

[Town of Tiburon – 1505 Tiburon Boulevard, Tiburon CA 94920]

August 22, 2002

The Honorable Lynn O'Malley Taylor  
Marin County Superior Court  
Post Office Box 4988  
San Rafael, CA 94913-4988

Mr. Lowell W. Smith, Foreperson  
Marin County Grand Jury  
3501 Marin Civic Center Dr., Room 303  
San Rafael, CA 94903

**Re: Response to Grand Jury Report 2001-2002- Pre-Sale Inspections**

Dear Honorable Judge Taylor and Mr. Smith:

This letter explains in detail the Town of Tiburon's response to the Grand Jury Report dated May 30, 2002. The Report directs the Town of Tiburon to respond to Findings Nos. 6, 7 and 8 and Recommendations Nos. 2 and 3. These findings and recommendations involve a number of jurisdictions other than the Town of Tiburon. This letter is intended only to apply to the Report's findings and recommendations insofar as they pertain to the Town of Tiburon.

**Finding No. 6:**

Based on a sampling of jurisdictions, the Grand Jury found an appearance that the actual scope of pre-sale inspections in many jurisdictions bear little relationship to the enabling legislation of the local Municipal Code and state law. The Town has no opinion regarding the practices of other jurisdictions in Marin County. However, the Town's own pre-sale inspection practices are perfectly legal, closely tracking Chapter 13-A of the Town's Municipal Code.

In 1994, after considerable research and consultation, the Town Attorney and Building Official recommended that the Town Council repeal the then-existing Municipal Code Chapter 13-A—Reports of Residential Building Records and adopt a completely revised process. The Tiburon Town Council adopted the current Chapter 13-A on December 5, 1994. This Chapter sets forth the procedure used by the Building Division today in preparing and issuing pre-sale reports.

**Finding No. 7:**

The Grand Jury found that currently the scope of pre-sale inspections varies widely from jurisdiction to jurisdiction. This frustrates realtors who often work in multiple jurisdictions.

The Town believes that the scope of pre-sale inspections may well vary from jurisdiction to jurisdiction. We are not in a position to say whether this causes realtors some level of frustration. However, as explained in greater detail in connection with Recommendation No. 3, the Town's first concern must be the safety and welfare of persons and property in the Town.

**Finding No. 8:**

The Grand Jury found that the costs to perform the inspection/reports appear to be covered by the fees collected (thus the process is relatively neutral) and can be undertaken with minimal staff.

The Town agrees that the Town's process is revenue neutral. Depending on the activity of the real estate market and the thoroughness of the inspections, it can be a time consuming process requiring additional staff.

**Recommendation No. 2:**

The Grand Jury recommends that the Marin County cities and towns have their attorneys review existing practices and code provisions and make any appropriate revisions to the codes or practices of the inspectors.

The Town has implemented this recommendation. The Town Attorney researched the legality of Chapter 13-A of the Municipal Code in 1994, before recommending that the Town Council adopt it. Our review has not revealed any change in the law in this area since 1994. After receiving the Grand Jury's Report, the Town Attorney reviewed the inspectors' practices with the Town's Building Official and confirmed that those practices comply with Chapter 13-A of the Municipal Code.

**Recommendation No. 3:**

The Grand Jury Report recommends that the jurisdictions that require pre-sale inspections should either establish a new study committee or utilize an existing organization such as the Marin County Codes Advisory group to meet with representatives of the Marin Association of Realtors to discuss the feasibility of standardizing the pre-sale inspection process.

The Town does not believe that this recommendation is warranted with respect to the Town of Tiburon at this time. The Town's existing process serves Town residents, present and future, well. Our inspection process provides an increased level of safety and general welfare by reducing the number of accidental fires, injuries and accidents. We believe that this result justifies our inspection and report requirements. Incidental frustration by realtors would not justify any reduction in the level of safety enjoyed by the residents of Tiburon. In addition, the Town does not have the resources to take the kind of initiative in this area that is suggested by the Grand Jury. We do not have surplus staff and the officials most knowledgeable in these matters – the Building Official and the Building Inspector – are fully occupied with the operations of the Town's Building Division.

That said, the Town Council is certainly willing to consider changes to its process for the benefit of realtors, providing that those changes do not reduce the current protection of residents. If a Countywide committee or task force develops a standardized process equivalent to the Town's existing procedure, we would be happy to review it.

\* \* \* \* \*

The Tiburon Town Council reviewed and approved this response on August 21, 2002. If you have further questions on this matter, please do not hesitate to call.

Very truly yours,

ALEX D. McINTYRE  
Town Manager

c: Town Council  
Town Attorney  
Planning Director

Building Official

**Report Title: Residential Pre-Sale Inspections – Should Marin County Also Require Them?****Report Date: May 30, 2002****Response by: Town of Tiburon****Title: Council****FINDINGS**

- I (we) agree with the findings numbered: 8
- I (we) disagree wholly or partially with the findings numbered: 6 and 7

(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

**RECOMMENDATIONS**

- Recommendations numbered 2 have been implemented.

(Attach a summary describing the implemented actions.)

- Recommendations numbered \_\_\_\_\_ have not yet been implemented, but will be implemented in the future.

(Attach a timeframe for the implementation.)

- Recommendations numbered \_\_\_\_\_ require further analysis.

(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)

- Recommendations numbered 3 will not be implemented because they are not warranted or are not reasonable.

(Attach an explanation.)

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

Number of pages attached \_\_\_\_\_