel is proposing no alcohol or food service after 9:30 p.m. and that includes no alcohol being bought inside and brought out to the deck, including the canopy area.

Mr. Flake said the noise mitigation and periodic review of the permit would be helpful. If the hotel goes through a whole summer where they get noise complaints, it will be a negative impact on them for a long time. He respects the time that Sam's has been at that location as being much longer than the hotel, but he didn't think that should give Sam's the right to do whatever they want to do.

He stated he sees "noise to sleep" as a negative impact similar as he sees "smell to food". He used an analogy of negative impact if Waters Edge proposed a new sewage treatment system that pumped noxious sewage smell across Sam's deck while its guests were eating. He felt it was the same for hotel guests trying to sleep, and the hotel is advertised as relaxing and peaceful and if impacted by a noisy restaurant, it would be hurtful to the hotel.

Paolo Petrone, co-owner of Waters Edge Hotel, stated they have been in business about 15 years; he wanted to reinforce what the hotel has done for Tiburon with hotel taxes, attracting tourists, and promoting the Town. He noted that they built the hotel for the operation that Sam's was 15 years ago; not what Sam's would like to become with this project. The hotel owners are worried large groups will hang around and drink all night with the new canopy at Sam's.

Steve Sears, co-owner of Sam's Anchor Cafe, noted the hotel has been there for 15 years, while Sam's began operation in 1920. He stated that he and Brian Wilson bought Sam's in 1978 and in 2000 Sam's was a much louder place than it is now. They welcomed other businesses and are good neighbors. He mentioned an agreement between Sam's and the owners of the hotel agreeing that Sam's would not construct any additions that would block views.

Mr. Sears feels that with an overhead canopy with roll down sides, the restaurant can improve the experience and its business and that bringing in more people will improve downtown businesses overall. The canopy roof cover is engineered to reduce sound as much as possible. Mr. Sears mentioned that when they have had complaints, they have worked with their neighbors and will continue to be good neighbors. With the new canopy there would be more management

presence out in the deck area. Mr. Sears stated that the condition to stop service at 9:30 p.m. wouldn't work. If someone comes in at 8:30 p.m., they would have to close that area and tell them can't serve after 9:30 p.m. and make it an unusable area and not worth the money to improve that area.

Mr. Sears said they have worked hard to build up the business over many years by bringing businesses together, attracting people, and helping to build the economic vitality of the Town, while trying to be good neighbors. They will continue to be good neighbors. They have agreed to eliminate the PA system as a gesture for the entire surrounding area.

In response to Councilmember Doyle, Mr. Sears reviewed the location and composition of the overhead canopy and the roll up sides proposed.

In response to Councilmember Fredericks, Mr. Sears reiterated they currently have no restrictions on the use of the deck or hours of service. Mr. Wilson stated they are now being told what time to operate business. Mr. Sears noted other restaurants on Main Street don't have these restrictions.

Vice Mayor Fraser opened the hearing to public comment.

Fred Mayo, Eastview Avenue, expressed concern about late night noise.

Ron Riskin, Eastview Avenue, objected to the condition of limiting service at 9:30 p.m. applying only to the canopy area. He stated the Planning Commission has to balance property rights and interests of the residents around the area. He noted Friday Night on Main Street is a big thing for the residents and Sam's is creating a nice environment for their customers. He thought the 9:30 p.m. cutoff was reasonable but only if it applied to food and drink and to the entire deck.

Eric Artman, 21-year resident, said he has watched the slow death of the downtown over his time here; it is not as vibrant as it was 21 years ago. He stated this item was noticed as an appeal of the hotel; thinks other people might want to speak if they knew it was *de novo*. He stated everyone who is opposed to the canopy purchased their property knowing Sam's was there; he is appalled at the hotel's mention of the sewage plant analogy. The hotel moved next to a bar and restaurant and if they didn't do soundproofing at the time they should have done so. He pointed out Luna Blu uses heaters and patrons are on the deck late at night.

Cindy Marques, Corinthian Island, said she and her husband bought their home 20 years ago; they are asking for acceptable noise levels seven days a week.

Lou Weller, Tiburon Planning Commissioner, stated he believed it was the Commission's intent that there was no distinction between food service and alcohol service. Sam's was a grandfathered use without a conditional use permit. The Commission was told by staff that they were to consider a use permit for regulation of the canopy area only.

During the appellant's rebuttal period, Mr. Flake disagreed with Mr. Sears' statement that Sam's was always a good neighbor when it came to responding to noise complaints. Also, in the past

he said there have been problems with carpenter noise and cleaning crews at 4 and 5 a.m. There have been areas of disagreement that have not always been addressed by the Sam's management, according to Mr. Flake.

During his rebuttal, Mr. Sears noted the area under the canopy is for dinner service; they are trying to promote food service; if all service has to stop at 9:30 p.m. they will probably not pursue the canopy project.

There being no further comment, Vice Mayor Fraser closed the public hearing.

In response to Vice Mayor Fraser, the Town Attorney explained the *de novo* hearing process; that the Council may review all conditions; the entire matter comes anew before the Council.

In response to Councilmember O'Donnell question asking whether there were current limitations on services of other establishments nearby, Director Anderson stated that operating conditions on other restaurants on Main Street would depend on their individual permit histories. Some restaurants such as Guaymas and Servino have conditional use permits that place conditions on operations. He would have to go back individually to research each one to be more specific. He noted Sam's Anchor Cafe predates the Town of Tiburon and zoning regulations in Marin County; it currently does not have any conditional use permit or associated restrictions.

Director Anderson further explained that Luna Blu took over an existing restaurant and has been used continuously as food service since the 1960's. Use permits were primitive at that time and contained few operating limitations.

In response to Councilmember O'Donnell, Director Anderson stated while there are limitations on what the Town can impose on existing uses; in this case there appears to be an application that could result in additional noise impacts. If the Council concludes that the proposed project could intensify noise impacts, conditions of approval could be imposed that would apply to areas beyond the canopy including the entire deck, in order to ameliorate those noise impacts.

In response to Councilmember Fredericks, who asked if it was an urban myth that music shouldn't be heard outside a restaurant's premises, Director Anderson stated that Guaymas has a use permit which contains a specific condition that amplified music should not be audible outside their premises.

In response to Councilmember O'Donnell, Director Anderson stated that the Planning Commission discussed various times to limit service under the canopy, but he didn't know why precisely they selected 9:30 p.m.

Planning Commissioner Weller stated it seemed to be a time agreeable to most of the parties; it was a compromise that the commission felt was as late as reasonably possible.

The item was returned to the Council for deliberation.

Councilmember Fredericks stated the conditions imposed by the Planning Commission seemed to have been acceptable, with the exception of the serving of alcohol after 9:30 p.m. She noted when people are drinking alcohol it does increase the volume of noise. She said she understood why hotel guests wouldn't want to hear that noise. Councilmember Fredericks stated she was comfortable with restricted hours of food and drink service and supported the 9:30 p.m. limitation on services. She said she was grateful there would be no amplified music on the deck and that stipulation should be memorialized in a resolution.

Councilmember O'Donnell noted that on the Waters Edge Hotel website there is a big picture of Sam's Deck. In response to the hotel's claims they would lose business with increased noise from the deck, he didn't think their guests went to bed at 8:30-9 p.m. In the winter time there wouldn't be activity after 9:30 p.m. and in the summer time a lot of people don't like to come out to eat until after the sun goes down. He stated this restaurant has been a Town mainstay; the life blood of Main Street. He noted he has been a veteran of noise wars in Tiburon over the years, with complaints about the St. Hilary gym; Kol Shofar synagogue; Belvedere Tennis Club--and none of it happened. He noted downtown has been a lot louder in years past when we had the honky-tonk bars. He thinks the fear people are projecting on worsening noise is not correct. He would vote to deny the appeal and relax the 9:30 p.m. limitation to 10:30 p.m. during summer months.

Councilmember Doyle stated he hadn't seen a rowdy crowd in downtown in a very long time. He mentioned loud noise at several other establishments on Main Street in the 1980's and 1990's, but said those days are long gone.

Vice Mayor Fraser stated this was clearly a difficult decision, noting that this Council has worked very hard to increase downtown business and vitality. It appeared that the mitigation is in effect as it relates to noise. He agrees with Councilmember Doyle's comments about noise decreasing in the downtown. The Council has been trying to get late night ferries to come back and forth in the evenings, creating commerce. He would support Councilmember O'Donnell's suggestion for a 10:30 p.m. closure in the warmer months.

MOTION: To direct staff to prepare a draft resolution for consideration at the next meeting denying the appeal and amending conditions to allow hours of service to 10:30 p.m. from May through October, and to 9:30 p.m. from November through April for alcohol and food services; and prohibiting amplified music on the deck without prior issuance of a Town permit.

Moved: O'Donnell, seconded by Fredericks

Vote: AYES: Unanimous

ABSENT: Tollini

- 1. Circulation Element Update** – Adopt Updated General Plan Circulation Element and Approve Negative Declaration of Environmental Impact (Director of Community Development Anderson)

Director of Director of Community Development Anderson introduced transportation consultant Brian Canepa from Nelson-Nygaard Consulting Services.

Director Anderson reviewed the Staff Report and stated the Town adopted its current General Plan Circulation Element in 2005. In 2014, the Town retained the services of Nelson-Nygaard Consulting Services to assist with a comprehensive update of the Circulation Element. Later that year, the Town Council adopted limited amendments to the Circulation Element to incorporate “complete streets” concepts required by state law. The more comprehensive update process has continued into 2015 and now reaches the Town Council for consideration of adoption.

He noted that a circulation element is a broad policy document that sets forth a community’s vision for its circulation systems through establishment of goals, policies, programs, standards, and classifications.

A driving force behind the initiation of the Town’s circulation element update in 2014 was the worsening peak hour traffic movement along Tiburon Boulevard over the past several years. It was timely to update and run the Town’s traffic model to ascertain existing conditions and predict future conditions. There was also hope that the update process might identify additional ways to address the congestion issues along Tiburon Boulevard and build on the work and findings of CART (Community Action to Reduce Traffic).

Anderson stated that as a land use planner, the increased congestion and delays on Tiburon Boulevard were particularly vexing to him in that there appeared to be no correlation with new development. For decades, Tiburon Boulevard traffic increases were primarily associated with new development on the peninsula, mostly residential subdivisions. In recent years, new development had flat-lined but traffic queues grew noticeably longer. Rather, factors such as increasing public school enrollment, the general societal trends of increased number of cars and increased vehicle miles travelled, and demographic changes appeared to be the major causes of increased congestion.

In response, the Nelson-Nygaard analysis reflected in the draft Element considers both “supply side” and “demand side” methodologies to reduce traffic congestion on Tiburon Boulevard. The general conclusion is that traditional “supply side” strategies such as road widening, signalization, signal-timing, and similar improvements are of limited efficacy along Tiburon Boulevard, primarily due to right-of-way limitations and related disruption and expense. The analysis concluded that physical improvements to Tiburon Boulevard should play a lesser role at reducing traffic congestion in the future, especially as the peninsula is already approaching virtual buildout.

Anderson stated that the yellow school bus program (YSBC) results demonstrate the potential power of “demand side” strategies to reduce traffic congestion, and that local officials were hard at work on finding an ongoing, long-term funding source.

Anderson noted that with respect to bicycle and pedestrian issues, such as those raised under the public comment portion of the agenda this evening, the Town maintains a much more comprehensive and detailed separate document known as the Tiburon Bicycle & Pedestrian Master Plan. He said this document is currently in the early stages of being updated by the Town through a contract administered by the Transportation Authority of Marin (TAM). Adoption is likely sometime in the latter half of 2016. Anderson then provided a summary of the major

changes to the Element, and sought specific feedback and direction from the Council on two important areas: 1) whether to lower LOS criteria at certain intersections; 2) and whether to retain a proposed physical roadway improvement at Trestle Glen Boulevard in the Element.

He noted that an Initial Study/Draft Negative Declaration was prepared for this project and released for public comment on November 12, 2015. The initial study indicates that the amendments and update would not result in any potentially significant environmental impacts. He concluded that there is no substantial evidence in the record to support a fair argument that the Circulation Element update adoption would result in a potentially significant impact on the environment, and recommended that following a public hearing, the Town Council provide direction on any revisions to the Element, and move to adopt the resolution adopting the negative declaration and the updated Element.

In response to Councilmember Frederick's question regarding potential future flooding of Tiburon Boulevard in the Downtown area, Director Anderson stated he has seen ABAG's maps as they relate to rising sea levels and one shows the downtown affected, but the prediction is so many years out it would not be within the scope of this current Circulation Element.

In response to Councilmember Fredericks, Director Anderson noted that there are no clear or easy solutions to the so-called "last mile" problem of getting people from their homes or cars to public transit in Tiburon. Some communities use sidewalks, however, in an area as hilly as Tiburon, sidewalks usually don't connect from the hills to Tiburon Boulevard and bicycling is also not a workable option in the hills.

Mr. Canepa stated you could study the issue by preparing a "last mile" plan; however he noted the challenges in Tiburon are significant and the Element did not address this specific issue.

There was a general discussion regarding the difficulty of keeping a flow of traffic when crossing guards activate the red lights in order to accommodate pedestrians. The Chief of Police has asked the crossing guards to wait for a few pedestrians to congregate during school times before activating the lights. The Council also discussed a roundabout at Trestle Glen Boulevard, but it would be incredibly expensive, would require encroachment into Blackie's Pasture Park, there is a creek and a major water pipe in that area that would further complicate such a project, and the intersection geometrics are also challenging. Anderson noted that the lane widening project alone is estimated to cost between 5 to \$10 million dollars,

Mr. Canepa stated it took years before CalTrans would accept roundabouts, and a one lane roundabout is safer than a two lane roundabout. A one or two lane roundabout is determined by the volume of traffic. A roundabout in that area would probably require takings of private property.

Vice Mayor Fraser opened the public hearing. There being no comments, the public hearing was closed.

Vice Mayor Fraser suggested that the Town challenge itself to improve the levels of service and he recommend that the Council keep the LOS targets where they are now. He noted that Policy

C-47 discussed parking meters in the Downtown; these had been discussed and it created uproar. He suggested dropping the reference to Downtown parking meters. He also questioned keeping a reference to preferential residential parking programs in conjunction with parking meters.

Councilmember O'Donnell noted one of the problems is employees moving their cars every two hours. Resident parking permits create problems too, he said. It was the consensus of the Council to drop the last sentence of Policy C-47 regarding parking meters and resident parking programs.

Councilmember Fredericks agreed with Vice Mayor Fraser to keep the current Levels of Service but acknowledge we won't meet them for a long time. It was the consensus of the Council to retain the current Element's LOS targets in the updated Element.

The Council also directed that the physical improvement of the Trestle Glen Boulevard intersection with Tiburon Boulevard remain in this long-term Element, revised to be more amenable to design alternatives to simple lane widening.

Director Anderson stated he will make these changes to the Element as directed.

MOTION: To adopt the Resolution recognizing the above amendments to the Element.
M/S: Doyle/Fredericks
AYES: Unanimous
ABSENT: Tollini

TOWN COUNCIL REPORTS

There were no reports.

TOWN MANAGER REPORT

There were no reports.

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Vice Mayor Fraser adjourned the meeting at 10:30 p.m.

s/

JIM FRASER, VICE MAYOR

ATTEST:

s/

DIANE CRANE IACOPI, TOWN CLERK