

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

In the Town Hall of the Town of Corte Madera, on May 4, 2010 at 7:03 p.m.

PRESENT: Mayor Condon  
Councilmembers Cock, Furst, Ravasio  
  
Town Manager David Bracken  
Town Attorney Jeff Walter  
Director of Emergency Services Roger Sprehn

COMMISSIONERS PRESENT

Planning Commissioner Richard Esteb  
Planning Commissioner Pat Pagnillo

OPEN SESSION

Salute to the Flag

Mayor Condon noted Lindsay Bedard of Redwood High School was in the audience.

PRESENTATION

Workshop with the Town Attorney to Discuss the Brown Act and Conflict of Interest Regulations –  
Town Board Members, Committee Members, and Commissioners will also be in Attendance

The Town Attorney stated that the purpose of the Brown Act is to ensure that public business is conducted publicly, that the public receives advance notice of items to be discussed in public, and that the public has the right to comment on those items.

He reviewed the Brown Act's provisions for meetings of elected bodies, which include the Council and its designated commissions and committees, and which attempts to control the development of a collective concurrence amongst a majority of the body. A group of officials less than the body's quorum can meet without violating these provisions, provided the actions are not then discussed with other members. This would constitute a serial meeting, which is prohibited.

He reviewed exceptions to the Brown Act, including ad hoc committees, the majority of a legislative body attending and speaking at another body's publicly noticed meeting, and a member's ability to speak with individual constituents or to attend meetings that are organized, paid for, and publicly noticed by other organizations. He warned that there are certain nuances to these exceptions and cautioned them against accidentally creating a consensus that would be otherwise prohibited by the Brown Act.

Mr. Walter stated that emails have also become the subject of discussions relative to the Brown Act and Public Records Act and there is debate on whether those sent from and received by personal computers are subject to disclosure. He advised being cognizant of what information is exchanged electronically and to avoid anything that would give the appearance of the development of collective concurrence as to action to be taken on an item. This would include any exchange of facts or substantive discussions that advance or clarify a member's understanding of an issue.

Councilmember Cock asked if Mr. Walter is aware of any instances where emails from home computers have been produced. Mr. Walter cited one court of appeals decision within the state involving a Central Valley paper's public records request for Councilmembers' communications with Lawrence Livermore National Laboratory, primarily emanating from emails sent from one Councilmember's personal computer. The trial court ruled that the definition of Brown Act did not include emails coming from a person's home computer. The court of appeals ultimately did not rule on the case as the appellant's attorney failed to name the specific Councilmember when filing the appeal. They did, however, intimate that if the computer was purchased with public funds, it may not be a personal computer.

Councilmember Cock asked if the Council has any record-keeping responsibilities relative to email communications. Mr. Walter said there are state laws that require certain records to be maintained but there is an unanswered question as to whether that applies to emails contained on a Councilmember's personal computer. He recommended they engage in a regular deletion process.

Harry Schriebman provided an example where a Councilmember attends a Planning Commission meeting and engages in a discussion on the merits of a project. He asked if that Councilmember would then have to recuse him/herself when the item comes before the Council. Mr. Walter said the more common situation is one where a member of the Planning Commission attends a Council meeting to further express their views on a matter already heard at the Commission level. In the situation where the matter is remanded back to the Planning Commission for further review, there may be a case for bias and prejudice. The same may be true for Mr. Schriebman's example, depending on the nature of the comments.

Mr. Walter reviewed the potential for conflict of interest, which includes bias, economic interests, and common law interests in which the personal feelings of an elected official would prevent them from advancing the interests of the community over their own. Among these are specific provisions prohibiting an official from being offered and accepting free transportation from a public authority; having an interest in a contract between an agency, the town, and oneself; owning or leasing property or business within 500 feet of a project; and receiving income from parties applying to the town. In the event a conflict is determined, the official is prohibited from any act of substance regarding the project such as speaking with staff or other officials. The official must publicly articulate the conflict, recuse themselves, step down from the dais, and remove themselves from the room. The official is permitted to speak to the Council as a member of the public, but only as it relates to the personal interest that created the conflict. He reviewed possible exceptions to these

conflicts and recommended that any official wishing to rebut the assumption of conflict solicit the advice of the Fair Political Practices Commission.

Planning Commissioner Richard Esteb requested further clarification on a recused official's ability to remain at the meeting as a member of the public. Mr. Esteb said an official may stay at the meeting provided they intend to and in fact do testify during the public hearing on the project's impacts on their particular situation.

Commissioner Esteb asked, as an architect with a project before the Planning Commission, if he should participate in the meeting until the project is heard and then return afterwards. Mr. Walter said there is a specific provision dealing with architects, but he could not confirm whether it applies to the Planning Commission and agreed to look further into the matter.

Councilmember Furst inquired after any regulations that govern how much of change officials can make to draft minutes. Mr. Walter said any changes can be made with the support of the entire Council.

Mayor Condon thanked Mr. Walter for the presentation and said she appreciates the years of advice he has given the Council.

Mr. Walter noted that AB 1234 requires public officials receiving money from the town to attend a one-hour ethics course within one year of being elected, and then every two years after.

Councilmember Cock questioned and confirmed with Mr. Walter that tonight's presentation did not satisfy that requirement.

Mayor Condon called a brief break and thereafter reconvened the regular meeting.

#### OPEN TIME FOR PUBLIC DISCUSSION

Jim Thomas, Summit Drive, reported that the home at 57 Summit Drive appears to be undergoing extensive renovation and all waste material is being thrown over the side of Summit and blocking the Golden Stairs. He said this situation is both unsightly and dangerous. The Director of Emergency Services said he and the building official were on site yesterday. The debris is a clear fire hazard, the property owner has been performing construction without a permit, and appropriate action will be taken.

Dr. Bob Bundy, Golden Hind Passage, cited a recent editorial piece by the former Mayor of San Anselmo that called for consideration of consolidating fire services within the Ross Valley. Mr. Bundy followed up with a letter to the Editor supporting that view and including examination of paramedic services; said many smaller agencies are well meaning but provincial in terms of not looking at the greater picture of the community's needs; thus forced Corte Madera to create its own agency. He said Chief Sprehn efficiently runs the town's paramedic authority but that residents are

paying more for services than they should. In addition, the paramedic authority provides benefit to the rest of the Ross Valley, particularly Larkspur and Greenbrae. He said the expense of personnel, training, equipment, and technology could be much more cost effective in a consolidated service and recommended Chief Sprehn as a prime candidate for Chief of that new service.

Mayor Condon said Chief Sprehn has looked into alternatives like this; explained that one of the fears with consolidation is that in balancing the level of service with that offered in other communities, the town may lose some service value. She concurred with Mr. Bundy that Chief Sprehn would make a capable chief and to continue investigating the options for something that is both practical and maintains Corte Madera's level of service.

Planning Commissioner Pat Pagnillo, Sausalito Street, said one of the primary issues with consolidation is that each entity wants to remain in control. He said this change would never be effected until it is directed by a higher authority. The issue is similar to that of school districts here and he doubted any action would be taken until a true budget crisis is at hand.

Mayor Condon said her primary concern is that we not diminish the town's services in order to satisfy what someone else may see as the big picture. She said she believed Chief Sprehn to be proactive in studying the alternatives that would meet the goals identified by Mr. Bundy without diminishing service to the town.

Harry Schriebman concurred with Mr. Bundy. He said he the town may not lose anything at all in doing so. He does not trust the figures already produced on consolidating the two fire districts, and he would like to see a fair and objective look at what it would take.

Michael Sapuppo, Chickasaw Court, said he represents a number of citizens concerned by the April 20, 2010 methamphetamine bust at Town Center. He understands the three suspects to be residents of San Clemente Place; that two were held pending clarification of their immigration status. He said methamphetamines are a serious matter that goes beyond recreational drug use and present a clear danger to children in this neighborhood; asked if the suspects have been evicted from San Clemente Place and if not, why. He asked that a representative of the Council to contact the property owner to determine, if anything has been done and what steps will be taken to prevent this from occurring in the future. He provided the Council with a letter from another concerned citizen.

The Town Manager deferred to the Mayor but did report that he and Chief Green have requested meetings with EAH (Ecumenical Association of Housing) and that they begin eviction proceedings on certain parties.

Mayor Condon said one of the conditions within the site's development agreement was that there would be standards and guidelines for the residents who live there. Those were put in place and do include requirements relative to criminal activity. She said that Mr. Bracken and Chief Green have strongly reminded EAH of this agreement and their need to comply. She asked Mr. Sapuppo to reassure his neighbors and to contact the Town Manager for future updates on the matter.

2. COUNCIL AND TOWN MANAGER REPORTS

- Town Manager Report

The Town Manager provided the following report:

- The Twin Cities Police Council met last Friday to award the contract for the new police facility. Due to irregularities, Council rejected the lowest bid and awarded the contract to Jeff Luchetti Construction. Groundbreaking is expected to begin in the next several weeks.

- Council Reports

Councilmember Furst provided the following report:

- The Reed School Board rendered a decision to raise the price of bus passes for Reed, Bel Air, and Del Mar students. A number of impacted east Corte Madera families have contacted her regarding next year's \$772 pass. The pass is very expensive, particularly for those families with multiple children. Many have contacted school board members and the superintendent, but there does not appear to be any relief. In addition to requiring payment up front, the board has requested that passes go on sale about two and a half weeks earlier this year. She is disappointed in how this was handled and in the lack of advance notice.

Mr. Bundy said there is an untold story in the antiquated boundaries of school districts and that the arbitrary boundary through Corte Madera's Bayside area results in long travel time for some students and greater expense for families. He said the larger issue of these boundaries must be reassessed for appropriateness with the current population growth of today's community.

Councilmember Furst reminded him the Reed School District used to operate a school within the town the district made a conscious decision to close that school and force east Corte Madera families to travel to Tiburon; while boundaries are certainly a part of it, there is more history that she hopes the school board is aware of.

Councilmember Ravasio provided the following report:

- He received communication from concerned neighbors that called for very specific action following the recent events discussed by Mr. Sapuppo. He contacted the Town Manager and was impressed to find that the specific actions had already been addressed.

Councilmember Cock provided the following report:

- She attended last week's League of California Cities meeting. The topic was medical marijuana dispensaries and the ballot initiative legalizing marijuana. Discussion on the first point was that local jurisdictions have the authority to regulate dispensaries with limited guidance from the state in terms of what those regulations should be. On the latter, there would only be basic criteria guiding the possession of marijuana, but it would be up to each local jurisdiction to determine under what conditions and through which establishments

marijuana could be sold. Most recent poll numbers indicate 52% to 56% of the population in favor of the initiative, although it is believed the majority of the public does not understand the full scope of what they are voting on;

- She attended last night's Flood Control Board meeting where it was discussed which projects will be proposed in the upcoming budget.

Mayor Condon provided the following report:

- She met with the Chamber of Commerce today. Applications for July 4<sup>th</sup> parade floats are available online and through the Chamber's office. The annual golf tournament, sponsored in conjunction with San Anselmo's Chamber of Commerce, is September 16<sup>th</sup> and will honor the retirement of Chief Phil Green. The Chamber's website is undergoing updates and seven new business have joined the Chamber this year;
- Jon Friedenber, Chief Fund & Business Development Officer of Marin Healthcare District, gave a presentation on the upcoming transfer of Marin General from Sutter Health to the district. Union Bank has facilitated the transfer's funding so that the hospital can remain liquid through this process. There will be no change to reimbursement rates. The requirements of SB 1953, the Seismic Retrofit Program, could mean as much as \$500 million in costs to construct a new inpatient facility and associated offices. It is anticipated that over \$100 million of that will have to be acquired through voter-approved bonds. Her concern is that the local community may not choose to support the hospital, which has the only labor delivery, cardiac surgery, and neurology departments in the county;
- She thanked Chief Green and Mr. Bracken for ensuring that EAH adheres to the enforcement standards set forth in their agreement;
- She noted the hanging baskets are up in town, along with other decorative pieces, and asked Mr. Bracken to thank Kevin Kramer for his work;
- She welcomed Urban Outfitters, who will be taking the place of Pier 1 Imports at Town Center. Izzy's has also closed but will soon be replaced by a new restaurant under the same ownership.

#### CONSENT CALENDAR

- 3a. Approved Warrant and Payroll for the Period April 14, 2010, through April 28, 2010, Warrant Check Numbers 125911 through 126023 and Payroll Check Numbers 3270 Through 3287, Payroll Direct Deposit Numbers 15895 through 15975, and Payroll Wire Transfer Numbers 1028 through 1032, and Wire – Twin Cities Police Monthly Payment
- 3b. Accepted Investment Transactions for the Month of March 2010

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

To adopt the Consent Calendar.

PUBLIC HEARING

4 Discussion and Possible Action Concerning Adoption Of A Resolution Amending Fees And Rates For Advanced Life Support (ALS) And Basic Life Support (BLS) Services And Supplies.

The Director of Emergency Services presented the staff report, stating the town's fees for service have been adjusted annually for the last several years and based on the cost for provision of service and changes in Medicare rulings. Based on recent Medicare policy changes, the town's contract biller (Novato Fire District) has recommended that the bundled rate for supplies be rolled into the base rate, along with other minor increases due to increased cost of goods. He noted that an alert citizen noticed certain billing errors which were run through the Town Attorney and eventually a premier law firm on Medicare related issues. The firm could not issue a clear decision but did recommend against the practice, which the Novato Fire District is now correcting.

Mayor Condon credited David Hyams for looking out for everyone's interests. She found the fee changes substantial and asked if Medicare will cover the charge in its entirety or if this represents a significant bill for Medicare patients. Chief Sprehn explained that Medicare pays a flat rate of roughly \$580 for each transport and regardless of what is involved. He said Medicare regulations prohibit the provider from billing the patient for the balance of those services which they cover. He noted there are some incidentals for which the patient may be billed, but said they are not balance billed. He clarified that the changes recommended by staff are simply to streamline the process and do not represent an increase for Medicare patients.

Councilmember Cock asked and confirmed that non Medicare patients would receive a bill for any portion not covered by insurance, provided they have it.

Mayor Condon opened the public hearing.

Dr. Bundy said he understood that citizens of Corte Madera, who pay the paramedic tax and have insurance outside of Medicare, are not additionally billed. Chief Sprehn said it is the town's longstanding policy that individuals are billed for any balance not paid by their insurance provider. He said it was his understanding in sitting on the Ross Valley Paramedic Authority Board that the basis of the paramedic tax is to avoid that practice. Chief Sprehn said that is true for the rest of Ross Valley but reiterated it has been the town's practice to bill patients for some time. Dr. Bundy said he supports consolidation in part because he believes that Medicare and insurance reimbursements will continue to decrease and we need to look at being as efficient as possible. He said the town's paramedic tax is significantly higher than that for the rest of Ross Valley and that at some point, citizens will recognize that in addition to that they are also being billed. He said this is worrisome in terms of the direction we are going and the ability to keep the tax affordable.

Chief Sprehn said there is a history of partial balance forgiveness in instances where the bill represents a significant hardship on the beneficiary or their survivors.

David Hyams thanked the Mayor for raising the issue with town staff, the Town Manager for raising the issue with the Council, and the Town Attorney's office for researching the law on the subject. He said the Novato Fire District failed to perform due diligence and the town has now assumed the costs associated with bringing the district's practices into conformity with the law. He asked what that cost was and if the district will be assuming any portion of that. Mr. Bracken said he would get back to Mr. Hyams and the Council with that information.

Mr. Hyams requested confirmation that ambulance service providers are prohibited from billing Medicare recipients for more than the Medicare allowed amount. Chief Sprehn clarified that there are several customary items for which Medicare does allow them to bill and for which they do not provide coverage.

Mr. Hyams challenged that, said his reading of the law is entirely different, actually read from Medicare law, and asked the Town Attorney to comment. Mr. Walter said he is not particularly conversant on the subject and declined to comment. Chief Sprehn said he spent considerable time looking into the matter and could cite a least a dozen other references within the law which address the policy for billing patients. He noted that the explanation of benefits received by the patient actually stipulates what Medicare has paid for and what is the patient's responsibility.

Mayor Condon acknowledged Mr. Hyams' points and requested clarification. Chief Sprehn offered to look into it further. Mr. Walter suggested speaking with the law firm consulted on this matter.

Councilmember Cock said that as a lawyer, she is confident that healthcare and Medicare regulations are much more complicated than they may appear. She recommended that staff obtain whatever clarification it could on billing so that the town does not end up subsidizing those services for which it could be charging.

Mr. Hyams said he was under the impression Mr. Walter's firm had looked into this matter and consulted with one of the leading law firms dealing with Medicare issues. Mr. Walter confirmed but said it was not him personally, that he has not reviewed the opinion reached by his colleague, and that he will now confer with her on the matter.

Mr. Bundy reviewed the origins of the Ross Valley Paramedic Authority (RVPA). He said that at the time the paramedic tax was established, insurance companies were not billed and citizens felt comfortable that the tax constituted their payment for service. He said RVPA now comes before the public for renewal of this tax every four years and that some of this evening's discussions could make a difficult case for voter support in the future.

Mayor Condon said the arguments of each side are well taken and asked staff to trace the history of RVPA, the tax, and how that applies to the town. Mr. Bracken said he understands and respects the comments of Mr. Bundy and Mr. Hyams and that he would look into it.

Chief Sprehn said he is not familiar with the history but that this has been the practice for the ten years he has been here. He said he is asked this question on occasion and typically compares the paramedic tax to a transit tax, where one still has to pay a fare when they ride the bus. To concerns that the tax may subsidize those who are not residents, he noted that all taxes subsidize others in some way or other. He also noted that if the service were covered by the tax, a person who has never used it could still argue that their payment subsidizes the service for others. He said that tax revenues are used to maintain the readiness of the service and clearly do not cover the cost to provide it.

Harry Schriebman asked if Medicare patients will be charged. Mr. Sprehn reiterated that there are certain circumstances under which they could receive a bill. He acknowledged Mr. Hyams' reading of the code, but said it is not as black and white as that.

Mayor Condon said it is clear from both the experience with Mr. Hyams as well as the comments of Chief Sprehn that paramedic transport and bundled services are not the burden of the beneficiary. There are; however, some extenuating items which Chief Sprehn has indicated the patient can be billed for. She said the Council and public want to be clear on what those times are, that Chief Sprehn will be looking into the matter, and that residents will be told which sections of the code provide for this. She asked if the matter should be continued, pending this information. Chief Sprehn explained that what is being asked of the Council tonight is to streamline the billing process, which will not change as a result of any information discovered on Medicare allowances.

Mr. Hyams requested that a member of Mr. Walter's office who is familiar with the subject be present when the matter returns.

The public hearing was closed

Mr. Bracken said there is an upcoming agenda item related to the paramedic tax, which would be an appropriate time to discuss this information. He confirmed this would be a public meeting, on the record, and with opportunity for public comment. He stressed Councilmember Cock's comments regarding how tedious the Medicare billing process can be. He cautioned that clearing this up may not be easy and said that as a manager, he sincerely hopes they do not spend more money figuring this out than it would cost to subsidize these items.

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

To adopt Resolution No. 3639 rescinding "Exhibit A" of Resolution No. 3593, setting fees for basic life support and advanced life support services and adopting new fees.

#### BUSINESS ITEMS

5. Approve Minutes of April 20, 2010

Mayor Condon requested the following corrections to the Minutes:

- Page 1, Line 16 – “Town Attorney ~~John~~ Jeff Walter”
- Page 1, Line 29 – “Pauline ~~Barasan~~ Basaran...”
- Page 3, Line 39 – “~~Councilmember~~ Mayor Condon said she is glad to hear of **the JPA Oversight MCCMC Legislative Committee’s plans...**”
- Page 4, Line 11 – “The Chamber’s annual silent auction will be held May 20<sup>th</sup> ~~and all members of the public are encouraged to attend~~. This is the last year the auction will be held at Bank of Marin **in its present location...**”
- Page 4, Line 24 – “..The ~~City of~~ Novato **Fire District**, the town’s billing agent...:

Councilmember Furst requested the following amendment to the Minutes:

- Page 6, Line 6 – “...she would ~~be out of town June 19<sup>th</sup> to July 3<sup>rd</sup>~~ **be unable to attend Thursday June 24<sup>th</sup> or Tuesday June 29<sup>th</sup>.**”

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

To approve the Minutes of April 20, 2010, as amended.

#### ADJOURNMENT

Mayor Condon asked to adjourn in memory of Brian Derner who passed away unexpectedly on April 26<sup>th</sup>. Mr. Derner grew up in Corte Madera and was a long time volunteer firefighter with the Corte Madera Fire Department. His parents Frank and Shirley Derner are well recognized for their annual holiday decorations.

The meeting was adjourned at 9:10 p.m. to the next regular meeting on May 18, 2010.