

REGULAR MEETING
OF THE
CORTE MADERA TOWN COUNCIL AND SANITARY DISTRICT #2 BOARD

In the Town Hall of the Town of Corte Madera, on March 16, 2010 at 7:15 p.m.

PRESENT: Mayor Condon
Councilmembers Cock, Furst, Lappert, Ravasio

Town Manager David Bracken
Interim Planning Director Dan Bell
Assistant Town Attorney Veronica Nebb
Associate Planner Larisa Roznowski

OPEN SESSION

Salute to the Flag

Mayor Condon reported the Council met in closed session and no reportable action was taken.

WORKSHOP

1. Workshop on Draft Housing Element, and Discussion and Possible Action Concerning Authorization of Staff to Forward the Draft Housing Element to the California Department of Housing and Community Development for Preliminary Review

Mayor Condon identified and thanked members of the Citizens' Advisory Committee on the Housing Element and noted that Corte Madera received recognition for its creativity in the 2002 Housing Element update.

Mayor Condon stated that her property is within 500 feet of a site identified in the proposed Housing Element, recused herself from the matter, and turned the meeting over to Vice-Mayor Cock.

Councilmember Furst stated she owns a piece of property adjacent to her home which is listed in the Housing Element as a potential development site; she also recused herself from this matter.

Bob Pendoley, consultant, presented the staff report; reviewed the requirements and review process for the Housing Element, stating that the law mandates it to be updated every 5 to 8 years. He stressed the importance of certification which, while not required, does provide protection in terms of legal and financial liabilities.

Mr. Pendoley stated that the Association of Bay Area Governments (ABAG) develops and assigns a Regional Housing Need Allocation (RHNA) that requires the town to provide an adequate basis for the development of the assigned number of housing units. He stated a total of 216 units were created in Corte Madera since the last Housing Element update, meeting 121% of the RHNA requirement. The RHNA for the 2007-2014 time period is over 214,000 units in the Bay Area, with 4,900 for Marin and 244 of those within Corte Madera. The town receives credit for units built between 2006 and 2008, which allows equals 79 units from the EAH development at San Clemente. The remaining balance is 165 units.

Mr. Pendoley reviewed the town's housing needs, stating that Corte Madera has been and is expected to remain a slow growth community. The town is a slightly younger community than the county average, with a significantly higher percentage of children than other communities. He noted that Corte Madera is predominately a community of single-family detached homeowners; the community is largely built out, and for sale and rental housing stock is relatively expensive.

Mr. Pendoley reviewed the 6 categories of need which the Housing Element is required to examine, noting that Corte Madera has a significant need for affordable housing and, in particular, for seniors, local employees, the disabled, and large and single parent households. He reviewed median sales and rental prices, stating that a significant portion of the community is overpaying for housing. Seniors are the fastest growing group in the community. Corte Madera also has a large disabled community of nearly 1,400 residents, with over 800 of those being under the age of 65. He stated that Corte Madera is fortunate with a high number of jobs, some of them being below the median income level and creating a job to housing imbalance of 1:8 which creates impacts in terms of traffic, greenhouse gas emissions, and global warming.

Mr. Pendoley reviewed the Housing Element goals, stating that they primarily focus on promoting housing opportunities to comply with RHNA and creating opportunities for work-force, senior, and disabled housing in an equal opportunity way, using land efficiently and sustainably by encouraging mixed-use development, infill, granny flats, density incentives, transit and job oriented housing, and the continued maintenance of open space. He stressed that mixed-use development is the major thrust of this update, building on the Land Use Element of the General Plan which identifies the San Clemente, Tamal Vista, and Tamalpais corridors and community plan areas. He discussed mixed-use opportunities at the WinCup and Village Shopping Center sites, the first of which would more than satisfy current RHNA needs.

Mr. Pendoley discussed two notable changes to the Housing Element. The 2002 Housing Element designated Wornum Drive Extension, Old Corte Madera Square, and the San Clemente Family Housing site as areas with high potential for housing. With agreement from the Advisory Committee, staff is recommending deleting the Wornum site and changing its General Plan land use designation to Open Space as well as re-designating Old Corte Madera Square from "high potential" to "resource." The WinCup property and Robin Drive would be listed as "high potential" sites.

He also noted that Mr. Jim Helfrich, owner of the WinCup property, spoke at the Planning Commission workshop and raised issues with Implementation Program H-2.5.b. It repeats the language of Implementation Program LU-4.4.a of the 2009 General Plan, but includes language to the effect that up to 180 units, including 45 affordable inclusionary units, could result from redevelopment of this site. Mr. Helfrich has voiced concerns that requiring construction of 45 affordable units on the site is not financially feasible.

After discussing the issue and considering the current analysis on affordability requirements, staff feels there may be a need for more flexibility in the town's inclusionary housing requirements. The proposed changes would delete the language pertaining to 45 affordable inclusionary units and requires the town to evaluate all appropriate incentives to facilitate development at "high potential" sites.

The Vice-Mayor opened the public hearing.

Jim Barbic, 1015 Meadowsweet Drive, inquired about the minimum square footage necessary to constitute a unit. The Assistant Town Attorney stated it was about 500 square feet, but she could not confirm this.

Diane Furst, 117 Sonora Way, referred to Housing Element Section 3.0, Sites Inventory Analysis. She noted the analysis identified the lack of street frontage to her property; she has been unable to determine how to establish any and believed it would be extremely difficult to ever do so.

Bill Zeller, 220 Granada Drive, complimented Mr. Pendoley on his presentation; he noted the inventory of available land does not address subdivision of existing lots; he said he and several neighbors in Mariner Highlands have lots that could be subdivided and asked that it be considered within the Housing Element. He requested the Council adopt language clearly stating that it would actively support that sort of development.

The Town Manager said he was asked to raise several questions, including whether the town is legally bound to follow through on the actions contained within an implementation program. Mr. Pendoley confirmed but noted that many implementation programs would only occur if a precise set of circumstances were presented. He shared concerns about the number of initiatives the Housing Element requires to be implemented; said this would be a burden on an already depleted staff and asked if lack of staff time is an acceptable cause for failing to do so. Mr. Pendoley stated that the State requires the update to assess the initiatives and actions of the previous Housing Element and that a number of those were identified as incomplete due to lack of resources.

In his experience, compliance issues would typically arise when conditions are met on a high priority item, but no action is taken. Mr. Bracken asked if secondary units are common in other jurisdictions. Mr. Pendoley confirmed, stating that State law requires the town to allow them automatically and with no use permit requirements.

Referring to Program H-1.1, Mr. Bracken requested clarification on "necessary facilities" for

families with children. Mr. Pendoley explained that there has been past instances of housing discrimination wherein an apartment complex would illegally disallow children due to a lack of play facilities.

Mr. Bracken asked if the reference to “height bonuses” must be included. Mr. Pendoley stated that he believes State law specifically requires the town to offer height bonuses as an incentive. He would verify the issue but noted that the requested action of the Council is to forward the document to the State for preliminary comment and not to take action on or approve the update itself.

Vice-Mayor Cock requested Mr. Pendoley’s opinion on Mr. Zeller’s comments. Mr. Pendoley stated that the Housing Element requires an inventory of all potential housing sites, some of which have been identified for potential subdivision. He explained that in the case of the Mariner Highlands development, where parts of the subdivision have double frontage, the subdivision approval contained a specific condition limiting lot access to the front street only. He said that while some lots are certainly large enough, the town’s present policy would be that those properties are not available for subdivision. He noted that staff researched the matter in depth some years ago, identified a possible process for changing that approval, but found it to be in depth and quite expensive.

Tad Devlin, 224 Granada Drive, shared Mr. Zeller’s interest in doing the same with his own property. He said subdivision of these lots would meet many of the items identified in Goal 3 and would increase revenue for the town.

Adam Nevitt, 248 Granada, said many of those lots are of good size and could be easily split. He asked Mr. Pendoley to explain the costs involved with amending the subdivision approval. Mr. Pendoley stated the primary cost issue identified by staff is legal process associated with amending the tentative and final map. Mr. Nevitt offered his legal services free of charge.

Jim Helfrich, owner of the WinCup property, said he spoke with staff about tools that could be used to implement the Housing Element, particularly as it pertains to use of his property. The amended draft works very well and provides future Council generations with a certain vision and without the use of the tools; it is unlikely that any development project on his property would be considered.

The Vice-Mayor closed the public hearing.

Councilmember Lappert asked if the question of subdivisions carried any validity in terms of the town’s overall policy. Mr. Pendoley said it could have considerable merit and the Council should be open to the idea in terms of housing opportunities. Councilmember Lappert said he would like the Council to discuss that policy, although not necessarily in terms of the specific lots in question.

Ms. Nebb said that while the Council may consider re-subdivision of already subdivided properties, the policy discussion is more one of zoning. She explained that the policy proposed by Mr. Zeller is a type of predetermination policy, a type of policy she would advise avoiding, but that a general subdivision policy discussion could be scheduled for a future date. Councilmember Lappert strongly

recommended doing so.

Councilmember Ravasio thanked the Advisory Committee and Mr. Pendoley for a detailed and well-prepared Housing Element. He referred to Implementation Programs H-2.6.a and H-2.6.c and asked if it could be interpreted to mean that the town will create the conditions under which development at Old Corte Madera Square could take place versus a more active and direct role in redeveloping the Corporation Yard. Mr. Pendoley explained that the town has already created the conditions under which housing could be developed at Old Corte Madera Square, whereas Program H-2.6.c simply suggests that the town consider the Corporation Yard as a housing site if it ever secures a new corporation yard.

Councilmember Ravasio said he believed that parking restrictions at Old Corte Madera Square would significantly limit housing development on the site. Mr. Pendoley said it is a difficult development site in terms of how to preserve the existing bulk of buildings while still providing adequate parking. He explained that this Housing Element recommends deemphasizing housing opportunities at this site for that reason.

Councilmember Ravasio applauded the policy of legalization of existing secondary dwelling units; said it has proven an effective policy for the County; and asked how long it will take to implement. Mr. Pendoley said implementation would be highly dependent upon staffing and noted that Mill Valley used legalized existing units to meet a large part of its RHNA requirements with the last Housing Element.

MOTION: Moved by Ravasio, seconded by Lappert, and carried unanimously by those present with Condon and Furst absent,

To authorize staff to forward the draft Housing Element, with the changes noted by Mr. Pendoley, to the California Department of Housing and Community Development for preliminary review.

Mayor Condon and Councilmember Furst returned to the dais.

1. OPEN TIME FOR PUBLIC DISCUSSION

Morgan Benezra, 189 Birch Avenue, questioned and confirmed that the Council is familiar with Larkspur's Sandra Marker Trail Access project. He said he was first advised of the project on February 16, 2010 when Larkspur's Public Works Department scheduled a public outreach meeting. The meeting was held during ski week and only attended by 4 people. He voiced concerns over the lack of public input on the project, the scope of the project, and the extent to which it impacts Corte Madera residents, although he noted that the community fully supports the trail itself and accessibility improvements. He and other Corte Madera residents met with Larkspur staff today to discuss their concerns, which have been partially resolved. He requested that the Council establish an oversight committee with the purpose of ensuring that all concerns of Corte Madera residents are

heard and that the commitments made by Larkspur staff are carried out.

Mayor Condon asked the Town Manager to comment on these commitments and what can be done to ensure that Corte Madera has a chance to provide feedback in the future. Mr. Bracken said he believes Larkspur understands the position and needs of Corte Madera residents and he will maintain a broad oversight on the project. He explained that the primary issue pertained to the scope of the new trail, which was proposed to create a step path for pedestrians and 2 new trails, one for cyclists and one for wheelchairs. Based on the outcome of today's meeting, Larkspur intends to modify the project to include only one trail and no step path.

Sierra Michelle Knolle, 677 Redwood Avenue, requested that, as the Council and staff address the issue of medical marijuana dispensaries, it develop an opportunity for her to apply for a business license or permit to operate her vision for a healing center. She said this opportunity would avoid the town setting a precedent that invites and allows irresponsible business owners to submit false applications and illegally operate dispensaries. Grandfathering in the two currently operating dispensaries would make the statement that the town does not care enough to ensure the safety of its citizens. She said she made a presentation at last week's Lions Club meeting and had the opportunity to hear very strong concerns, all of which she feels inspired to address through responsible business.

2. COUNCIL AND TOWN MANAGER REPORTS

- Council Reports

Councilmember Furst provided the following report:

- She attended the Transportation Authority of Marin (TAM) Subcommittee meeting and received an update on the Highway 101 Twin Cities/Greenbrae Corridor Project. While TAM and Caltrans were at an impasse following Corte Madera's position on the closure of Madera Boulevard ramps, it would appear Caltrans is now on board and is expected to return with some minor adjustments.

Councilmember Ravasio provided the following report:

- He attended the second day of the Every 15 Minutes presentation at Redwood High School, calling it incredible and a wonderful use of resources;
- He attended at meeting of the Marin Telecommunications Agency (MTA). Comcast's Director of Franchise Service Operations was in attendance and they had an opportunity to discuss numerous service problems throughout the County. Michael Eisenberg, Community Media Center of Marin, announced preparation of rate sheet to be distributed to all towns which would enable them to broadcast local meetings through a full range of media. MTA is coordinating with all public works departments along the Highway 101 corridor to participate in Google's super high-speed broadband study.

Mayor Condon said she hopes the town makes a proactive attempt to become involved in the

study.

Councilmember Lappert reported

- He will assume Councilmember Ravasio's position with MTA beginning in June.

Mayor Condon provided the following report:

- She attended the first day of the Every 15 Minutes presentation and urged any who have not done so to see the compelling production;
- She attended a Local Agency Formation Commission meeting. No agenda items related directly to Corte Madera;
- She attended a Community Development Block Grant meeting and approved funds to be dispersed throughout Lower Ross Valley to Marin Services for Women, Brain Injury Network, and other worthy services.

CONSENT CALENDAR

- 3a. Approved Warrant and Payroll for the Period February 24, 2010, through March 10, 2010, Warrant Check Numbers 125508 through 125642 and Payroll Check Numbers 3224 Through 3237, Payroll Direct Deposit Numbers 15661 through 15738, and Payroll Wire Transfer Numbers 1009 through 1015
- 3b. Accepted Investment Report for the Month of February 2010
- 3c. Acceptance of the 2010 Corte Madera Chamber of Commerce Budget and Goals and Objectives
- 3d. Approved Mayor Condon's Attendance at the League of California Cities Housing, Community and Economic Development Policy Committee Meeting

MOTION: Moved by Cock, seconded by Furst, and carried unanimously,

To approve Consent Calendar items 3a through 3d.

PUBLIC HEARING

4. Environmental Assessment No. 09-003 and Zoning Ordinance Amendment No. 09-004 – Discussion and Possible action Concerning the Approval of the Final Initial Study and Mitigated Negative Declaration and Rezoning of the Higgins Landing Park from R-2 (Low-Density Multiple Dwelling District) to POS (Parks, Open Space, and Natural Habitat) to Make the Zoning Consistent with the General Plan Land Use Designation of "Park" That Was Assigned to the Property by the 2009 General Plan

Associate Planner Larisa Roznowski provided a PowerPoint presentation, stating that the purpose of

the hearing is to consider approval of the Final Initial Study and Mitigated Negative Declaration and introduction of an ordinance for rezoning of the subject park property. On February 9, 2010, the Planning Commission unanimously voted to approve the design review and conditional use permit to construct a new ADA accessible dock at the site, contingent upon the Council's rezoning approval from R-2 to POS (Parks, Open Space, and Natural Habitat). She said the subject site has been used as a park for the last 39 years, is designated as a park in the town's General Plan, and would be more consistent with the General Plan's land use designation for parks if rezoned to POS.

Ms. Roznowski briefly reviewed the Initial Study and Mitigated Negative Declaration findings, which address both the proposed dock and rezoning but primarily assesses and mitigates the impacts associated with the proposed construction to less than significant levels. The draft study was publicly noticed and circulated for a 30-day review period. Staff received 3 comment letters to which responses were prepared and changes were incorporated into the final document.

Councilmember Lappert asked if the project provides an opportunity for future habitat rehabilitation credits. Ms. Roznowski said no, as neither the project itself nor the rezoning represent a physical change of or restoration to the natural wetlands habitat.

The Mayor questioned and confirmed with Ms. Nebb that the town will receive ADA accessibility credits.

The Mayor opened the public hearing.

Jim Saffron, 110 Riviera Circle, said his home is situated on the basin and directly opposite the proposed dock. He said his family has lived there for 34 years and his children learned to sail in that basin. He said the grant monies provide a wonderful opportunity here, but that he has concerns regarding the lack of public input on the design and lack of opportunities for sailing. Mayor Condon noted this has been a five-year process with numerous public hearings. Mr. Saffron said he never received notice on the project until now.

Jim Robinson, 25 Ash Avenue, commended staff and Larry Chin for their efforts. He asked the Council to support some method for the public to contribute to ongoing maintenance and improvements of the dock. Mr. Bracken said he would look into the matter and also assured Mr. Saffron he and his neighbors would be kept apprised of all upcoming meetings.

Beth Zemchow, 108 Lucky Drive, said she lives in the immediate vicinity of the dock and does not support the project. She said she learned from a member of town staff that approval of the project was based more on the availability of grant funds than actual support. She said the visual, noise, and parking impacts would be a tremendous intrusion and requested more information on the construction process and final product.

Vince Betar, Lucky Drive, concurred with Ms. Zemchow. He said he only received 1 notice on the project, that it was in the last 30 days, and that he lacks a proper understanding of the scope of the

project.

Ms. Roznowski stated that the February 9, 2010 Planning Commission hearing, where the actual dock was considered, was publicly noticed as legally required for a ten-day period and to all properties within 300 feet of the subject site. Additionally, notice was posted in the newspaper and three public places and this notification was consistent throughout the entire application process.

Roger Hugo, 30 Seamast Passage, said many people seem to be under a false impression of the dock's size and requested that staff present the approximate size and location on the map. Ms. Roznowski demonstrated the dock's design and location, noting that the proposed length of the dock is required to comply with ADA standards. Ms. Zemchow asked her to do the same with the proposed changes to the current parking area. Ms. Roznowski stated there would be no change to the parking area's size and she described some of the park like features to be installed.

Mr. Bracken stated that the project itself is not the item under consideration and asked that the Council focus on the recommended change in land use. He offered to return at a future meeting with a to-scale aerial photo of the proposed project.

Ms. Nebb stated that the project was approved by the Planning Commission, that the action was not appealed, and that approval is final. She said the Council could choose not to move forward with the project but that the time for design modifications is well past. She noted that the dock and gangway were designed by the California Department of Boating and Waterways in order to achieve the slope and geometric proportions required by ADA guidelines.

Kevin Hackman, 102 Riviera Circle, said he is very pleased to see this project progress but that he shares concerns about the loss of that space for sailing purposes. He said he has studied the design carefully, believes there is potential for reorientation of the dock so that it would still comply with ADA guidelines, and asked how to commence a process in which that could be considered.

Mayor Condon reiterated that the public process for that has already occurred, that no appeals were filed, and that it is unrelated to the matter under consideration at this time.

Councilmember Lappert said the town has gone to considerable expense and has exercised all options in order to reach this point. The end product will be a tremendous improvement in usability and enjoyment for most people.

Larry Chin thanked the Council for their support and invited anyone wishing more detail on the project to visit www.higginslanding.org. He said Kevin Jensen, Port of San Francisco employee and ADA expert, donated a considerable amount of time and expertise to develop this project and thanked Dr. Penny Wells for her time, as well. This is a golden opportunity for the town to construct one of only a few ADA accessible docks in the Bay Area. He said he learned of the project through the newspaper, that it was well advertised, and that he first spoke of it to Mr. Saffron about 4 years ago. He said he did not believe the changes to the dock or surrounding area would be at all drastic

and that most are necessary to meet ADA requirements. The site is centrally located near 3 schools, is well-served by public transit, and will ultimately be a point of pride for the town.

Ms. Zemchow asked what residents could expect in terms of construction time and noise. Ms. Roznowski explained that the dock would be pre-fabricated offsite; on-site construction should last approximately three weeks, and would comply with town's Noise Ordinance.

Mayor Condon closed the public hearing.

MOTION: Moved by Cock, seconded by Lappert, and carried unanimously by those present,

To adopt Resolution No. 3637, Approving the Final Initial Study and Mitigated Negative Declaration and Adopting the Mitigation Monitoring & Reporting Plan (Environmental Assessment 09-005) for Zoning Ordinance Amendment No. 09-004 to Rezone the Property from R-2 to POS at 190 Lucky Drive.

MOTION: Moved by Lappert, seconded by Ravasio, and carried unanimously by those present,

To introduce Ordinance No. 918 to Rezone the Higgins Landing Park from R-2 (Low Density Multiple Dwelling District) to POS (Parks, Open Space, and Natural Habitat) at 190 Lucky Drive, by title only, waiving further reading.

Mayor Condon initiated a round of applause for Mr. Chin and thanked staff, the Planning Commission, Kevin Jensen, and Penny Wells.

5. Discussion and Possible Action Concerning Introduction of a Town Wide Zoning Ordinance Amendment Amending Section 10.08.030(4(G) to the Town Municipal Code Which Would Allow and Alternative Affordable Housing In-Lieu Fee for Any Condominium Conversion Project Within Town Limits

Mayor Condon recused herself from the item, stating that while she did not believe there to be a conflict of interest, there is concern about the potential perception of conflict.

Interim Planning Director Dan Bell presented the staff report, stating that on February 2, 2010 the Town Council approved a conditional use permit for the condominium conversion of 126 units at Madera Vista Apartments. That same hearing included a proposed Zoning Ordinance amendment to allow for affordable housing in-lieu fees which would affect the entire town. At that time, the Council requested staff to return with more information regarding implementation, appropriate fees, and the actual costs associated with development of affordable housing.

Mr. Bell reviewed the current ordinance which calls for 25% of converted units to be made available to low and moderate income families. He noted that new construction development provides an opportunity for in-lieu fees, provided the development is for 1 to 9 units. The fees set forth in the

ordinance assume the cost of constructing an affordable unit and what a person of low-income could afford to pay.

At the February 2nd hearing, the applicant proposed a similar fee structure, based on the assumption that 2003 construction costs of \$125 per square foot increased the same 5.9% that affordability did. Applied to the Madera Vista project, this formula would provide a little over \$1.5 million in fees. At that time, the Council recommended increasing the cost per square foot to \$160 for a total fee of approximately \$1.8 million but the concerns remained as to whether this was sufficient in terms of constructing affordable housing.

Mr. Bell stated that Corte Madera's 25% inclusionary requirement is the highest in the county, with most jurisdictions requiring 10%-20%. He noted that no affordable units have resulted from either condominium conversions or market rate multi-family projects, and the efficacy of this requirement has not been tested. Staff determined that in-lieu fees are not typically structured to cover the full cost gap between what a unit costs to construct and what a person of moderate income can afford to pay. Staff also determined that Marin County conducted an analysis of in-lieu fees which determined an average affordability gap of approximately \$386,000 per unit. It was felt that a fee of that amount would likely break any new development, and the County fee was reduced to \$232,200. This formula applied to Madera Vista would yield approximately \$3.1 million in fees.

Mr. Bell referred to a letter from EAH, developers of the San Clemente project, which suggests that their support of the concept of these fees based on their ability to leverage monies for the actual development of a project. He reviewed the language of the proposed amendment, noting that it would allow a pro-rated fee for conversion projects of 1-9 units and would also provide the applicant with the option of selecting in-lieu fees, affordable units, or a combination of the two.

Councilmember Ravasio asked if the proposed amendment would mean that in-lieu fees are driven by the square footage of the converted units rather than the total number of units. Mr. Bell clarified that the formula's square footage is fixed.

Councilmember Furst noted that the ordinance does not provide the town with the option to require the actual units over the in-lieu fee. Mr. Bell confirmed it is the applicant's choice.

Councilmember Furst said that while this site is not ideal for affordable housing development and is therefore suited for an in-lieu fee, the same may not be true for future conversions. She cautioned that leaving this decision to the applicant could be detrimental. Mr. Bell said either option would benefit the town, as evidenced by the letter from EAH. Councilmember Lappert concurred.

Referring to Section 18.08.030(4)(G)(iii)(4), Vice-Mayor Cock noted it provides description of 1 to 9 and less than 9, but not more than 9. Ms. Nebb concurred that this section could benefit from slight amendment and provided the following:

“For condominium conversion projects from one to nine total units, the in-lieu fee ~~for nine~~

total units shall be the in-lieu fee for one affordable unit shall be calculated as follows: one affordable unit for every nine units converted. The fractional in-lieu fee for each unit in the project from one to eight units is eleven percent of the fee ~~for~~ applicable to nine units.”

The Vice-Mayor opened the public hearing.

Pat Pagnillo, 276 Sausalito Street, said he had several opportunities to review this project as part of the Planning Commission and turned it down for the following reasons: it did not meet ordinance requirements; it was not in the best interest of the town to remove existing rental stock; and the identification of significant safety issues. He estimated that \$3 million in fees would cover only 8 of the 31 units the project is required to provide. He said the applicant has indicated a sale price of \$600 per square foot and that Mr. Pendoley informed him that San Clemente costs \$400 per square foot to build. This is significantly more than the \$160 assumption in the proposed formula. The basis is incorrect and does not provide anything near what is needed to construct affordable housing.

Jim Robinson said the town's history of affordable housing projects is commendable and should be lauded. He asked the Council to consider what means would achieve the maximum impact in terms of providing affordable work-force housing.

Greg Lyons, W.E. Lyons Construction Company, said he was the original contractor for the Madera Vista Building 7 project and has also done work for EAH. He generally supports the conversion as well as the in-lieu fee, noting that the construction of market-rate and affordable housing does not generally mix well. He and some of his subcontractors are still owed approximately \$1.5 million for the Building 7 project and asked that, before the any in-lieu fees are accepted, the Council ask the applicant to clear the property of past debt.

Mary Murphy, Gibson Dunn, said she and her client are sympathetic with the Mr. Lyon's point of view and appreciates his presence and support. She acknowledged the material and mechanic liens associated with the property, noted the applicant disclosed the lender's failure to disperse funds as promised, and assured the Council all liens would be cleared prior to the sale of any condominiums. She directed the Council to the letter from EAH, which provides compelling points regarding the policy reasons behind permitting in-lieu fees to be paid and clearly outlines the degree to which sums of money can be leveraged to produce real property. She said the intent of an inclusionary housing ordinance is to produce affordable housing and yet from 2003 to 2006, during one of the greatest housing boons in history, no inclusionary units are built. She said that information would suggest that even under the ripest conditions for production, the amounts provided by those requirements made it infeasible. She said the applicant has proposed an amount which she believes is feasible, and respectfully requested that the Council vote to pass the ordinance.

Vice-Mayor Cock closed the public hearing.

Councilmember Lappert said this item is not only a consideration of ways to provide for affordable housing, but also the means to provide the developer to move forward with a failed project. He said

positive action on this ordinance would help to address a soon to be derelict property as well as satisfy the needs of EAH.

Councilmember Ravasio concurred. He said he read the letter from EAH; he has worked with them in the past; and that they can, in fact, leverage funds into something much larger. He was deeply sympathetic that Mr. Lyons and other contractors have not been paid, but that the matter is unfortunately outside the Council's jurisdiction. Ms. Nebb confirmed it is a private civil matter between two parties and not subject to the town's control.

Councilmember Ravasio said that all evidence indicates that allowing the applicant to move forward with the conversion project will secure the financing and funding needed and contractors will get paid.

Councilmember Furst said she could support the recommendation but urged the Council to take another look at construction costs provided by EAH, calculating a cost of \$230 per square foot at San Clemente. She said that while there are occasionally grants and matching funds that can be secured, it is unlikely the full cost of construction will be recovered. She said staff has created a solid formula that she could stand behind. Ms. Murphy noted that San Clemente costs include the cost of land, which can often be secured without actual cost to the town.

Councilmember Ravasio concurred with Ms. Murphy, stating that Larkspur's Niven property project resulted in a land dedication in exchange for development rights. He suggested that if negotiations move forward with the WinCup property, the town may be able to secure a donation of land to be used for affordable housing.

Vice-Mayor Cock said she could support the amendment, albeit reluctantly. She said there has been little discussion on the fact that these units will be expensive, particularly when the cost of in-lieu fees is added in. She estimated a sales price of roughly \$700,000 per unit, which is well beyond affordability for middle-class families, and she would be reluctant to push these fees any higher for that reason. She doubted whether the finding that the units will be less expensive than most single family homes in town could be met. She concurred with comments regarding leveraging of funds and asked that future staff reports provide more independently obtained information rather than relying on that provided by interested parties.

MOTION: Moved by Ravasio, seconded by Lappert, and carried unanimously by those present,

To introduce Ordinance No. 919 Amending Section 10.08.030(4)(G) to the Town Municipal Code Which Would Allow and Alternative Affordable Housing In-Lieu Fee for Any Condominium Conversion Project Within Town Limits, by title only, waiving further reading, as amended.

Mayor Condon returned to the dais.

BUSINESS ITEMS

6. Approve Minutes of March 2, 2010

Councilmember Cock requested the following correction:

- Page 7, Line 22 – “Pat Pagneillo...”

ADJOURNMENT

The meeting was adjourned at 9:40 p.m. to the next regular meeting on April 6, 2010.