

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

In the Town Hall of the Town of Corte Madera, on August 18, 2009 at 6:40 p.m.

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

Town Manager David Bracken
Assistant Town Manager Robert Pendoley
Town Attorney Jeff Walter
Director of Administrative Services George Warman

COMMISSIONERS PRESENT

Richard Esteb, Planning Commission

OPEN SESSION

Salute to the Flag

INTERVIEWS

Interviews for Citizens Advisory Committee (CAC) for the Housing Element

6:45 Pauline Basavan
Fred Casissia – Out of town – Would like to be considered
6:52 Michael Harlock
6:59 David Kunhardt
7:06 Sebastian Rouas – Unable to Attend
7:13 Ann Thomas
7:20 Matthew Wiltala – Absent

The Council interviewed the 4 applicants present, as well as Jim Robinson, a last minute applicant submitted by the Chamber of Commerce. Melissa Gill, Chamber of Commerce President, apologized for the late submission, stating the Chamber has generally supported workforce housing within the town and would like Mr. Robinson to serve as its liaison.

The Planning Director stated that in the past, the Council has customarily appointed 1 Councilmember and 1 Planning Commissioner to the committee. The Planning Commission has asked for Peter Schwartz to be appointed. He said the committee is expected to meet once to twice a month over the next 4 to 6 months.

Mr. Pendoley informed the Council that the building permits for the San Clemente project were issued at a time that allows the planned units to be counted in both the current and upcoming Housing Element. He said the project will account for 79 of the 244 units the town is required to provide through 2014 and will meet nearly half of the affordable housing assignment. He noted that

the Wincup property, which has been purchased by a developer, is designated for another 180 units and would fulfill the rest of the requirement.

Councilmember Condon offered to assume the Council's committee position but noted that she may not be able to continue for the full term. Councilmember Ravasio agreed to act as the alternate.

The Council agreed to appoint Planning Commissioner Peter Schwartz.

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

To appoint Pauline Basavan, Michael Harlock, David Kunhardt, Jim Robinson, and Ann Thomas to the Citizens Advisory Committee for the Housing Element.

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

To interview all absent applicants at the next scheduled Council meeting.

1. OPEN TIME FOR PUBLIC DISCUSSION

Richard Esteb, 33 Harbor Drive, requested that the Council consider a Zoning Ordinance amendment to allow for a single beehive in R1 zones.

Mayor Lappert reported receiving numerous calls regarding the condition of Lagoon 1. Citizens in the immediate area are planning an informal meeting to discuss the matter and have requested an audience with the Council during open time or via a formal discussion item. The Town Manager said he would prepare a discussion for one of the Council's September meetings.

2. COUNCIL AND TOWN MANAGER REPORTS

- Town Manager Report

The Town Manager provided the following report:

- Corte Madera sent 3 firefighters and 1 engine to battle the Bonny Dune fire and all have returned safely. 1 battalion chief has been sent as their replacement.

- Council Reports

Councilmember Cock provided the following report:

- She attended a meeting of the Twin Cities/Greenbrae Interchange Subcommittee of the Transportation Authority of Marin. Project Manager Bill Whitney will attend the Council's second September meeting with a status briefing. The project is preparing for the EIR phase which will include the selected northbound option and 3 phases of southbound projects. Anyone interested in more information on the project can visit the TAM website;

- She noted that the Bayside Trail grant money from TAM was received, in part, as a result of the housing project approved for San Clemente Drive.

Councilmember Ravasio provided the following report:

- The Larkspur School Board has approved a contentious new parcel tax measure for the November ballot to help recoup the 10% lost by budget cuts. Parents currently provide \$1.2 million annually through direct donation and it is the Board's position that families could not be pushed to increase that amount. The proposed measure would increase the current tax of \$350 per parcel using a tiered structure aimed at increasing the tax on commercial properties and if passed, would not take effect until December 2010. As currently proposed, the top tier contains 3 parcels and increases the tax to \$20,000. The town's auto dealerships do not fall within the top tier. One auto dealer indicated they may move their business elsewhere and this tax is one more problem.

Councilmember Condon provided the following report:

- The Chamber of Commerce has serious concerns that the School Board's parcel tax measure would establish a compelling increase for certain businesses. Some business owners have voiced doubts about the feasibility of operating within Corte Madera if forced to bear such an increase;
- The City of Larkspur has entertained discussion on de-annexation from the Ross Valley Sanitary District in favor of joining Corte Madera's Sanitary District No. 2;
- She asked that her compliments on the transformation of the Bayside Trail be conveyed to Kevin Kramer. She has received several emails from citizens angered by the expenditure in light of the current fiscal situation and reassured them it is being funded completely by grant monies;

Councilmember Lappert provided the following report:

- He has also heard public concern over the expenditures involved in rehabilitating the Bayside Trail and asked that the public be made aware of how that is being funded.

The Town Manager recognized the concerns and promised to convey the information again.

Mayor Dupar provided the following report:

- He attended the Central Marin Sanitation Agency meeting last week and again this morning to review the grand jury report;
- He offered thanks to Kevin Kramer on the outstanding transformation of the Bayside Trail;
- A celebration for Officer Torres' 30 years of service is scheduled this Saturday at Piper Park;
- Harbor Drive has been the site of an MMWD water leak the last several days.

Mr. Bracken explained that many of the pipes at Harbor Drive are aging, many pipes along Golden Hind Passage are undergoing replacement, and the same is expected on Harbor Drive and Echo Avenue in the next few years. Mayor Dupar asked staff to coordinate that replacement with street improvements.

CONSENT CALENDAR

Town Items

- 3a. Approved Warrant and Payroll for the Period July 1, 2009, through July 26, 2009, Warrant Check Numbers 123609 through 123860 and Payroll Check Numbers 947 through 960, Payroll Direct Deposit Numbers 14276 through 14397, and Payroll Wire Transfer Numbers 916 through 920; and Approve Warrant and Payroll for the Period of July 27, 2009 through August 11, 2009, Warrant Check Numbers 123861 through 123991 and Payroll Check Numbers 981 through 994, Payroll Direct Deposit Numbers 14403 through 14525, and Payroll Wire Transfer Numbers 924 through 927
- 3b. Approved Investment Transactions for the Month of June, 2009
- 3c. Approved Plans and Contract Documents and Authorization to go out to Bid ARRA Slurry Seal, Project #09-301
- 3d. Approved Plans and Contract Documents and Authorization to go out to Bid Marquart Lagoon Pump Station Lagoon, Project #07-010
- 3e. Designated Voting Delegate, Councilmember Carla Condon, at the League of California Cities Annual Conference
- 3f. Adopted Resolution No. 3609 Allowing Signs on Public Property Advertising the Corte Madera Lions Club Luau Event
- 3g. Adopted Resolution No. 3610 Allowing Signs on Public Property Advertising the Corte Madera Beautification Committee's Oktoberfest

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

To approve Consent Calendar items 3a through 3g.

BUSINESS ITEMS

- 4. Discussion and Possible Action Concerning Amending the Town's Transient Occupancy Tax Ordinance

The Town Attorney introduced the proposed amendments to the Transient Occupancy Tax (TOT) Ordinance pertaining to (1) the Tax Administrator's determination of the Transient Occupancy Tax appeals, (2) the appointment of an independent hearing officer (IHO), and (3) the required payment of the disputed tax before litigation can be initiated. The existing TOT Ordinance provides for two

hearings should a hotel operator contest the town's determination of outstanding TOT. The proposed amendment authorizes the Tax Administrator to make a tax assessment determination along with any penalties and interest without a hearing, but provides the taxpayer the opportunity to appeal that determination. That appeal would result in a hearing to be held before an IHO and the cost of which would be absorbed by the town.

Mr. Walter stated the town is currently involved in investigating the possibility of a claim against online retailers who purchase local hotel rooms at a bulk rate and then sell those vacancies to the public without paying TOT on the difference. This has, in part, spurred the proposed amendment as the existing appeals process could potentially assume a great deal of the Council's time and leaves the town open to claims of bias and procedural due process.

Councilmember Cock asked and Mr. Walter confirmed that the proposed amendments meet due process requirements.

Councilmember Lappert asked how the IHO term is established. Mr. Walter explained that an IHO's term is completed when the hearing on a particular contested tax is concluded and that any person retained as an IHO may not be reappointed to such a position for 3 years. He noted that the online retailers in question are likely to establish en masse, resulting in only 1 hearing and the appointment of 1 IHO.

Councilmember Lappert questioned if online retailers should be paying TOT on the bulk rate. He likened it to a wholesaler/retailer relationship and noted that a retailer does not pay tax on its inventory but does collect it at the time of sale. Mr. Walter explained that the tax due is based upon the ultimate price and no matter who should assume that tax, that is not happening in this situation.

Mayor Dupar opened the public hearing.

George Topor said this reminds him of a previous situation in Florida wherein a bar patron would not pay tax on a drink ordered at the bar but would pay tax on the same drink ordered at a table.

Mr. Walter said that because online retailers are not forced to pass on, at least in part, a TOT on the final sales price, they are able to provide consumers with a lower rate.

Councilmember Condon asked if it would be possible for these retailers to charge consumers a TOT on the wholesale price and then call any additional cost an overage or handling fee.

Mr. Walter explained that most TOT ordinances, including the town's, are drafted broadly enough to cover that; what the fee is labeled is not important, and that the full amount collected is subject to the TOT.

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

To introduce Ordinance No. 912, and ordinance amending the town's Transient Occupancy Tax Ordinance.

5. Adopt Resolution Providing for the borrowing of Funds for Fiscal Year 2009-2010 and the Issuance and Sale of 2009-2010 Tax and Revenue Anticipation Notes in an Amount Not to Exceed \$5,000,000

The Director of Administrative Services presented the staff report, stating this would be the fourth year in which the town has issued Tax and Revenue Anticipation Notes (TRANs). In fiscal year 2008-2009, a TRANs was issued for \$3,750,000. The amount borrowed this year is expected to be less as a result of decreased sales tax revenues and the loss of library revenue. He stated that, should the Council approve the resolution, the amount borrowed would likely be around \$3 million or 85% of anticipated revenues.

Mr. Warman introduced financial consultants Craig Hill and Scott Ferguson of Northcross, Hill, Ach.

Mayor Dupar asked what the expected cost to the town would be. Mr. Hill said he expects rates to fall between 1.5% and 1.75% on an annualized basis.

Mayor Dupar opened the public hearing.

Harry Shriebman questioned and confirmed that the town typically borrows around \$3 million per year and asked why it has increased to \$5 million this year. Mr. Warman explained that the resolution allows the town to borrow as much as \$5 million though it is only anticipated to borrow around \$3 million.

Mr. Shriebman asked if TRANs are issued twice a year to cover the Motor Vehicle License Fee (MVLf) Swap. Mr. Warman said this only happens once a year; the MVLf Swap coupled with the Sales Tax Triple Flip results in an acute shortage of cash between late September and the middle of December. These factors are combined with low cash balances in other town funds to require the TRANs to fund cash flows.

Mayor Dupar closed the public hearing.

MOTION: Moved by Lappert, seconded by Cock, and carried unanimously by those present,
To adopt the Resolution, No. 3608, a resolution Providing for the Borrowing of
Funds
for Fiscal Year 2009-2010 and the Issuance and Sale of 2009-2010 Tax and Revenue
Anticipation Notes in an Amount Not to Exceed \$5,000,000

6. Approve Minutes of July 7, 2009

MOTION: Moved by Lappert, seconded by Cock, and carried unanimously by those present,
To approve the Minutes of July 7, 2009, as drafted.

ADJOURNMENT

The meeting was adjourned at 8:11 p.m. to the next regular meeting on September 1, 2009.