

**TOWN COUNCIL
SPECIAL AND REGULAR MEETING
MINUTES**

SPECIAL MEETING AGENDA – 7:00 p.m.

CALL TO ORDER AND ROLL CALL

Vice Mayor Fraser called the special meeting of the Tiburon Town Council to order at 7:00 p.m. on Wednesday, August 17, 2016, in the Town Council Chambers Conference Room, located at 1505 Tiburon Boulevard, Tiburon, California.

Councilmember Doyle, Councilmember Fredericks, Councilmember O'Donnell, and Vice Mayor Fraser were present; Mayor Tollini was absent.

ORAL COMMUNICATIONS

None.

CLOSED SESSION

Public Employee Performance Review: Government Code Section 54957

Title: Town Manager

ADJOURNMENT – *to regular meeting*

REGULAR MEETING AGENDA - 7:30 p.m.

CALL TO ORDER

Vice Mayor Fraser called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, August 3, 2016, in the Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

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

ABSENT: COUNCILMEMBERS: Tollini

PRESENT: EX OFFICIO: Town Manager Chanis, Town Attorney Stock,
Director of Community Development Anderson,
Director of Public Works/Town Engineer Barnes,
Director of Administrative Services Bigall, Town
Clerk Crane Iacopi

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

Vice Mayor Fraser said no action was taken in closed session.

ORAL COMMUNICATIONS

None.

CONSENT CALENDAR

1. **Grand Jury Report** – Authorize Town response to Grand Jury Report on Citizen Complaints (Town Manager Chanis)
2. **OPEB Investment Strategy** – Authorize proposed investment strategy for Other Post Employee Benefits (OPEB) (Town Manager Chanis/ Director of Administrative Services Bigall)
3. **Route 8 Bus Service** – Authorize letter in support of continuation of Route 8 bus service to Tiburon Peninsula (Town Manager Chanis)

MOTION: To adopt consent calendar Item Nos. 1 through 3, as written.

Moved: Fraser, seconded by Fredericks

Vote: AYES: Unanimous
ABSENT: Tollini

Order of Items on Agenda

Vice Mayor Fraser said the some of the agenda items would be taken out of order; also, he said Councilmember O'Donnell would have to recuse himself from hearing Action Item No. 2, therefore, it would be heard last.

ACTION ITEMS

1. **Trestle Trail Project** – Update on Trestle Trail Project; consider request by proponents to install temporary signage and track at Blackie's Pasture for fundraising purposes (Town Manager Chanis)

Town Manager Chanis said that on April 20, 2016, the Town Council considered a proposal from the Tiburon Peninsula Foundation to construct a 600-foot accessible pedestrian walking trail on top of the berm which leads to the former site of the railroad trestle that was once located in the vicinity of Blackie's Pasture near the intersection of Tiburon Boulevard and Trestle Glen Road.

Chanis said the Council approved the project in concept and authorized up to \$40,000 as the Town's contribution, to come out of the 2016-17 budget. He said tonight's hearing would

provide the Council with a design update and request the temporary placement of an exhibit in Blackie's Pasture, to assist the group [Tiburon Peninsula Foundation] in its fundraising purposes.

Architect David Holscher, representing the Foundation, said the fundraising efforts had resulted in contributions totaling \$129,000, to date. He presented some drawings with various design changes – he proposed 40 feet of track now versus 20 feet, and pulling the trail back 20 feet from the edge of the berm. He said this would allow the natural edge of the berm to remain and would no longer require a rail, wall or other barrier at the end of the trail. He also said they proposed replacing concrete with decomposed granite on the path leading up to the site. The next step said would be more fundraising, according to Holscher (for which the temporary installation was needed), and a proposed construction start date of Spring 2017 (instead of Fall 2016).

Councilmember Fredericks reiterated her request at the April 20 meeting that the Council be provided with a final design before construction starts. Mr. Holscher said the current plans were pretty close to final and he could provide sets to the Council.

Fredericks asked about the location of the temporary installation. Town Manager Chanis explained that it would be in the corner Blackie's Pasture closest to the entry to the Old Rail Trail, and would include rail, ties, fencing, and a temporary sign explaining the project.

Tiburon Peninsula Foundation member Phil Cassou said a few words about the installation, stating it would be comprised of one set of rail 20-feet long and 8-feet wide, for a total of 160 square feet. He said next to it would be an example of "legacy ties" and plaques that are being sold to donors. He said the install would take about eight strong volunteers, and they would like it to be in place by September 17.

Councilmember Fredericks asked if Landmarks had the equipment to do the installation. Town Manager Chanis said the Town could provide a skip loader that could easily lift the ties and rails.

Vice Mayor Fraser opened the matter to public comment. There was none.

MOTION: To approve the revised plans and request for temporary installation, as presented.
Moved: O'Donnell, seconded by Fredericks
Vote: AYES: Unanimous
ABSENT: Tollini

AI-3: Well Permits [taken out of order] – Review of Tiburon's Water Well regulations (Chapter 13F of Town Code) for possible amendment (Community Development Department)

Director Anderson said that in June 2015, the Town Council reviewed and approved an application for an irrigation-only water well on property located at 4545 Paradise Drive. He said the application was opposed by neighboring property owners who were concerned that the requested irrigation well could result in off-site impacts such as subsidence, diversion of ground water flows, draining of an aquifer, impacts on wildlife, and so forth. He said the Council

approved the permit but requested that the Town revisit the water well regulations at a future meeting.

Anderson said the Town first adopted water well regulations in 1991, codified as Chapter 13F of the Tiburon Municipal Code (Water Well Regulation and Use). He said 20 water well permits have been approved since that time.

Director Anderson said Chapter 13F was repealed and replaced in 1993 during a period of prolonged drought and a public water agency moratorium, when the possibility of owners relying on a well for domestic drinking water purposes seemed quite real. However, according to the Director, that fear proved unfounded, and he said staff is not aware of any homes in Tiburon that are not connected to the public water system and rely on a water well for potable water. No applications for potable water well have been filed since the ordinance rewrite in 1993; rather, Anderson said the applications have all been for irrigation wells.

The Director provided a review of the geological makeup of the Tiburon Peninsula, more fully detailed in the written report. He said the type of geology does not support traditional aquifers. As a result, he said staff believes many approved well permits have resulted in “dry holes” (as was the case when the Town drilled for an irrigation well at Blackie’s Pasture in 2004, and also turned out to be the case at 4545 Paradise Drive).

Anderson said the relevant finding for approval of a well permit is that: *The granting of the permit will not be detrimental to the health, safety or welfare, nor injurious to other properties in the vicinity.* He said this type of finding is associated with regulations imposed pursuant to the “police power” vested in California municipalities, and every municipal water well ordinance in Marin County contains a similar finding.

Director Anderson said staff had reviewed the regulations of other jurisdictions and found that Tiburon was the only one that required Town Council approval of well permits; he said the others all require staff-level approval. Anderson said the Town of Fairfax also requires a report by a hydrologist or geologist, but none of the other cities ordinances appeared to do so. He said staff concludes that the Town’s water well regulations require more processing and professional review of potential impacts than is typical of other municipalities in the County; he noted that Town Council approval for water wells is unique for this County.

Anderson said that subsequent to the 4545 Paradise Drive application, staff has revised the Town’s water well application form to require the hydrologist or geologist report to specifically address possible adverse effects on water resources such as springs, seeps and watercourses in addition to potential adverse impacts on adjoining properties. He said any such expert opinion may be heavily qualified, but the Town’s requirement represents a good faith effort on the part of the Town to disclose any such potential impacts prior to making a decision.

In addition, Anderson said staff has clarified an applicant’s duty to indemnify the Town and also requires the applicant to indemnify the Town with counsel approved by the Town.

During the Council discussion, Councilmember O'Donnell said staff had outlined the issues and had set in motion additional procedures to address them. Director Anderson said the Town's ordinance has always done so, but said the updated application contains language that addresses the issues of potential adverse impacts on water resources as well as on surrounding properties.

Councilmember Fredericks asked if the Town's existing regulations address the trapping of water by an uphill neighbor which might affect the downhill neighbors. Director Anderson again described the absence of aquifers in Tiburon so he said it was unlikely this could occur. He said the Town's regulations focus more on the location of a well, and that some cities have setback requirements in their regulations (from creeks or other known bodies of water). He said the Town's regulations already give the Town the ability to require a well to be located elsewhere on a property [than the proposed location]. Councilmember O'Donnell commented that the tanks associated with wells usually are not large tanks [that hold large quantities of water].

Vice Mayor Fraser opened the matter to public comment. There was none. There being no further comment, Vice Mayor Fraser closed the hearing.

MOTION: To approve the staff's recommendations, as presented.
Moved: Fredericks, seconded by O'Donnell
Vote: AYES: Unanimous
ABSENT: Tollini

AI-4: Bicycle Education and Safety [taken out of order] – Direct Parks Open Space & Trails Commission to formulate a Bicycle Safety Training Program (Community Development Department/ Department of Public Works)

Town Manager Chanis said that at its July 20 meeting, the Town Council adopted an updated Tiburon Bicycle and Pedestrian Plan. In adopting the Plan, he said the Council requested strengthening of the section on "education programs". He said Vice Mayor Fraser subsequently suggested delegating the task to the Parks, Open Space and Trails Commission (POST).

Town Manager Chanis said this was appropriate because in prior decades, the Town's Bicycle-Pedestrian Advisory Committee (now included in the mission of POST) has worked with the Police Department and the Marin County Bicycle Coalition to provide training events, including "Share the Road" training programs. He said the direction to POST would be to reengage with their partners in the training programs and to develop and an ongoing, sustainable training program for bicycle and pedestrian safety. If endorsed by Town Council, he said the item would be placed on the next POST agenda for action. POST would also be asked to report back to the Council periodically on its progress in developing the program, according to the Town Manager. He said staff recommends the Town Council direct POST accordingly and place the item on the next POST agenda for action.

Vice Mayor Fraser said his recommendation came from his involvement with the Safe Routes to School program, as well as his involvement locally with the Yellow Bus Program. He said the idea was to increase safety in our community for bicyclists and pedestrians, but also to better educate automobile drivers. He said everyone needs to know the rules of the road, and that POST was the place to start this educational process.

Vice Mayor Fraser opened the matter to public comment.

Kathy McLeod said she served on the Safe Routes to School Task Force but worried that POST might tend to focus more on trail bikes rather than road bikes. She wondered whether the Town might form a committee dedicated to the road bike riders because it was a different focus. She said the committee could focus on rules of the road, driver safety, engineering, and new standards that needed to be developed. She suggested that POST had so many things on its plate, such as the Martha Property (open space) and field maintenance (McKegney Green), that they might not be able to take on this challenge.

There being no other speakers, Vice Mayor Fraser closed the matter to public comment.

Councilmember Fredericks assured Ms. McLeod that POST was aware of the Safe Routes to School programs and would do a good job. Vice Mayor Fraser said there would be public outreach by POST and input solicited from all users. Councilmember O'Donnell concurred.

MOTION: To approve the recommendation to direct POST to undertake a safety education program as part of the Bicycle Pedestrian Master Plan.
Moved: Fredericks, seconded by O'Donnell
Vote: AYES: Unanimous
ABSENT: Tollini

TOWN COUNCIL REPORTS [taken out of order]

None.

TOWN MANAGER REPORT [taken out of order]

Town Manager Chanis introduced a discussion of Town Holiday Party dates. He said the Council normally cancelled its second regular meeting in December in favor of the Town Holiday party. However, this year, Chanis said the second meeting fell on December 21; at least one Councilmember (Mayor Tollini) had informed him that it was unlikely she would be in town on that date. He asked for the Council's input on the date selection.

The Council directed staff to cancel the December 21 meeting as is its custom; it also selected December 14 as the date of this year's Holiday party.

AI-2: Appeal of Encroachment Permit [taken out of order] – Consider appeal of denial of an Encroachment Permit for the installation of a security gate in Town right-of way at 1860 Mountain View Drive (Public Works Department)

AP No. 059-042-11
Applicant: John Merten, Studio Green
Owner: MV 1860 LLC

Councilmember O'Donnell recused himself because he lives within 300 feet of the address, and left the meeting.

Director Barnes said on June 27, 2016, John Merten of Studio Green Architects submitted an Encroachment Permit Application on behalf of Jan Brandt, the property owner of 1860 Mountain View Drive in Tiburon. He said the applicant was seeking permission to place a portion of a vehicular access gate and a concrete freestanding wall within the public right of way, through a driveway servicing the subject property.

Barnes said staff reviewed the proposal and determined it was inconsistent with the Town's policy for encroachments into public streets, as set forth in Town Council Resolution No. 45-2014. He said staff has no authority to waive the policy, as set forth in the Town's resolution, and therefore denied the application which led to the appeal. He said only the Council had the authority to make an exception to Town policy

Director Barnes said that the appeal Section C.5 of the resolution has to do with parking that would be required by the Municipal Code for a newly constructed use, and if there is no driveway or garage on the property, the applicant can apply for an exemption. In this case, the Director noted there is already a driveway and garage on the property, so the applicant was denied an exemption. He said the encroachment was about 100-120 square feet of Town property.

Vice Mayor Fraser opened hearing to the appellant.

John Merten said that Ms. Brandt was unable to attend the hearing. He said as a single lady, she had asked him to provide a more secure condition for the property. He said he understood the staff's position on the matter but asked for the Council's consideration based on the unique nature of the conditions on the property. He identified these conditions as being no separate pedestrian entry to the home, except through the driveway; and the topography of the property (including a heritage oak tree). He said Ms. Brandt travels a lot and wants security for the parked vehicles in her driveway and for the house. He said she does not like front door location and said it makes her feel vulnerable to the street. He said Ms. Brandt's safety and welfare should be considered in the context of "public safety and welfare". He said there had been three break-ins in the neighborhood since Halloween of last year. He said Ms. Brandt's dog was deaf, as well.

Mr. Merten said the installation of the gate would not inhibit turning around in the driveway, or prohibit deliveries or street repairs. He said it would be set back and similar to other gates in the neighborhood (for which he provided photographic examples).

Vice Mayor Fraser opened the matter to public comment. There was none.

Vice Mayor Fraser closed the public hearing.

Councilmember Doyle said that rules, regulations and guidelines are there for a purpose but that sometimes common sense should prevail. He said the installation of the gate would not harm anyone and made sense given the topography of the property (the slope) which would not allow it to be placed elsewhere. He said it would provide the applicant with the same opportunity for a gate that her neighbors had.

Councilmember Fredericks said she understood the applicant's need but said that the Town's policies discourage the privatization of the public right-of-way. She said she would not give away the right-of-way unless there was a huge safety concern. In any event, Fredericks said the application was not consistent with the Town Code and policies.

Vice Mayor Fraser asked if there had been similar instances considered by the Town. Director Barnes said that there had been examples of applications for fences with pedestrian gates, but no gates on public right-of-way. And he noted that one applicant had subsequently removed the access gate from its fence application.

The Vice Mayor asked the Town Attorney about what findings could be made in this instance. He said if findings could not be made to support the application, could findings be made from a common sense of reasonableness. Attorney Stock said if the Council could not agree that Section C.5 provides enough flexibility, it could simply exempt this application from the privatization policy. The Town Attorney noted that the Council had directed staff to process an application in an earlier appeal. However, he expressed his concern that the more times the Council makes an exemption, it creates a precedential value for future applications.

Councilmember Fredericks said that making an exemption without a finding erodes the Council's authority to uphold the Town's laws. She said the Town's policies should be changed rather than approving an application without a finding.

Councilmember Doyle said he agreed and understood this argument. However, he said the area in question was not being used by the public, is only 120 square feet, and is a space no one else will ever use.

Fredericks said you cannot always tell when a space will become crucial to the public use. She cited examples of streets being built only so wide and now there is no space for bike lanes, sidewalks, and the like.

Vice Mayor Fraser asked if the permit was revocable; for instance, if in the future the Town wanted to site a pedestrian walkway in front of the property.

Councilmember Fredericks said that theoretically the permit is revocable but this is not so easily done. Town Attorney Stock concurred, citing a case where a homeowner said he had a vested right in the public right-of-way when the town or city wanted to revoke the encroachment.

Vice Mayor Fraser said he agreed with both points of view -- the need to protect the public right-of-way, as well as the need for making an exception for an application where it seems like no real harm will be done. He said he would fault on the side of granting the appeal, in this instance.

Before asking for a motion, the Vice Mayor stated that [statistics show] we live in one of the safest towns in all of the United States. He said we have had "incidents" but the Tiburon Police Department was a solid and strong police force. He said he has lived in Tiburon since 1982 and feels safe 100% of the time.

MOTION: To grant the appeal and direct staff to return at the next regular meeting with a resolution memorializing that decision.

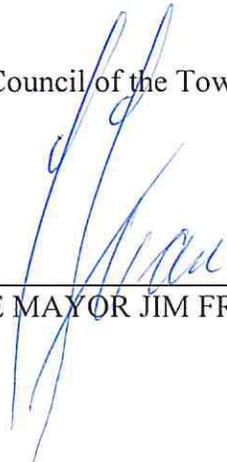
Moved: Doyle, seconded by Fraser
Vote: AYES: Doyle, Fraser
NOES: Fredericks
ABSENT: Tollini
RECUSED: O'Donnell

WEEKLY DIGESTS

- Town Council Weekly Digests – August 5 & 12, 2016

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Vice Mayor Fraser adjourned the meeting at 8:35 p.m.



VICE MAYOR JIM FRASER

ATTEST:



DIANE CRANE IACOPI, TOWN CLERK