

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 17, 2009 at 7:30 p.m.

PRESENT: Mayor Dupar  
Councilmembers Cock, Condon, Lappert, Ravasio  
Town Manager David Bracken  
Town Clerk/Assistant to the Town Manager Christine Green  
Twin Cities Police Chief Phil Green  
Planning Director/Assistant Town Manager Robert Pendoley  
Assistant Town Attorney Veronica Nebb  
Director of Administrative Services George Warman

CLOSED SESSION

Closed Session Pursuant to Government Code Section 54957.6

CONFERENCE WITH LABOR NEGOTIATOR

Agency negotiator: Glenn Berkheimer, IEDA  
Town Manager, Town of Corte Madera  
Employee organization: SEIU Local 1021, Miscellaneous Employees

OPEN SESSION

Salute to the Flag

OPEN TIME FOR PUBLIC DISCUSSION

There was nothing to report as a result of the closed session.

Barbara Salzman stated that the goals of the policies contained within the proposed General Plan do not match the plan's definition of sustainability in terms of retaining and supporting protection of natural resources in a way such as they will sustain life, the proposed implementation measures do not support sustainability, are vague, allow for infill, and will withdraw some of the protections currently in place. She asked the Council to carefully consider these issues during its review.

2. COUNCIL AND TOWN MANAGER REPORTS

Councilmember Condon:

- She reported that LAFCO's current budget situation has resulted in the elimination of one position and relocation to less expensive offices. It was hoped that these concessions would allow a reduction in membership fees but a decrease in applications may not allow for it. LAFCO approved the annexation of 1.95 acres in Tiburon to Sanitary District #2 which will help to consolidate its service area.
- The sewer agency of southern Marin has been assessed \$1.6 million for their sewage spill

which may foreshadow another push for consolidation of sanitary districts. While consolidation sounds more efficient in principal, Corte Madera could find its strong infrastructure compromised by the diversion of funds to address deferred maintenance in surrounding districts.

Councilmember Ravasio provided the following report:

- The Larkspur School District reported budget cuts of about \$300,000. No lay-offs of permanent employees are expected, but there may be furloughs of temporary positions. Discussion is also focused on the number of kindergarten students next year and renewal of the parcel tax on next year's ballot;
- The Marin Telecommunications Agency met and discussed the \$7.2 billion in stimulus funds that has been allocated for broadband projects. They are currently grappling with understanding the requirements and identification of suitable projects; the town has been asked to submit any projects already on the books;
- He attended the MCCMC Legislative Committee meeting where they discussed the 6 upcoming ballot measures whose failures could result in a \$7 to \$10 million underfunding of the State budget. The Council has been asked for direction on Bills AB155, AB1284, and ACA9.

The Assistant Town Attorney advised the Council that to the extent this item will result in action on the part of the Council it will need to be placed on the agenda. If there is a need to take action immediately relative to this issue, a 2/3 majority vote of the Council could add the item to this agenda.

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

To add direction on AB155, AB1284, and ACA9 to the action item agenda with the finding that there was a need to take action subsequent to the posting of this agenda and there is a need to take action immediately.

Mayor Dupar:

- Sanitary District #2 continues discussion on the waste energy proposal and will conduct a tour of a similar program at the east bay municipal facility in April. Councilmembers are invited to attend.

Councilmember Lappert:

- The Disaster Council is preparing to circulate the final draft of the Emergency Operations Procedure Manual on April 7, 2009. He commended the Director of Emergency Services for organizing the information into a comprehensive document;
- Get Ready and CERT programs are a continued success for the community;
- The Twin Cities Police Council has established a 13-person oversight committee to review expenditures of bond proceeds;
- He suggested assigning a value to all of Sanitary District #2's implemented improvements to

facilitate reimbursement should district consolidation occur.

The Town Manager acknowledged concerns with district consolidation and assured the Council that staff would not make a recommendation unless there is an expected benefit to the community.

### CONSENT CALENDAR

- 3a. Approved Warrant and Payroll for the Period February 25, 2009, through March 10, 2009, Warrant Check Numbers 122576 through 122723 and Payroll Check Numbers 2803 Through 2816, Payroll Direct Deposit Numbers 13340 through 13425, and Payroll Wire Transfer Numbers 857 through 863 and Wire-Twin Cities Police Monthly Payment
- 3b. Adopted Resolution No. 3589 Approving a Lease/Purchase Agreement with Zions First National Bank, Salt Lake City, Utah, for the Town of Corte Madera Public Works Department Corporation Yard, 81 Lucky Drive, Corte Madera, California (Required for Land Acquisition by Twin Cities Police Authority for Police Facility Site) and Approved a Supplemental Appropriation in the Amount of \$968,000
- 3c. Approved Investment Transactions for the Month of February, 2009
- 3d. Adopted Resolution No. 3590 of Local Support for the American Recovery and Reinvestment Act of 2009 (ARRA) Funding
- 3e. Approved Property Management Agreement for the Park Madera Center

Harry Schriebman asked for clarification on Item 3e as it pertains to compensation of the Property Manager and gross revenues, including operating expense reimbursements. The Director of Administrative Services explained that gross revenues include rent and all common area maintenance (CAM) charges. The Assistant Town Attorney added that it is common for the management fee to include a percentage of CAM fees as the manager is responsible for overseeing any activity and collecting any fees associated with that maintenance. She noted that 4.25% is paid in commissions on rent receipts which include those CAM fees.

Mr. Schriebman expressed concern that the property manager could potentially collect a hefty sum in commissions on an expensive improvement project. Councilmember Lappert clarified that capital improvements are not included in rent and CAM fees.

Councilmember Cock noted that Section 8.02 does provide for compensation for the manager should they oversee any capital improvements.

Mr. Schriebman asked for clarification on Section 8.04 of the agreement which states that extensive negotiations will result in compensation to the manager at a rate not to exceed 2.5%. The Town Manager explained that the compensation rate applied to rent revenues. Mr. Schriebman asked that the agreement clearly state this.

George Topor asked for a definition of “significant time” and “extensive negotiation”; what commissions have been for the last two years; what commissions would be under the proposed schedule; and what future cost projections are. He said that he understands the agreement to provide for a flat rate compensation of \$400 for standard, non-negotiated lease extensions.

The Town Manager explained that the previous agreement allotted a significantly higher fee of 2% of total lease rents for all negotiations. He acknowledged that extensive negotiation could result in a much higher fee than \$400, but reiterated that all lease renewals were subject to a percentage based fee under the old agreement, and on the whole, this new agreement should save the town a substantial amount.

Councilmember Lappert asked to pull Item 3b from the Consent Calendar for further discussion.

MOTION: Moved by Condon, seconded by Ravasio, and carried unanimously,

To approve Consent Calendar Items 3a, 3c, 3d, and 3e, with the modifications noted to Item 3e.

Mayor Lappert voiced concern that Larkspur has yet to provide a deed of trust for the property associated with Item 3b. The Town Manager shared his concerns and explained that an incorrect description of the property and resulting lot line adjustments created issues with the County Recorder’s office. As soon as it is resubmitted, a deed will be recorded transferring title to the Twin Cities Police Authority. He noted that in the interim, the town will be collecting interest on the \$945,000 already paid to Larkspur for the property.

Mayor Lappert confirmed that the money can be returned to the town in the event that something unforeseen prevents the deed transfer.

Councilmember Cock questioned and confirmed with the Town Manager that it would not be appropriate to condition adoption of the resolution on the deed transfer, as the funds have already been paid to Larkspur.

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

To approve Consent Calendar Item 3b.

#### PUBLIC HEARING

4. Zoning Ordinance Amendment No. 09-001 – Discussion and Possible Action Concerning Introduction of an Ordinance Amending Sections 18.08.220(e) and 18.24.080 of Title 18 of the Corte Madera Municipal Code to Allow Additional Lot Coverage for Uncovered Decks on Properties Located within the R-1 District and the Special Flood Hazard Area (Flood Zone) and Where the House Has Been Raised Above the Base Flood Elevation

The Planning Director reviewed the proposed amendments to the town's zoning ordinance that would allow an additional 2% of lot coverage for first level decks associated with homes located within the R-1 Residential District and the Flood Zone that have been raised above the base flood elevation. Presently, any uncovered deck greater than 36" above grade is counted toward allowable lot coverage. The process of raising a home above the flood base elevation raises first floor levels 3' to 5' above grade and impacts the ability of homeowners to rebuild existing decks without a "step-down" and without affecting lot coverage. He noted that the Planning Commission identified potential privacy impacts on adjacent properties caused by larger decks raised approximately 4' above grade; the Commission accordingly directed staff to revise the amendment to subject decks 3' or greater above ground level. All such decks would be subject to a sliding scale coverage standard and continue to be subject to setback requirements and visual buffering allowances.

Mayor Dupar confirmed that the amendment applies only to properties located within the flood plain. He opened the public hearing.

Steve Wheeler, Harbor Drive, noted that decks at any height other than floor level are hazardous. He supported the staff report and Planning Commission ruling and asked the Town Council to concur.

The public hearing was closed.

Councilmember Lappert voiced his support for anything that removes a hindrance to raising homes out of the flood plain.

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

To introduce the ordinance Number 909 amending Sections 18.08.220(e) and 18.24.080 of Title 18 of the Corte Madera Municipal Code to Allow Additional Lot Coverage for Uncovered Decks on Properties Located within the R-1 District and the Special Flood Hazard Area (Flood Zone) and Where the House Has Been Raised Above the Base Flood Elevation

##### 5. Discussion and Direction to Staff Concerning the Draft Updated General Plan

The Planning Director provided a review of previous hearings on the draft updated General Plan. The final hearing is scheduled for April 7 with the possibility for postponement to April 21<sup>st</sup>; it will focus on requested changes; and offer responses to all comments received to date. Tonight's presentation relates to Chapters 5, 6, 7, and 8 of the General Plan. He again recommended that the Council review and receive public comment on one chapter at a time.

Chapter 5: Community Design: This chapter contains an optional element that the Council directed staff to include in order to propose goals, policies, and implementation programs that address residential, non-residential, and infrastructure design issues. Broad policies identified include the intention to develop design guidelines, natural amenity driven community design, and protection of the night sky. This chapter also contains more detailed content to be further developed through the

proposed Design Manual that would provide more specific guidance for design decisions.

Councilmember Lappert spoke on the “tunnel effect,” noted that some homes have no back yard but house children, and asked if the same design principles apply to hedges. Mr. Pendoley confirmed, and added that the zoning ordinance currently limits hedges to 4’ in height with the possibility for exceptions, and noted that front yard fencing and shrubbery setback requirements are standard.

Councilmember Lappert acknowledged the intent of the policies’ long range views but cautioned that they may create greater long-range problems. Mr. Pendoley explained that the purpose of identifying these goals and policies through design guidelines is to allow for greater flexibility.

Councilmember Condon requested that Chapter 5 as it pertains to view preservation on page 5-5 be amended as follows:

“This issue ~~should~~ **would** be regulated with standards that allow for a reasonable amount of development while minimizing significant negative impacts to neighbor’s views.”

Councilmember Condon questioned the provision allowing for development of scenic corridors, stating that she believed the identified areas to already be considered such. Mr. Pendoley explained that there is not yet any specific policy pertaining to this. Councilmember Condon asked for more definitive language by replacing “could” with “will.”

Councilmember Cock questioned Policy CD-2.5 which places a greater emphasis on long-range views, cited controversial hearings regarding short-range views, and suggested focusing on a balance between the two.

Councilmember Condon argued that failure to state a preference could result in decreased consideration for preservation of long-range views simply because a home also enjoys short-range views.

Mr. Pendoley explained that the policy simply states a preference, agreed that the direction could be changed to promote balance, and cautioned that balance may be more difficult to achieve.

Councilmember Lappert said that one man’s long-range view is another man’s short-range nightmare and expressed concern that someone could build a short-range behemoth so long as a view of Mt. Tamalpais is retained.

Mayor Dupar asked if this policy accounts for primary versus secondary views. Mr. Pendoley said no, and noted that changing the emphasis to balance would provide for greater consideration of principal living spaces.

Councilmember Cock stressed her desire to steer away from a preference for long versus short-range views. The Assistant Town Attorney explained that this is a basic policy statement; the details of that will be developed as a part of the design guidelines. She cautioned against creating so much

detail and direction in the General Plan that it narrows the ability to deal with issues in the design guidelines. She suggested adopting a slightly more general language at this juncture to allow for greater flexibility down the road with the development of the design guidelines.

Mr. Pendoley agreed to develop language that strikes a greater notion of balance and discretion.

Mayor Dupar noted that the historical definition of active use areas has always referred to interior space, and he asked if these policies adequately address that. Mr. Pendoley said that there are times when a deck view is significant, and he suggested using language that says, active use areas will be defined in the design guidelines.

Mayor Dupar asked how these policies address issues as those associated with Madera Garden homes. He explained these homes were originally slab built and any remodel work requires raising the floor level 4', which sacrifices interior height. Mr. Pendoley said that the height limit throughout town is 30'; while staff has certainly negotiated the height of roofs down for the sake of appearance, height limit compliance has never been an issue even with second story additions.

Mayor Dupar opened the public comment period.

Chuck Davis, Macerich Company, discussed non-residential design goals and policies. He asked the Council to consider how to incorporate commercial design needs with community's needs while still allowing for commercial identity. He also asked that the goodwill extended by the Planning Commission carry through to the development of the design guidelines, especially as they apply to upcoming work at The Village.

Jim Helfridge, 201 Tamal Vista, referred to page 2-20 and the Mixed-Use Gateway FAR of 0.34; his property is currently built out to 0.48 FAR and would then qualify under non-conforming use. He expressed support for staff and the town's vision for the General Plan and asked to consider amending the FAR to the 0.48 that is currently on the property, as having a non-conforming structure can be very detrimental in terms of financing and insurance.

Councilmember Lappert supported this request and Mayor Dupar directed to staff to amend the plan accordingly.

Chapter 6: Parks and Recreation: This chapter, also optional and included in the draft at the Council's direction, codifies policies and programs that have long been in effect for enhancing and maintaining the town's recreation facilities, programs, and open space areas. Mr. Pendoley reviewed the key elements of this chapter which include an updated Park Impact Fee and development and implementation of program and facilities master plans.

Councilmember Lappert said it was his impression that a parks facility master plan had recently been implemented. Mr. Pendoley explained that it was only for the one facility while the draft General Plan proposes one to address the entire town; further development is at the discretion of the Council.

Mayor Dupar asked if land banking is addressed. Mr. Pendoley acknowledged that increased park space is a universal desire; that is provided for in these policies, and advised the Council that they may want to consider future program needs to identify desirable properties for prospective acquisition.

Mayor Dupar opened the public comment period and seeing there was none, closed the public comment period.

Chapter 7: Flood Plain Management: This chapter consolidates all of the town's basic flood control policies, which deal with the town's most urgent natural safety element, into a single element of the General Plan.

Chapter 8: Public Safety and Hazards: This chapter satisfies the Government Code requirement to include both a Safety Element and Noise Element in the General Plan.

Mr. Pendoley explained that both chapters were largely drafted by the Director of Emergency Services and Town Engineer and essentially codifies long-standing safety programs within the town. He noted an error in PSH-3.1., and explained that it has been revised to simply say the town would work on improving egress issues in the Christmas Tree Hill area. He also noted that a policy has been added to allow the town to respond to aircraft noise issues.

Mayor Dupar asked how much control the town actually has over noise. Mr. Pendoley said quite a bit, especially by way of noise studies and mitigation measures as they apply to development along Highway 101.

Mayor Dupar asked how this relates to air flight paths over town. Mr. Pendoley explained that the policy simply states that it is a concern the town will attempt to deal with. He added that the town has significantly greater discretion over private helicopter landings.

Councilmember Cock referred to Implementation Program F-1.1.a: Develop a comprehensive Storm Drainage Master Plan. She noted that one has already been developed and asked that the language be corrected to reflect that.

Councilmember Cock questioned whether this also addresses levies and tidal rise or if it was limited to storm drainage. Mr. Pendoley said that it does contain some contingency elevations on the dikes to deal with sea level rise, and the Town Manager confirmed that it does identify and account for sea level rise.

Councilmember Cock referred to Implementation Program F-2.2.a: Drainage Improvements. She questioned if the language would allow the town to request that commercial developers contribute toward storm drainage improvements beyond their property. The Mayor said there is already a policy in place and was used at Madera del Presidio. Mr. Bracken clarified that the policy exercised

in this situation required collection of a reimbursement fee. This policy simply emphasizes what regulatory agencies currently require. Mr. Pendoley added that while there is no square footage fee, certain circumstances can require mitigation in the form of storm drainage improvements if environmental review finds that construction would result in adverse effects to drainage.

Councilmember Cock cited the current funding needs for storm drainage and flood related work and stressed the importance of creating additional funding means if additional development is to be allowed. She suggested that language allowing for such be added to the policy. The Assistant Town Attorney stated that it would be acceptable to do so only to the extent that a new development or increase in an existing development adds to an existing problem; the town cannot require correction of a problem that already exists in full.

Councilmember Lappert asked if Implementation Program F-1.1.d: BCDC Shoreline Studies ties the town into FEMA. Mr. Pendoley explained that it proposes collaboration with BCDC; it is expected that BCDC will be one of the lead agencies in future planning efforts to deal with sea level rise.

Councilmember Lappert asked if the storm drainage tax is expected to fund this and Mr. Pendoley confirmed this is the recommendation.

Mayor Dupar opened the public comment period.

Barbara Salzman stressed the importance of maintaining tidal marshes for flood protection contributions through water absorption and attenuation of wave energy. She encouraged the Council to work with BCDC and noted an upcoming erosion study co-funded by the EPA. She asked what assurance there is that the wetlands studies proposed in the draft updated General Plan will be done. The Planning Director explained that the General Plan guidelines require a timeline for each element.

Julia Chitwood, 489 Montecito, registered her strong support for the 100' wetlands setback suggested by many residents and also recommended specific inclusion of smaller wetland areas like Edgewater Lagoon, Blackwater Lagoon, and San Clemente Creek. She opposed the Army Corps of Engineers' definition of wetlands and asked the Town Council to either retain the current definition or adopt one drafted by Friends of Corte Madera Creek, which reads as follows:

“Lands where the water table is at, near, or above the land surface long enough to promote formation of hydric soils or to support the growth of hydrophytes. It shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent or drastic fluctuations of surface water levels, wave action, water flow, and high concentrations of salt or other substance in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year at their location within or adjacent to vegetative wetlands or deep water bay habitats.”

Sandy Newman, 477 Montecito, echoed Ms. Chitwood's comments and asked the Town Council to be thoughtful in terms of the considerations just described.

Councilmember Lappert said that sea level rise will continue to push wetlands further inland and questioned how this will be dealt with. Mr. Pendoley said that the next ten years will give way to the beginning of a series of regional issues to address the matter.

Councilmember Lappert asked if there are tools to track sea level rise on a regular short-term basis. The Town Manager said there are a number of websites demonstrating that trend and noted that recorded tides thus far are significantly less than what is suggested in the media.

Mr. Pendoley noted the direction received from the Town Council this evening and agreed to return to the Council with revisions and responses to comments on April 7 or April 21, if time does not allow for the former.

7. Discussion of and Possible Direction to MCCMC on AB155, AB1284, and ACA9

Councilmember Ravasio reviewed requests for direction from the MCCMC Legislative Committee on three upcoming bills. The Committee is asking for a formal resolution opposing AB155 which requires that local public entities receive approval from the agency bankruptcy committee prior to municipal bankruptcy proceedings.

AB1284 would provide notice to cities and counties on licensed applications for residential drug and alcohol treatment facilities if those facilities are to be located within 300' of an existing facility licensed to the same owner or manager. The Assistant Town Attorney confirmed that this is a very real concern. She shared a similar experience in the City of Martinez and cautioned that the city had a great deal of difficulty in addressing the impacts created by the campus-like nature of these facilities.

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

To forward the Town Council's support of AB1284 to the MCCMC Legislative Committee.

ACA 9, also known as the Jared Huffman Bill, would amend the California Constitution to lower the voter threshold on local tax measures from 2/3 to 55% of the total vote.

Mayor Dupar expressed strong opposition to this bill, stating that there are already too many tax issues before the voters and that ultimately, the legislature would seek to assume the revenues resulting from this.

Councilmember Cock concurred with the Mayor regarding the importance of limiting taxes, but argued that the State may continue budget cutbacks and assumption of local revenue streams which

would necessitate new tax revenues to support local governments.

Mayor Dupar maintained that the legislature always targets the local governments for funding regardless of voter intent. Councilmembers Lappert, Condon, and Ravasio concurred.

MOTION: Moved by Condon, seconded by Dupar, and carried unanimously by those present,  
To forward the Town Council's opposition of ACA 9 to the MCCMC Legislative Committee.

6. Approve Minutes of March 3, 2009

MOTION: Moved by Lappert, seconded by Condon, and carried unanimously,  
To approve Minutes of March 3, 2009, as drafted.

ADJOURNMENT

The meeting was adjourned at 9:13 p.m. to the next regular meeting on April 7, 2009.