

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

In the Town Hall of the Town of Corte Madera, on November 3, 2008 at 7:30 p.m.

PRESENT: Mayor Lappert
Councilmembers Condon, Dupar, Ravasio
Director of Planning/Assistant Town Manager Robert Pendoley
Town Attorney Jeff Walter

Salute to the Flag

OPEN SESSION

Steve Wheeler, 18 Harbor Drive, stated that he purchased a home for remodel one block away from his current residence. As part of the improvements to the property, he raised the home above the flood plain. He explained that conversations with the Building Department indicated that the home's outdoor deck space is now at a height that is considered additional square footage and exceeds the allowed coverage for that lot. Mr. Wheeler asked the Council to consider allowing an exemption for outdoor square footage at floor level on homes that have been raised out of the flood plain.

The Director of Planning explained that the Town's Zoning Ordinance states that any deck sitting three feet or more above the ground counts as coverage; at this height it begins to have a visual impact. He stated that the typical home is raised in Corte Madera is four feet and deck coverage could easily be remedied by creating a two step decline to the deck but most homeowners prefer the deck to sit on the same level as the house.

Mayor Lappert asked if that creates ADA issues as stairs could make a deck fairly unusable for those with disabilities. Mr. Pendoley agreed that a step down would certainly have an impact on wheelchair bound individuals, and that a deck exemption could be drafted, especially if it were specific to those homes raised above the flood plain.

Councilmember Condon cited a recent issue at Marin Estates and noted that in the case of two-story homes, a deck exemption could create privacy issues for neighboring homes.

Mayor Lappert stated that any proposed exemption should only pertain to first level deck space.

Councilmember Dupar asked to have the issue return to the Council, and Mr. Pendoley suggested allowing the Planning Commission to consider the issue and draft a report.

1. TIME FOR PUBLIC DISCUSSION

No items were brought forth.

2. COUNCIL AND TOWN MANAGER REPORTS

Councilmember Condon provided the following report:

- Governor Schwarzenegger has called a special session of the Legislature on November 5, 2008 to discuss items such as job creation, the mortgage crisis, the declining economy, and other problems currently facing Californians. The timing is problematic as many legislators have termed out; their replacements will not be sworn in until December 4, 2008 and there is concern that the State deficit is now larger than anticipated.

Councilmember Ravasio provided the following report:

- He has spoken with the neighborhood group concerned about the impact of weekend parties held at the Town's Recreation Center. The neighbors attended a recent Parks and Recreation Commission meeting and have reported that they are pleased their needs were heard and with the Town's efforts to mitigate this impact.

CONSENT CALENDAR

- 3a. Approved Warrant and Payroll for the Period October 16, 2008, through October 29, 2008, Warrant Check Numbers 121443 through 121570 and Payroll Check Numbers 2635 Through 2654, Payroll Direct Deposit Numbers 12539 through 12617, and Payroll Wire Transfer Numbers 800 through 804 and Wire – Twin Cities Police Monthly Payment
- 3b. Approved Investment Transactions for the Month of July, 2008
- 3c. Approved Investment Transactions for the Month of August, 2008
- 3d. Approved Investment Transactions for the Month of September, 2008
- 3e. Authorized the Town Manager to Execute an Agreement with Cook Attorneys, A Professional Law Corporation, to Initiate and Prosecute Litigation Against Nationwide Auction Systems to Recoup Money Owed to the Town

Mayor Lappert explained that Item 3e is the result of an auction house failing to pay the Town proceeds acquired from the sale of one of its street sweepers. He noted that Corte Madera is not the only party Nationwide Auction Systems has failed to pay.

MOTION: Moved by Dupar, seconded by Ravasio, and voted unanimously by those present,
To approve Items 3a, 3b, 3c, 3d, and 3e on the Consent Calendar.

BUSINESS ITEMS

4. Proposed Marin Energy Authority – Discussion and Direction to Staff

The Director of Planning explained that for the past several years, Marin County has explored the benefits of utilizing Community Choice Aggregation (CCA) via the Marin Energy Authority (MEA). As defined by AB 117, CCA allows communities to come together to aggregate the electric loads of residents, businesses, and municipal facilities to facilitate the purchase and sale of electrical energy. A draft Joint Powers Agreement (JPA) has been prepared and circulated and the Board of Supervisors adopted an ordinance last week.

Mr. Pendoley outlined some of the major points of the JPA, specifically what the Town Council would commit Corte Madera to if it signs the agreement.

- The JPA will most likely become a full-fledged legal entity within the next eight weeks. This starts the 180 day clock during which agencies may choose to enter the JPA at no cost; there would be an entry fee following this period.
- The JPA's Board of Directors will consist only of elected officials. Each member agency must nominate two of its members who would serve as principal and alternate. The program is expected to require a tremendous amount of technical work the first two years and whichever members serve on the Board should be prepared for a steep learning curve and substantial time considerations.
- Corte Madera residents will only have the option to purchase energy from the MEA if the Town joins the JPA. Should the Town choose to leave the JPA after the end of the first program agreement, participating constituents can continue their involvement with the MEA.
- There is the potential for General Fund exposure. The agreement is very clear in its intent that all CCA activities (buying and selling of energy) be covered by customer revenues, but there is no guarantee those revenues will be sufficient. It is expected that each member agency would be diligent in ensuring that its General Fund monies not subsidize peoples' electricity bills. The JPA can also take on other programs that are unspecified at this time and members may be asked to contribute financially to those efforts.
- There are at least three withdrawal options should the Town find itself uncomfortable with the financial requirements of the JPA. If a member agency votes against the first program agreement, they are automatically withdrawn from the JPA. This withdrawal basis carries no financial liability. If a member agency notifies the Board of Directors that it opposes an amendment to the JPA and that amendment should pass, the member agency is automatically withdrawn. A member agency also has the option to give the Board of Directors a six-month notice of its desire to withdraw. The agency would be out of the JPA at the start of the following fiscal year. The timing of this option could mean ongoing financial obligations for up to eighteen months.
- The League of California Cities is discussing additional AB32 requirements over the next several years. It may be easier to satisfy AB32 working with others via CCA than it would be alone.

Mr. Pendoley noted that he is not reviewing the business plan with the Council as it is a more difficult, technical issue. The Town does have access to a consultant who city and town managers agree is a qualified and completely neutral expert on the issue. His services have already been funded and he is available to speak with the Council at a future meeting should they have more questions.

David Hyams stated that the issues of global warming and climate change are very real and as a largely man-made situation, it is our responsibility to address it. He is concerned, however, that MEA could be a terrible overreach, requiring too much effort for the value of its produce. His calculations of the County's energy usage indicated a disproportionate effort required for the proposed achievements. He noted that PG&E's upcoming renewable energy requirements are not much below what the MEA will provide and its current level of carbon imprint free power already equals what the MEA projects for itself. He reiterated his concern that the considerable financial and manpower sacrifices required will not yield a significant difference.

Harry Schriebman asked what the fiscal impact would be on the JPA and Corte Madera should major players like San Rafael or Novato withdraw from the agreement. Mr. Pendoley explained that 50% of the County's power usage needs to be represented by the JPA in order for this to work. The only way to secure that volume is with two or more of the larger cities like Novato or San Rafael. Town Attorney Walter added that the JPA will adopt operating rules and procedures, part of which will outline the financial consequences and payments a withdrawing member must make. While it does not preclude the remaining members from serious financial consequences, it will be designed to provide disincentives to those wishing to withdraw after the first program agreement is signed.

Suzanne Canner noted that the Town can enter the JPA with no responsibility to join the MEA once it is formed. She stressed that the Town has the opportunity to see what the costs will be before backing out. As a citizen of Corte Madera, she would like the opportunity to be a part of the MEA and is disheartened that she may not have that option if the Town does not join the JPA.

Peter Schwartz attended the MEA presentation and offered his thoughts to the Council as an energy consultant. He stated that the MEA used many averages in comparing municipal utilities that are not exactly like for like. He felt that the data given was too generalized, failing to take into account municipal district size and geographical constraints; and did not present an accurate picture of what the MEA could provide at what cost. He suggested that while the community is in favor of bringing renewable energy and reduced greenhouse gas emissions to Marin, MEA's business plan deserves further consideration.

Mayor Lappert asked if PG&E is expected to present a full report. Mr. Schwartz stated that PG&E was not present at MEA's latest presentation due to a misunderstanding on the nature of the forum; it is hoped they will take the opportunity to speak with each Town and City Council in the near future.

Councilmember Condon noted that she was insistent on incorporating a sustainability component

into the most recent General Plan. She considers herself environmentally conscientious but identified the following concerns regarding the JPA and MEA proposal:

- The \$500,000 contribution from Marin County is not actually a gift. Article 6 of the JPA's financial provisions clearly states that the County will be reimbursed. "The initial cost paid by the County of Marin shall be included in the customer charges for electric services as provided by section 6.3.3. The County of Marin shall be reimbursed from the payment of such charges by customers of the authority."
- While MEA will be the buyer and seller of energy, PG&E remains the transmitter of these resources. The PG&E fees for this service are still an unknown.
- If the Town decides to opt out of the JPA after the first program agreement is signed, there may be up to eighteen months of financial obligation. The General Fund could be called upon to subsidize this liability.
- Public opinion is split on the matter, but those against MEA are concerned that local government will be overly assertive about where its constituents can purchase their energy.
- Corte Madera, with only 7% of the JPA's member population, may not have much of a voice against larger members like San Rafael and Novato.

She noted that there is a provision allowing for late entry in to the JPA and suggested that the Town might benefit from waiting to see if the program will work, what the financial implications will be, and what alternative opportunities may come available from PG&E. She reiterated her concern over rushing into something with so many vague components.

Mr. Pendoley stated that staff is committed to remaining neutral on the matter; their role is to provide the Town Council with any and all information available. He addressed Councilmember Condon's concern that Corte Madera might not have a voice amongst larger members of the JPA. He explained that the voting process is designed to protect the smaller members by utilizing a two phase process that counts both a weighted vote based on the percent of total energy used as well as a vote per member count. It is difficult to weigh the pros and cons of entry timelines into the JPA, but joining now allows the Town the opportunity to wait and base its membership decision on the actual numbers that come in with the first program agreement.

Mayor Lappert asked if the Town's constituents could remain MEA customers if the Town joined now but withdrew before signing the first program agreement. Mr. Pendoley stated that he has been unable to verify this but believes that the Town must have voted in favor of the first program agreement in order for constituents to remain.

The Town Attorney confirmed, adding that entering into the JPA is designed as a non-consequential event in terms of pursuing the program and any financial commitment. The initial focus will be to adopt operating rules and procedures which will address the issue of future financial liability as well as the future rights, if any, of a withdrawn member to protect the rights of its constituents. Any cost associated with the sixty day review period of the first program agreement will be borne by the \$500,000 loan from Marin County.

Mayor Lappert stressed the time constraints surrounding this issue and the importance of having staff monitor its progression constantly. He concurred with Councilmember Condon that this is a business deal that presents its investors with very few answers and a lot of financial exposure but underlined that he would like Corte Madera's residents to have this opportunity. Mr. Pendoley agreed that there is potential for financial exposure but noted that by joining now, the Town has an opportunity to affect the rules and terms of the first program agreement.

Councilmember Condon expressed concern over the potential for currently unstated exit fees for residents wishing to leave one service provider and enlist with another.

Councilmember Dupar said he believed everything is speculation until the Town has a voice in the JPA and even then, he is concerned that elected board members may not have the knowledge to properly handle complex energy contracts.

Mayor Lappert concurred, adding that he is uncomfortable with the presence of an "energy czar" who will be guiding a board of directors with a complete lack of technical knowledge.

Councilmembers agreed that the information available at this time leaves many questions unanswered.

Councilmember Ravasio stated that it seems as though is being asked to fund a business venture and in doing so, is taking on a substantial liability. He and Mayor Lappert questioned the efficiency of the JPA given the differing politics of each town involved.

Councilmember Dupar noted that in addition to acquiring a joint debt of \$500,000, the draft JPA states that "Other costs not directly or indirectly associated with the CCA will be shared by the members." He reiterated that there are far too many unknown variables to allow for an educated decision at this point.

Mayor Lappert asked staff to return with more detailed information and added that he would like the opportunity to hear PG&E's presentation.

Mr. Pendoley summarized Councilmembers' questions as follows:

- What is the impact on consumers if the Town withdraws from the JPA before the first program agreement? After the first program agreement?
- What is the Town's financial exposure if it joins the JPA and most residents opt out of the MEA?

Mr. Pendoley suggested that the Council take advantage of the impartial resources available to further clarify the business plan.

Councilmember Condon asked how comprehensive the program's operating guidelines will be before signing the first program agreement. Town Attorney Walter guessed that it would be

comprehensive and if not, the Town has the opportunity to withdraw before signing the agreement.

Mr. Pendoley predicted that the program agreement will be technically complicated and include multiple contingencies to cover all possible variations in the energy market. He cautioned that the agreement may be too complicated to readily understand and that the Town could find itself needing to obtain an independent review.

Staff agreed to return to the Council with a more detailed picture of the proposal.

5. Approve Minutes of October 20 and October 21, 2008

MOTION: Moved by Dupar, seconded by Ravasio and carried unanimously (Councilmember Condon abstained) by those present,

To approve the Minutes of October 20, 2008, as drafted.

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

To approve the Minutes of October 21, 2008, as drafted.

ADJOURNMENT

The meeting was adjourned at 8:39 p.m. to the next regular meeting on November 18, 2008.