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, March 18, 2009, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

PRESENT:	COUNCILMEMBERS:	Berger, Collins, Fredericks, Gram, Slavitz
PRESENT:	EX OFFICIO:	Town Manager Curran, Town Attorney Danforth, Director of Administrative Services Bigall, Director of Community Development Anderson, Director of Public Works/Town Engineer Nguyen, Chief of Police Cronin, Town Clerk Crane Iacopi

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

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Section 54956.9(a))

Wayne et al. v. Town of Tiburon

INTERVIEWS FOR VACANCIES ON BOARDS & COMMISSIONS – (7:15 p.m.)
(Design Review Board Vacancy)

- Lisa Catanzaro, 54 Linda Vista Avenue

Ms. Catanzaro was unable to attend.

CLOSED SESSION ANNOUNCEMENT

Mayor Fredericks that no action was taken in closed session.

ORAL COMMUNICATIONS

None.

CONSENT CALENDAR

1. **Town Council Minutes** – Adopt minutes of March 4, 2009 meeting (Town Clerk Crane Iacopi)

2. **Placement of Temporary Signs –** Adopt resolution establishing an additional day for the display of temporary off-site signs pursuant to the recently updated Sign Ordinance (Director of Community Development Anderson)

MOTION: To adopt Consent Calendar Items 1 and 2, as written.
Moved: Slavitz, seconded by Berger
Vote: AYES: Unanimous

ACTION ITEMS

1. **Appointments to Boards, Commissions & Committees** – Consider appointment to fill vacancy on Design Review Board (Town Clerk Crane Iacopi)

Town Clerk Crane Iacopi said that the interviewee scheduled for this evening was unable to attend due to a work deadline and sent her regrets. The Town Clerk said that Ms. Catanzaro was the sole remaining candidate for the vacancy and that Council could choose to appoint one of the candidates they had interviewed at the last meeting, or direct staff to continue to advertise the vacancy.

Vice Mayor Berger said that he would be pleased to make a motion to appoint local architect John Kricensky who he said was well suited for the position. He also said that it was good for the town to have other interested applicants for future openings.

MOTION: To appoint John Kricensky to the Design Review Board.
Moved: Berger, seconded by Gram
Vote: AYES: Unanimous

2. **CKS Permit Fee Application** – Consider adoption of an agreement between Congregation Kol Shofar and the Town of Tiburon regarding traffic mitigation fees required by a Conditional Use Permit for property located at 215 Blackfield Drive, AP No. 038-351-34 (Town Manager Curran)

Town Manager Curran introduced the item and handed out a revised version of the proposed agreement which, she said, contained non-substantive language changes.

Ms. Curran said that Congregation Kol Shofar (CKS) had received approval of a conditional use permit (CUP) in 2007 which, among other things, entitled them to an additional 50 students over their current 100-student day school/preschool at the site. This incremental increase triggered traffic mitigation fees in the amount of $248,066, according to Curran.

The Town Manager said that CKS had approached the town to discuss a possible deferral of payment of these fees until some point in the future when the 100 student threshold was crossed. Ms. Curran said that she had discussed the request with the one remaining member of the CKS subcommittee, Councilmember Gram.

Town Manager Curran said that under the proposed agreement, the CKS use permit would be amended to hold the 50 student entitlement in abeyance until the applicable fees were fully paid at the rates in effect at the time. She said that CKS had also asked the Town to proceed with issuance of its building permit before the Town had amended the CUP to reflect this arrangement. Accordingly, Curran said the proposed agreement was prepared by staff for Council's consideration.

Ms. Curran said the agreement would require CKS to pay its fees in full now in order to obtain a building permit, but the town would reimburse the traffic mitigation fee related to the 50 students until such time as the amendment to the CUP was obtained. She said that if the CUP was not amended, the town would retain the fees and that CKS would abandon any right it might have to challenge the fees in the future.

In addition, under the proposed agreement, Curran said that CKS would be required to report annually on its school enrollment and a substantial penalty would be imposed should CKS increase the enrollment above 100 children without prior payment of fees. She said that the town would have rights to audit the total enrollment upon reasonable notice.

Ms. Curran identified several issues with such an agreement—precedent, in that it had never been done before, and the open-ended duration of the agreement. To address the latter issue, Ms. Curran distributed another version of the agreement which stated that the proposed arrangement would expire after a certain length of time (to be determined by the Council).

Councilmember Slavitz asked if this was the first time a request of this nature had been made to the town. Director of Community Anderson said that he had never seen anything like it in his 20 year tenure.

Councilmember Slavitz noted that the space would be built unchanged under this arrangement, but that there would be a child "cap." Anderson agreed, noting that the fees were related to intensity of use.

Councilmember Collins asked whether the fees were "earmarked" for certain traffic mitigation projects. He also asked whether the funds would earn interest when deposited and therefore raise an issue of use of public funds.

Ms.Curran said that the fees were put into a restricted fund used only for traffic mitigation purposes.

Director Anderson clarified that these fees were applicable throughout the entire Tiburon planning area and would be used for circulation systems improvements under the General Plan.

Town Attorney Danforth said that this arrangement would not be construed as a gift of public funds.

Mayor Fredericks commented that it raised the question of the significance of an incremental increase in intensity. She asked what would happen if a developer came in and made a similar request.

Town Attorney Danforth said that the Council would not be legally obligated to respond to such a request. She said that it might give rise to an expectation, but not in the legally binding sense.

Mayor Fredericks opened the public hearing.

Councilmember Gram asked the CKS representatives in the audience why they had closed down the school after moving from their site. He said he recalled that they had not planned to do so during the CUP hearing.

Ron Brown, past president of CKS, addressed the issue of increased use first. He said that the square footage being built was not necessary for an increase in the preschool side of the project but rather, for a Jewish day school. He said the increase in number of students was needed for the religious school rather than for the preschool. In that sense, he said the request was unique.

Councilmember Gram asked if there would be other grades in the school, besides preschool. Mr. Brown said no. Gram asked how many students were in the preschool. Mr. Brown said there were 100 students and noted that they (Ring Mountain) had moved to Davidson Middle School in San Rafael.

Mr. Brown said that the new school would be a collaborative effort between CKS and the Jewish Community Center. He said they had 11 students now and that it could take years to reach the 100 mark.

Councilmember Gram said that was one reason why he had looked favorably on this request, because CKS was essentially starting "from nothing."

Councilmember Collins asked if there was a difference between a day school and preschool in the CUP. He said the CUP talked of a combination of 100 students between the two classifications.

Mayor Fredericks agreed; she noted that the agreement used the term "tenant day school" and sometimes used other descriptions.

Mr. Brown said that the words were used interchangeably; Mayor Fredericks said they were used conjunctively. Town Manager Curran said that the wording was used to mean a *cumulative* number. Mr. Brown said CKS concurred with Ms. Curran's description of the number as cumulative.

The Mayor said that the term "tenant" might apply to one CKS might acquire.

Bruce Raful, responding to Councilmember Gram's question, said that when the CUP was issued, Ring Mountain Day School was there and had intended to move to the new location but had gone elsewhere.

Mayor Fredericks asked the CKS representatives for more information on timing for the new school.

Mr. Brown said that it was their intention, in keeping with their goal and mission, to have a Jewish preschool but said that it would take some time to develop.

Councilmember Slavitz suggested that a simpler solution might be to amend the CUP back down to 100 students and if there was a need in the future, apply for another amendment. He said that it would be far less controversial than the arrangement under consideration.

Mr. Brown said that CKS did not want to have to seek an amendment in future; he said that 150 students was their "vision."

Mayor Slavitz pointed out that they were seeking an amendment now.

Howard Zack, speaking on behalf of CKS, said that the CUP represented an historical gauntlet that was crossed and that they were reluctant to go "backwards." He added that $250,000 was an appreciable sum for a non-profit and that these "hard won" dollars raised by the membership could be put to better use in these hard economic times. He said that the money would go into the building, and the best possible building, for the greater good for the community.

Mr. Zack added that the CUP was reviewed annually by the town, so he thought the question of timing was not an issue.

Councilmember Gram asked Mr. Zack how long he thought it would take to reach 101 students.

Mr. Zack said he thought it might take seven to 10 years. Gram asked whether 10 years could be used as a timeline in the agreement. Again, Mr. Zack questioned the need for a deadline due to the mechanism of annual (CUP) review. He said that it seemed redundant but, if pressed, 10 years would probably be acceptable.

Mr. Gram suggested the addition of the words "from date of occupancy" to the 10-year clause.

Mr. Brown noted that this was an unusual situation and expressed his gratitude to the town and staff for their time and consideration.

Mayor Fredericks closed the public hearing.

Councilmember Gram said that he was in favor of the agreement because CKS had disbanded student activity at the site [during construction] and it would take a while for them to get the numbers back up to 100. He commented that the 101st student would be an "expensive" one.

Gram said that he had not reached a conclusion as to the deadline question and would wait to hear from someone on the Council who had proposed it.

Councilmember Slavitz said that he was the one who had proposed a deadline. He said that it might take years to build up the student body but at some point he felt it was important to use the entitlement or lose it. He said that he was really looking for a sunset clause in the agreement.

That issue aside, Councilmember Slavitz said that he did not approve of the agreement because it was unprecedented. He said that other applicants might come in asking for similar arrangements and that there was no easy way to get around this. However, on the broader issue, he said that he understood the reasons for the CKS request.

Vice Mayor Berger thanked staff for taking the time to think the issue through and make a proposal for Council consideration. He said he agreed with Councilmember Gram's assessment and that even though it was not easy, it was a reasonable request.

Berger pointed out that there was no change to the facility [plans], and that only the use was changing unlike other projects that might request a waiver of fees. He also said that the community would not experience a radical change [in the increase from 100 to 150]. Finally, Berger said it was a non-profit organization and community resource, and that the facility would be around for a long time. For this reason, he said that the best possible facility should be built and that $250,000 would buy a lot of enhancement.

Town Manager Curran asked to comment on the issues of entitlement and timing.

Ms. Curran said that there was a reason why entitlements are usually limited and that it is the same reason why CKS is concerned about losing their entitlement. She said that community values change over time and the further out you go, the harder it is to envision how the community will feel about the deferred change. She said the proposed agreement was a mechanism so that CKS would not have to come back in the future to "get back" their entitlement, but that it was reasonable to put a limit on how long that entitlement would be held in reserve for them.

Mayor Fredericks said that she understood the good reasons for the CKS request. On the broader issue of fees, she said that there was not a dollar per unit of impact relationships between fees

and mitigation measures. She said there was a timeline associated with implementation of mitigation that was not necessarily related simply to the unit of impact that triggered the need for mitigation. Therefore, waiting for the fees did not make logical or administrative sense.

Councilmember Collins said that he agreed with the commentary of his colleagues on the Council. He agreed that it was not an unreasonable request, especially during tough economic times, but he said that he continued to have a problem with the issue of precedent notwithstanding these reasons. He said that future Councils might be faced with similar dilemmas.

Collins said that if the agreement was approved by a majority of the Council, he would suggest a letter of credit or some tool to allow the town to collect its fees.

Vice Mayor Berger said that a letter of credit was not useful against a construction loan, and Councilmember Gram noted that letters of credit are not readily available in this economy.

Mayor Fredericks asked if there was a motion to proceed. There was none.

Town Attorney Danforth said there might be another option. She said that CKS could be given a choice of obtaining a CUP amendment, or not getting their money back.

Vice Mayor Berger asked when the building permit was going to be pulled. Director of Community Development Anderson said that it was imminent and that the next Planning Commission meeting was scheduled for April 22.

Councilmember Collins asked how CKS could be assured that this scenario would work given the shortness of time.

Town Attorney Danforth suggested that CKS might be required to deposit the funds, pull the permit and initiate proceedings to amend the CUP. As soon as the amendment was approved, they would get the money back.

Howard Zack, speaking again on behalf of CKS and as Capital Campaign Chair, said that the town was always in a position to keep their feet to the fire. He suggested that the payment be made at the time of issuance of the Certificate of Occupancy because the congregation may well be in a position to pay the fees at that time. If not, they would "fall back" to the 100 mark and waive the entitlement. Nevertheless, he said that they would like to keep the 150 number "alive."

Councilmember Slavitz said that it was not a matter of holding anyone's feet to the fire but rather a matter of playing by the same rules as everyone else. He said that St. Hilary's school, and other applicants, had paid their fees at the time of obtaining a building permit.

Mr. Zack said that he was simply "mirroring" the leverage language suggested by town staff.

Mayor Fredericks questioned whether the money could be raised later if it was difficult to raise it now.

Vice Mayor Berger said that it was only a matter of 12 to 16 months until occupancy.

Town Manager Curran said that she understood Mr. Zack's idea that CKS might be able to make a more informed decision down the road and suggested that the town could accept the fees in order and issue a building permit, but enter into an agreement whereby the Town would reimburse the money if the CUP was amended before the Certificate of Occupancy was issued.

Mr. Zack described an arrangement would allow CKS to "opt out" of the 150 entitlement at any time. Town Manager Curran said this could mean that the agreement would terminate at the time of occupancy and that way, the fees would continue to be linked to the permit.

Mr. Zack asked whether the CKS fees would be "isolated." Town Attorney Danforth said that the Town keeps such fees in impact funds, but they were not segregated by project.

Councilmember Slavitz said that he would consider this option as long as the town was not in the position of making an exception.

Town Attorney Danforth said that Council might authorize the Town Manager to execute a new agreement without waiting for a CUP amendment.

Councilmember Gram said the agreement should be reviewed by the legal subcommittee prior to execution.

MOTION: To authorize an agreement that allows CKS to exercise its option for 150 students by paying the traffic mitigation fees at the time of issuance of a building permit; that between the time of permit and issuance of a certificate of occupancy, CKS could receive a refund of those fees by obtaining an amendment to the CUP reducing the maximum number of students to 100.

Moved: Berger, seconded by Slavitz
Vote: AYES: Unanimous

TOWN COUNCIL REPORTS

None.

TOWN MANAGER'S REPORT

Town Manager Curran said that the Town Council/Staff retreat was scheduled for March 26 at the Tiburon Lodge. She suggested adjourning the meeting to that date and time (1:30 p.m.).

Ms. Curran also suggested that the April 1 meeting be cancelled because of the upcoming meeting and lack of pressing business that could be carried over to the next regular meeting. Council concurred.

WEEKLY DIGESTS

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

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. to March 26, 2009, 1:30 p.m. at the Tiburon Lodge.

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ALICE FREDERICKS, MAYOR

ATTEST:

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DIANE CRANE IACOPI, TOWN CLERK