

**TOWN COUNCIL
MINUTES**

CALL TO ORDER

Mayor Fredericks called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, November 18, 2009, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

PRESENT: COUNCILMEMBERS: Collins, Fredericks, Gram, Slavitz

ABSENT: COUNCILMEMBERS: Berger

PRESENT: EX OFFICIO: Town Manager Curran, Town Attorney Danforth, ,
Chief of Police Cronin, Director of Public
Works/Town Engineer Nguyen, Director of
Administrative Services Bigall, Town Clerk Crane
Iacopi

Prior to the regular meeting, the Council met in closed session, beginning at 6:30 p.m., to discuss the following:

CLOSED SESSION

PUBLIC EMPLOYEE PERFORMANCE EVALUATIONS

(Section 54957)

Title: Town Manager

Title: Town Attorney

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

Mayor Fredericks said that there was nothing to report from the closed session.

ORAL COMMUNICATIONS

William Rothman, resident of Belvedere, said he had read a letter to the editor in the Ark newspaper concerning the costs of undergrounding utilities in Tiburon. He said that retired persons especially had felt the downturn of the economy on their savings, and he cautioned the Council against imposing these types of expenses on people without considering all the complications, such as the ongoing legal costs associated with the Del Mar undergrounding.

CONSENT CALENDAR

1. **Town Council Minutes** – Approve minutes of October 21, 2009 regular meeting (Town Clerk Crane Iacopi)
2. **Town Council Minutes** – Approve minutes of October 26, 2009 special meeting (Town Clerk Crane Iacopi)
3. **2008-09 Street Improvement Program** – Adopt Resolution accepting project and authorize filing of Notice of Completion (Director of Public Works/Town Engineer Nguyen)
4. **1655 Mar West Street/175 Esperanza Street** – Adopt Resolution approving a Parcel Map and taking related actions for the subdivision into two lots of a 0.51-acre parcel; Diane Ho, owner and applicant; Assessor Parcel No. 059-051-18; Town File #60402 (Director of Community Development Anderson)

Mayor Fredericks asked if the Council or anyone from the public would like to remove an item from the Consent Calendar.

Helen Lindqvist, Cazadero Lane, posed several questions concerning Item No. 4: a) would the subdivided property remain accessible so that existing trails could continue to cross over it; b) would fencing be allowed on existing easements or could language be added to preclude it; c) were trees going to be felled during development.

Town Manager Curran said that Director of Community Anderson was unable to attend the meeting due to illness. Mayor Fredericks suggested a continuation of the item in order to address Ms. Lindqvist's concerns.

MOTION: To adopt Consent Calendar Nos. 1 through 3, as written; Item No. 4 continued.
Moved: Slavitz, seconded by Collins
Vote: AYES: Unanimous
ABSENT: Berger

ACTION ITEMS

Item No. 2 was heard first.

1. **Lyford Cove Undergrounding Assessment District** – Recommendation to adopt a Resolution Declaring a Surplus in the Improvement Fund and Direct that the surplus be used to Redeem a portion of Outstanding Bonds (Town Manager Curran/Director of Administrative Services Bigall)

2. **Security Cameras** – Review and consideration of proposal to install security cameras on Tiburon Boulevard and Paradise Drive (Chief of Police Cronin, Director of Public Works/Town Engineer Nguyen)

Chief of Police Cronin said that in 2007 and 2008, there were 100 to 125 thefts from vehicles and burglaries in Tiburon, and that the Department was tracking the same number of similar crimes in 2009. Cronin said that most of the perpetrators are from outside the peninsula and that most crimes are committed late at night.

The Chief said that this pattern, coupled with the unique geography of the peninsula, offered an opportunity to increase the number of arrests, recover more property and ultimately reduce the number of offenses. He proposed to do so by installing an ALPRS (Automated License Plate Reader System) on Tiburon Boulevard and on Paradise Drive.

Cronin said that the system takes a digital photograph of the trunk and license plate of every car that passes its location, transmits the image to a server, and stores it for a prescribed time. The system can be programmed to alert the police when a particular license plate, such as one on a stolen or wanted car, passes.

While this is useful, Cronin said his primary interest was to use the system as an investigative tool following the report of an offense in Tiburon.

In most cases, the Chief said the police are able to establish a time frame during which a crime is committed. In the case of the most common crime, thefts from vehicles and burglary, this is usually late at night when traffic counts are very low. Cronin said this would make it relatively simple to find those few license plates that came and went and check them for connection with any prior offenses or persons who have criminal records, establishing potentially valuable leads in cases where the police now have nothing to go on.

He said the system would be especially useful in those cases where the police know exactly when a crime occurred or those where they have a partial license plate or vehicle description. In those cases, he said it would be possible to estimate the elapsed time between the crime and travel time to the camera and look at the relatively small number of vehicles that pass, for ones that match.

Cronin said the system is only useful in identifying vehicles that drive through the roughly 8' by 8' window called the "capture zone," which the camera is focused on in a traffic lane. He added the following points:

- It does not capture images of occupants, only the rear of the car and the license plate;
- It does not record any information about the vehicle's owner--that requires a separate transaction by an authorized user accessing DMV records;

- It has no ability to pan, tilt or zoom;
- The cameras do not lend themselves to traffic or drunk driving enforcement--they are single images, not video, so little can be determined about the operation of the subject vehicle

He said the proposed cameras would be located on Tiburon Boulevard between Blackfield Drive and Bay Vista Way, and in the 5000 block of Paradise Drive.

Chief Cronin said that he recognized there is a way around this system (by avoiding the cameras), but noted that it would require some local knowledge or at least some pre-planning to avoid the cameras. He said that the criminals who commit the kinds of crimes being targeted are generally “unsophisticated opportunists and drug addicts” who were unlikely to have either the local knowledge or the inclination to pre-plan.

The Chief presented three alternatives for mounting the cameras:

- Option A involves using the Caltrans light standards in the center median of Tiburon Blvd and a PG&E pole on Paradise Drive.
- Option B involves using PG&E poles at both sites.
- Option C involves using new poles erected by the Town.

He summarized the project costs, stated below:

Option A: Cameras on existing Caltrans light poles in the center median of Tiburon Boulevard

Option A would cost approximately \$137,000.00, funded as follows:

Town contribution:	\$44,500
Belvedere contribution:	\$30,800
Sheriff contribution:	\$13,700
ABAG grants	\$48,000

Option B: Cameras on existing PG&E utility poles on the shoulder of Tiburon Boulevard

Option B would cost approximately \$166,000, funded as follows:

Town contribution:	\$64,000
Belvedere contribution:	\$37,400
Sheriff contribution:	\$16,600
ABAG grants	\$48,000

Option C: Cameras on new poles erected by the Town on the Caltrans right of way

Option C would cost approximately \$197,000. Over \$70,000 would be attributable to electrical, construction, infrastructure and possible environmental costs associated with erecting poles and supply them with electrical power. The funding breakdown would be as follows:

Town contribution:	\$85,000
Belvedere contribution:	\$44,300
Sheriff contribution:	\$19,700
ABAG grants	\$48,000

With regard to maintaining the system, Chief Cronin said that maintenance agreements range up to \$11,000 per year for an “all inclusive” warranty/maintenance agreement subject to negotiation. Annual costs for electricity and data transmission are estimated at \$1,200 to \$4,200 per year, depending on the location of the cameras.

He also said that a policy governing use of the cameras, as requested by the Council, was attached to the staff report. Key elements include:

- Cameras will be “fixed” to record only the back of vehicles and do not have “pan, tilt & zoom” capability.
- Cameras will be directed only to capture the rear of vehicles and not into any place where a “reasonable expectation of privacy” might exist.
- Access to recorded images will be password protected and access limited to the Police Chief, the Police Captain, Watch Commanders, the Police Detective and the Town’s Information Services Manager.
- Images not retained in connection with a specific offense will be purged after one hundred days (as soon as the law allows).
- Images will only be released in compliance with a search warrant, criminal subpoena, court order or statute or to allied agencies as evidence in a criminal investigation. Allied agencies would only receive images released to them by Tiburon Police Department for a specific investigation.
- An annual audit of compliance with the policy will be conducted by the Town Manager.

Any attempt to secure an image by subpoena in relation to a civil case would be resisted by the Town and a judge would ultimately decide the issue.

Requests by the public to review images would be declined by the Police Department. The California Public Records Act exempts the images from public disclosure under section 6254(f).

The Chief said that it had been determined through subsequent discussions with the Town Attorney that the Town could limit retention of the records to 30 days. He suggested that the Council direct staff to modify the draft policy section 378.4 Data Storage “...retained for period of thirty days.”

He also recommended that section 378.5 be changed to read “criminal subpoena,” instead of “subpoena”.

He recommended that the Council take public input and then determine if it wished to proceed with the project. If so, he recommended that the Council:

- Approve the draft policy with recommended changes;
- Authorize the manager to spend up to \$197,000.00 to complete the project;
- Approve a budget amendment increasing project funding from \$50,000 to 197,000.

The Chief asked if Council would like to ask any questions of staff.

Councilmember Gram asked if there had been any more progress in the negotiations with Caltrans and PG&E for placement of the cameras on their rights-of-way and utility poles. Chief Cronin said that he had positive responses, on both fronts. He said he hoped to hear more this week.

Councilmember Slavitz asked whether the 30-day retention period was legally defensible. Town Attorney Danforth said that most of the images are formal records, subject to the Town’s existing records retention policies. She said that those pertaining to investigations are kept anyway [longer than 30 days].

Councilmember Slavitz asked about the usefulness of these records. Chief Cronin said that in cases where there are known specific timeframes, it would be invaluable to assist the police in determining when a perpetrator may have left town.

Councilmember Slavitz asked whether the annual policy review could also include an annual review of the efficacy of the program. Chief Cronin answered affirmatively, and said that the department would be able to point to specific cases in its report.

Councilmember Slavitz asked if the program would help supplement the police force. Chief Cronin said that in the larger picture of staffing the department, the program would eliminate the need to post an officer on the street watching cars coming and going into town after the report of a crime. He said that in this year’s budget cycle, two officer positions had been eliminated and this program would allow for more efficient use of the remaining officers’ time.

Councilmember Collins asked if the program would aid in crime prevention and deterrence. Chief Cronin said that it would, and addressed the concern expressed by some that criminals would know the cameras had been installed and would figure out a way to avoid them. Cronin said that in his experience, criminals did not read the newspapers and what they learned, they learned in jail from talking to other inmates. He said that the cameras represented a potential significant deterrent factor.

Mayor Fredericks asked about implications of scanning license plates to obtain other kinds of information. She asked if the data could be used as a “hot list” to look for stolen vehicles, for instance. Chief Cronin said that the system could be programmed to provide data on vehicles that pass a point at a particular time. Mayor Fredericks asked if this could be used in the absence of the report of a crime. Chief Cronin said that it could, but that this would be a policy decision.

Mayor Fredericks asked if he was asking to add scanning for stolen vehicles to the policy since the current draft policy said that only the report of a felony would trigger obtaining the plate information. Chief Cronin pointed out that stealing cars was a felony.

But in response to Mayor Fredericks’ inquiry, Chief Cronin suggested that further modifications be made to the policy that reports of felonies would trigger use of the data obtained by the cameras, rather than lesser crimes.

Councilmember Slavitz said that he understood the program, as presented, would allow the police to use information obtained by the system primarily to locate stolen vehicles and in Amber Alerts [both felonies].

The Council had some additional questions concerning maintenance costs. Chief Cronin said that the \$15,000 (annual maintenance fee plus electricity and data costs) was the highest cost and was negotiable. However, he noted that this cost included a full replacement guarantee.

Councilmember Gram asked if the data obtained by the cameras could be retained less than 30 days. Town Attorney Danforth said that it was more of a logistical question and that as a practical matter, 30 days was the preferred time. Chief Cronin added that many crimes are committed in “series,” and that keeping data for 30 days seemed sufficient to deal with patterns of crimes.

Mayor Fredericks opened the matter to public comment.

- Terry Graham, 15-year resident, said she was “horrified” by the idea of surveillance cameras and said the 4th Amendment’s prohibited illegal search and seizure; she quoted from her “pocket Constitution” that said that laws that infringe upon the rights of citizens are “null and void.” She asked why the Council would surveil citizens who are presumed to be innocent.
- Wes Poole, Tiburon Boulevard, said it seemed to him to be an incremental erosion of rights and that once the cameras were installed, they would no be taken away.
- Andrew Thompson, former mayor, thanked Chief Cronin for bringing the idea forward and said that he actually thought of a similar plan in 1995 to ensure children’s safety when walking to school; he said it would help the police in kidnappings, such as the Polly Klass case, to obtain immediate data; he said there had been two robberies on his street that might have been deterred if the cameras were in place. Thompson said that surveillance cameras were everywhere and that it was silly to think otherwise; he said it was time to take a bold step that would make a difference.

- William Rothman said that it was a well-intentioned, ill-conceived, and ill-fated plan, for instance, that it would not prevent crimes committed by Tiburon residents, like some of the crimes that had taken place in Belvedere; he said that cameras were everywhere but that he could choose not to go to some of those places (such as Walgreen's); he said that Tiburon would be seen as an elitist and racist community if it installed the cameras; he also said that they would contribute to the death of children if criminals chose, for instance, to speed through intersections to avoid the cameras. Rothman held up a drawing of a new logo Tiburon, showing an eye and the words, "Tiburon—we see you."
- Barry Toronto, cab driver, Terra Linda, said the message being sent was the "we don't want outsiders;" he said that he was worried that he would be recognized as living outside of town and would be stopped by the police; he said Tiburon had a vibrant music scene and that black musicians would be harassed; he asked the Council not to waste the money that could be used for something else;
- Mark Boyajian, Rancho Road, said he completely supported the cameras and that anyone who had been the victim of a crime would be in favor of them; he said they were a tool to assist law enforcement personnel and would be managed very carefully; he said he would support the cameras even if they were no public funds available;
- Carolyn Logan, student, Felipa Court, asked what if it was "your" child who was kidnapped;
- John Pearson, former member of the Belvedere City Council, said that most people he knew were in favor of the cameras; said it was not a matter of elitism but rather security;
- Wes Poole said he did not want to be "categorized" and that there was nothing to stop this from happening; he asked that the Council not give away any more rights];
- Camille Bosworth, Corinthian Island resident, said the cameras were a bad decision and that they should not be installed without a vote of the people; said that she would be photographed every single day when she travelled down Tiburon Boulevard;
- Arnie Freeman said that the cameras at Walgreens could not identify him but that these cameras could; said that they violated the same principles of an open society as monitoring telephone calls and other movements of citizens;
- Kenneth Nemzer, Hilary Drive, said that the concept of privacy was being misused in this argument because we did not live in a place where "our enemies are in charge;" said that he would like the police to know "everything" about him;
- Al Anolik, Round Hill Road, said he had submitted a letter in support, adding that nothing is more important to a tourist area than the safety and security of its people; added that the area was also vulnerable because of its wealth; he said that a recent 9th Circuit Court of Appeals ruling stated that a government had the right to take your PDA, cell phone, and computer at the border and download the data; said he wanted his civil rights protected but that nothing was more important than the protection of his family and community and that the most effective way is to have a plate recognition system; he encouraged the Council to give the police the tools that are available;
- Joe Reich, Barbaree Way, said he was opposed to the cameras and would be photographed every time he crossed the street; he said that an annual review of the program would be irrelevant because "the cow has already left the barn;" he asked what percentage of crimes would be resolved because most of them were committed by kids in

town; stated that liberties and privacy were being taken away in tiny increments; that we don't "trust" government and that the safeguards written into the policy would be changed the day after the cameras were installed.

Mayor Fredericks closed the public hearing.

Councilmember Collins said that he "absolutely believes in the right of privacy" but that the Council must do what it can to protect the community. He addressed the issues raised by some of the speakers concerning the Fourth Amendment and cited case law dating back to 1967 that addressed the issues of privacy and reasonable expectation of privacy. He said that many cities already had the cameras in place and more would be following suit. Collins said that to him, it was a cost effective program and that furthermore, even if one perpetrator was caught, it would be worth the price.

Councilmember Slavitz said that while he sympathizes with some of the sentiments and concerns expressed by the speakers, the installation was really not a privacy issue but a safety tool. He said that there was no data base being created, no tracking or categorizing of data, and that the data "dies" every 30 days. He said it would help the police department during budget cuts and that it was available to the community because of its unique geography. He said it was not an infringement of rights.

Slavitz said that he concurred with the recommended changes to the policy and that the program's usefulness should be reviewed annually, and that the cameras could be removed. Slavitz said that he would vote to authorize the purchase up to the budget limit stated in the staff report.

Councilmember Gram said that he understood both sides of the argument. He said that the key to the program's success was the controls placed on the mechanism and that he had faith in this and the ability of future Councils to monitor the program appropriately. Gram said that Tiburon was not the first city to install cameras, and that hundreds of cities had done so since the mid-to-late 90's when the technology became available.

Gram said that the program would protect the community against burglaries and other crimes, but stated that he was more concerned about kidnapping and violent crimes. He said that it might help ensure the safety of children walking to school. He said that the cameras would not mean stopping people, except if the data triggered the presence of a stolen vehicle or felony. He said that as a member of the Finance Committee for eight years, the cameras were a "bonus" if they would help save money by not replacing two positions on the police force.

He said that he had asked for a data retention period of less than 30 days but that it did not seem feasible.

Mayor Fredericks said she understood the "cultural repugnance" against the cameras but said that it was an exaggeration of what the cameras actually were programmed to do. She said

that there was no legal expectation of privacy of one's car license plate, whether the vehicle is on the public street or parked in a private driveway.

Fredericks said the database was of numbers, not people. She agreed that the challenge was to create a good policy over the use of the data.

Mayor Fredericks acknowledged that there was a distrust of government. She said that the Council was the [local] government and that "we answer to you." She added that "your weapon is your vote."

The Mayor said that the comments about "low crime rates" in Tiburon might be expressed differently. For instance, based on current statistics and population, there was one burglary per every 435 people in Tiburon. She said that burglaries often took place at night and that more than one occupant might be home and affected when the burglars entered the house.

MOTION: To approve the recommendations as stated in the staff report, with the amendments to the policy pertaining to data retention [Section 378.4] and criminal subpoenas [Section 378.5], as well as use of the cameras in response to reports of felonies (versus other crimes); [as amended by Gram] to proceed no further with the program until agreements have been reached with Cal/Trans and PG&E regarding use of their facilities, and until agreements have been reached with the City of Belvedere and the Marin County Sheriff's Department concerning their contributions to join the program; [as amended by Collins] to add language to the policy that if the equipment is located elsewhere, or if there are any changes to the program, they will be brought back to the Council for approval.

Moved: Slavitz, seconded by Gram

Vote: AYES: Unanimous

ABSENT: Berger

1. **Lyford Cove Undergrounding Assessment District** – Recommendation to adopt a Resolution Declaring a Surplus in the Improvement Fund and Direct that the surplus be used to Redeem a portion of Outstanding Bonds (Town Manager Curran/Director of Administrative Services Bigall)

Director Bigall gave the report. She said the final reconciliation of the Lyford Cove Utility Undergrounding Assessment District ("District") had determined that a surplus existed in the District Improvement Fund in the amount of \$918,000. She said the Town Council had four options for disposition of those funds pursuant to the Municipal Improvement Fund Act of 1913, Division 12 of the Streets and Highways Code of California.

Ms. Bigall outlined the options:

- a) Transfer of \$1,000 to General Fund. An amount equal to \$1,000 may be transferred to the General Fund and used for any legal purpose.
- b) Credit Against the Assessments without calling bonds. The surplus may be applied as a credit upon the assessment and any supplemental assessments. In this option the surplus would be used to pay debt service on the bonds for a limited period.
- c) Use for Maintenance. The surplus may be transferred to a special fund and used for the maintenance of the public improvements that were financed by the assessment district bonds.
- d) Redeem bonds and reduce assessments. The surplus may be transferred to the bond trustee for deposit in the redemption fund and used to call bonds for redemption at the next available redemption date. This will require a corresponding reduction in the outstanding assessment and subsequent assessment installments levied to the property in the assessment district.

Director said that staff originally recommended Option (d) as the option that would have the most benefit to current and future property owners. However, Ms. Bigall said that District organizers, Liz Bird and Joan Lombardo, had stated that the property owners were in favor of an “assessment holiday.” Ms. Bigall said that staff had prepared a substitute resolution for Council’s consideration in which the Town would issue a credit against the assessments without calling bonds. In addition, Director Bigall said it was also an appropriate time for the Town to make its agreed upon contribution to the District in the amount of \$50,799, which would be transferred from the General Fun Infrastructure and Facility Reserve to the Lyford Cove UUAD Bond Redemption fund. Ms. Bigall recommended Council approval of both actions.

Mayor Fredericks asked what the difference would be between calling bonds earlier and the assessment “holiday.” Ms. Bigall said that calling the bonds would be like pre-paying principal on a loan which would result in a lower payment but not a shorter term.

Bigall said that under the scenario recommended by the District organizers, the “holiday” translated into a savings of about \$1,000 per year [for approximately two years], depending on whether the property owner had prepaid or financed the transaction, and what the actual amount of their assessment was. At the end of the “holiday,” they property owners would resume their same assessment payments, as before, according to Bigall.

Councilmember Slavitz asked whether owners of properties who had prepaid the bonds and had subsequently sold their properties would benefit. Ms. Bigall said that the assessment runs with the property and therefore, people who had prepaid and no longer lived there would not benefit. She said the “holiday” only affected the current property owners who were paying the assessments.

Councilmember Slavitz asked why the assessment “holiday” was preferable. He noted that calling the bonds would lower the assessment payments by approximately \$240 per year for the remainder of the term.

Town Manager Curran said that it could be seen as “relief” during difficult economic times. She said it also depended on how long a property owner planned to stay in their home, and was

seen as a benefit to some of the current owners.

Councilmember Collins asked if there was a cost to the Town to adopt the proposed “holiday.” Ms. Bigall said there was none.

Council asked bond underwriter Mark Pressman for his comments.

Mr. Pressman said that typically, he sees bonds called in order to spread the benefit over time, however, he said that the “holiday” would be a popular and welcome approach.

In response to a question as to whether other districts had employed this method, Mr. Pressman said that it was uncommon to have a surplus and more common to be “over” budget. He said that one of the districts in Belvedere had a surplus but he could not recall exactly how they had disposed of it.

Mr. Pressman said that home buyers in the district would have full disclosure of the situation and would accept the higher payment and the lien.

Mayor Fredericks asked if there was additional public comment. There was none.

Councilmember Slavitz said that while he sympathized with the organizers, it seemed more equitable to redeem the bonds so that everyone could share the benefit in the future, and to lower everyone’s assessment for the next 25 years (versus an approximate two-year “holiday” on paying the assessment).

Mayor Fredericks said that Ms. Bird and Ms. Lombardo played a key role in developing the District and therefore, their word carried some weight. She agreed that during difficult economic times, the “holiday” could be seen as giving something back to those who lived through the laborious [district formation] process and subsequent construction.

Councilmember Collins concurred with the Mayor’s analysis.

Councilmember Gram said that he could go either way on the recommendations. He said that personally, he would chose option (a) which would result in a lower payment and greater savings over time, however, he understood the other recommendation, as well.

MOTION: To adopt the amended resolution to establish an assessment “holiday,” as recommended by the district organizers, and approving the Town’s payment into the Lyford Cove Utility Undergrounding District Bond Redemption Fund.

Moved: Collins, seconded by Slavitz

Vote: AYES: Unanimous

ABSENT: Berger

TOWN COUNCIL REPORTS

There were none.

TOWN MANAGER'S REPORT

Town Manager Curran thanked Director of Public Works Nguyen who was instrumental in obtaining the nearly \$1million surplus in the Lyford Cove Utility Undergrounding Assessment District. Councilmember Gram commented that the bond issue for the supplemental district was \$2 million, so that \$900,000 represented a savings of nearly half of that amount.

Councilmember Collins thanked Chief Cronin for bringing forward the difficult topic of the security cameras and weathering the criticism. Chief Cronin thanked the Town Manager and members of the Town staff for their help in bringing the topic forward.

WEEKLY DIGESTS

- Town Council Weekly Digest – November 6, 2009
- Town Council Weekly Digest – November 13, 2009

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Fredericks adjourned the meeting at 9:15 p.m.

ALICE FREDERICKS, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK