

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 17, 2009 at 7:30 p.m.

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

Town Manager David Bracken
Director of Planning/Assistant Town Manager Robert Pendoley
Associate Planner Larisa Roznowski
Assistant Town Attorney John Abaci

COMMISSIONERS PRESENT

Planning Commissioner Richard Esteb

CLOSED SESSION

Closed Session Pursuant to Government Code Section 54957.6
CONFERENCE WITH LABOR NEGOTIATOR

Agency Negotiator: Town Manager, Town of Corte Madera
Unrepresented Employees: Miscellaneous Employees

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

OPEN SESSION

Salute to the Flag

1. OPEN TIME FOR PUBLIC DISCUSSION

Steve Hoffmire, 146 Willow Avenue, speaking on behalf of his neighbors, requested a meeting with the Council concerning the scope of commercial business in Village Square and Menke Park. He noted that the entire area was residential at one point; cited several examples of large or expanding businesses in the area; and said he would like to discuss bringing it back to a low-impact zone.

Guillermo Montoya, 311 Tamalpais, complained that the Fire Department's exhaust system is poorly muffled. He can hear the fan running at all hours and requested that a new and larger muffler be installed.

2. COUNCIL AND TOWN MANAGER REPORTS

- Town Manager Report

The Town Manager provided the following report:

- The Negative Declaration on Higgins Landing Boat Dock has been released, finding no significant adverse impacts with the project. The Planning Commission plans to hold a public hearing on the Negative Declaration, project approval, and permit applications on January 12, 2010;
- The Citizens Advisory Committee for the Housing Element will hold a workshop November 18th at the Recreation Center at 7 p.m.;
- Town Park contains a number of rubber coyotes. The coyotes are intended to scare off geese and will be regularly relocated throughout the park to promote realism.

- Council Reports

Councilmember Condon provided the following report:

- She met with Bill Whitney and Diane Steinhauser of Transportation Authority of Marin (TAM) to discuss the Highway 101/Greenbrae/Twin Cities interchange project. She reiterated her opposition to any closure of direct access to Madera Boulevard;
- She and the Town Manager met with Al Domenico of Marin General Hospital to discuss the hospital's transfer from Sutter Health to the public health district. There is some question surrounding the distribution of some Marin General Hospital profits throughout the Sutter Health hospital system and requested staff draft a letter for the Council's consideration that expresses the wish for those funds to remain local.

Councilmember Cock provided the following report:

- She attended the recent TAM meeting as well as the TAM Executive Committee Meeting. The Greenbrae/Twin Cities interchange project was discussed at the latter and will be voted on at TAM's meeting this week. She learned that San Mateo has opted to put forth its own Regional Housing Needs Allocation numbers rather than accepting those allocated by ABAG. She also learned that the state transportation direction is to coordinate land use and transportation; the expectation is that there will soon be more guidelines and requests on combining the two.

Councilmember Ravasio provided the following report:

- He attended the Marin Telecommunications Agency meeting held at the new facilities on in San Rafael. He recommended that the Council allow the director to provide a brief presentation on the expansive services offered. The agency will vote on the low-income/disabled subsidy program next week and he has made it clear that Corte Madera is not in favor of it.

Mayor Dupar provided the following report:

- He attended a meeting of the Central Marin Sanitation Agency at which the audited financial statements were accepted.

CONSENT CALENDAR

- 3a. Approved Warrant and Payroll for the Period 10/15/09, through 11/10/09, Warrant Check Numbers 124487 through 124708 and Payroll Check Numbers 3065 through 3085, Payroll Direct Deposit Numbers 14883 through 15053, and Payroll Wire Transfer Numbers 952 through 963
- 3b. Approved Investment Transactions for the Months of September and October 2009
- 3c. Appointment of Sloan Bailey to the Traffic Advisory Committee (TAC) as the Representative from the Planning Commission

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

To approve Consent Calendar items 3a, 3b and 3c.

PUBLIC HEARING

- 4. **501 Corte Madera Avenue** – A Public Hearing to Consider An Appeal of the Planning Commission’s Action to Conditionally Approve Design Review No. 08-008, Thereby Allowing Conditional Approval to construct a 3,985 Gross Floor Area (GFA), Single-Family Residence, Including a 4.0% Lot Coverage Where 25% Lot Coverage is Allowed, a 6.9% Floor Area Ratio (FAR) Where 40% FAR is Allowed, a 25 Ft. Front Yard Setback Where 25 Ft. is Required, a 10 Ft. Southern Side Yard Setback Where 10 Ft. is Required, a 42 Ft. Northern Side Yard Setback Where 10 Ft. is Required, and a 158 Ft. Rear Yard Setback Where 35 Ft. is required; and Discussion and Possible Action Concerning Adoption of a Resolution Approving a Design Review Permit to Allow Construction of a 3,985 GFA New Residence, Which Includes 2,980 Sq. Ft. of Finished Habitable Area, a 900 Sq. Ft. Attached Garage, and a 105 Sq. Ft. Unfinished Non-Habitable Area, as Conditionally Approved by the Planning Commission

The Planning Director introduced this item, stating that the two most important issues associated with this property are siting and the two existing concrete retention basins. He explained that the lot is steeply sloped with some variability of slope direction; is irregularly shaped, and is accessed via a private driveway access easement which connects from Corte Madera Avenue to the building site at the southeastern side of the lot. Two 100 year old concrete reservoirs exist northwest of the proposed residence. The reservoirs were constructed as part of a private water supply company that has not been in operation for many decades. Staff was able to conclude that the primary risk associated with the reservoirs would be if either one were to catastrophically fail while full of water. Mr. Pendoley stated that the proposed project would reduce that risk by installing drains in both reservoirs and that the proposed building location is the most appropriate location to site development on this property because it is closest to the access easement and furthest away from the reservoirs.

The Associate Planner presented the staff report, stating that this item is an appeal of the Planning Commission’s conditional approval of a request to construct a 3,985 gross floor area single-family

residence which either meets or exceeds all required setbacks and meets all other development standards in the Zoning Ordinance. She reviewed the layout of the lot and added that the only visible adjacent residences are in the immediate uphill and downhill vicinity. The closest neighboring residence is at 425 Corte Madera Avenue, belongs to the appellants, and is 162 feet away from the subject residence.

The Associate Planner reviewed the proposed residence, which is partially built into the hillside. The massing of the house steps down the hillside by utilizing a series of decks/patios, the driveway, and stepped retaining walls which follow the existing topography of the site. She stated that the proposed residence will be sited in a neighborhood with an eclectic array of design styles and that the overall design of the project incorporates the hillside design techniques that the Planning Commission encourages including: cutting and building in to the hillside; stepping the building back with decks/patios to follow the surrounding topography of the site; utilizing dark and earth-toned colors to reduce the apparent bulk and mass of the building; and screening with landscaping.

Ms. Roznowski stated that on October 1, 2009, the Benstead's submitted a timely appeal of the Planning Commission's decision to conditionally approve the proposed project based on 8 points of appeal. She stated that based on the Zoning Ordinance's definition of height, the maximum height of the proposed residence is 27'-2" where the maximum allowable height is 30' and that the retaining wall closest to the Benstead's is 7'-6".

Ms. Roznowski discussed point 6 of the appeal, which states that the reservoirs are hazardous and subject to rupture and failure in the event of winter storm or earthquake, and point 8 which argues that failure to stabilize or remove the reservoirs fails to comply with CEQA requirements. She stated that the two reservoirs presently serve an important hydrological function as they intercept 92.5% of the storm water runoff from the watershed. The upper reservoir intercepts a portion of the runoff; it then discharges into a swale, which in turn discharges into the lower reservoir, and from there enters a concrete box below the lower reservoir. Water is then routed into a 4" pipe which connects to the Town's storm drainage system on Corte Madera Avenue, although the pipe is currently clogged. She noted that as a result of this clog, storm water has overflowed onto to the neighbor's driveway at 385 Corte Madera Avenue during large storm events but said that such an overflow would not impact the proposed development. She also explained that the applicant has agreed to include improvements that would help to prevent the risk of overflow by replacing it with a new dedicated pipe to collect water from the lower reservoir. The applicant would also install a second dedicated pipe in the same easement to adequately accommodate surface and subsurface runoff from the proposed development. She said this action effectively improves the reservoirs' safety by slowly draining water into the Town's storm drainage system and ultimately emptying the reservoirs. She cited engineering reports submitted by the applicant which support the conclusion that the new development will have no effect on the safety and stability of the reservoirs. She also cited the Drainage Report and Geotechnical Investigation Reports which conclude that the hydrologic and hydraulic conditions upstream and downstream of the project will remain unaffected as a result of the project and that the proposed construction should have no adverse effects on either reservoir. She said that as a result of these findings, the project is Categorically Exempt from CEQA guidelines and staff believes the

project greatly improves drainage relative to the reservoirs. She noted that while the failure of either reservoir would be unrelated to the proposed project, the property owner would be liable for any effects on adjacent properties.

Ms. Roznowski stated that the Planning Commission adopted Resolution 09-009 that made Design Review and Hillside Capacity Overlay District findings based on factual evidence in the record. She said the Town Council has discretion to make other findings based on evidence, as it deems appropriate. She stated that staff recommends that the Town Council deny the appeal and uphold the Planning Commission action by adopting the attached resolution. She noted that the Council could also modify this action by directing the applicant to make further design revisions.

Councilmember Ravasio asked for clarification concerning the clogged flow of water. Ms. Roznowski explained that there are 2 siphons at the top of each reservoir which, when the reservoirs reach their high limit, drain the water into an existing concrete box below the lower reservoir. The water is then drained from the concrete box by a 4" pipe situated in a 4' easement; it is this pipe that is completely clogged. She said the applicant will replace the clogged pipe with 2 drain pipes to be installed at the bottom of the reservoirs and connecting directly to a new pipe in the same easement.

Councilmember Ravasio asked what measures could be taken to ensure that the new pipes do not become clogged in the future. Ms. Roznowski and Mr. Pendoley said it would be the ultimate responsibility of the property owner.

Councilmember Condon asked if the reservoirs and drainage system are recognized in the Storm Drain Master Plan. Mr. Bracken said no, that the downstream drainage improvements were done without consideration of this system.

Councilmember Condon said that if the system fails, the resulting overflow will affect many surrounding properties and enter into town right of ways. She asked if there are any contingencies to ensure that the proposed improvements are completed before construction begins. Ms. Roznowski said that a timeframe has not been specified as part of the application, but that the Council could include it as a condition of approval.

Councilmember Condon asked and Ms. Roznowski confirmed that the reports cited were compiled by a hydraulic engineer.

Councilmember Lappert said he visited the site and felt there was a considerable amount of exposed concrete with the reservoirs themselves. Mr. Pendoley stated that the upper reservoir is essentially a large hole in the ground, with the only visible concrete being on the interior walls. He explained that the lower reservoir is more of a dam than a cistern, backfilled with earth on one side and a retaining wall that stands about 12 feet high on the other.

Mayor Dupar opened the public hearing.

Len Rifkind, attorney for the appellant, questioned whether 4 of the 8 mandatory findings outlined in Chapter 18.30.070 of the Municipal Code could be made to grant approval of this project. He argued that the project does not conform with the General Plan, particularly the community design element which contains language that requires consideration of the perception of visual bulk in elevating the form of new residential construction. He said that, from the Benstead's perspective, replacing a hillside full of trees with a home is not considerate. He noted that one finding dictates that a project does not unnecessarily remove trees and cited evidence that the applicant has already removed a significant number of trees from the building envelope, prior to project approval. He argued that the project affects the privacy of both his client and the residents of 503 Corte Madera Avenue and said that while both existing homes are quite large, adding a third large home in between the two creates a crowded environment.

Mr. Rifkind said that the Council's highest and most important duty is life safety. He cited conflicts between reports supplied by the applicant and historical reports created by Mr. Nelson, a well-respected engineer, in 1980 and 1997; the latter stated that the reservoirs could experience failure even if restorative or corrective measures are taken. He said it is reasonable to question the safety of reservoirs constructed with unreinforced concrete in the 1900s and requested a peer review report. He also noted that the project has no guaranteed easement; he referenced a letter from his clients which clearly state there are no viable easements over their property, and cited a 2008 project on Meadowsweet Drive in which the Town was most concerned with access easements.

Mr. Rifkind said the proposal is a clear example of a design which does not fit the lot for which it is intended. He acknowledged that the height of the home is 27' -2" from finished grade but said that the overall mass is significantly larger because the home is set up on a pedestal. He said that this height, coupled with other design considerations, impose significantly on the Benstead's privacy. He acknowledged that the lot is very steep but suggested that alternative site locations have not been given due consideration. He cited, for example, an old fire road that could be used for relatively easy access to the upper reservoir and said that removing that reservoir would provide a flat and private site for the home.

Kelly Benstead, appellant, said that the bulk and location of the proposed residence is excessive and fails to comply with General Plan guidelines. She said the home is not stepped up or down with the natural property slope, but is merely built up in order to create a level surface and give the appearance of stepping. She suggested that the design of the home was imported from Tiburon rather than being created to specifically suit this site. She said that the overall mass creates an 18 foot visual wall which is intrusive and looms over her back yard. She noted that when the application was considered complete, it did not comply with the existing zoning ordinance and was allowed to continue despite the fact that the new ordinance took effect only two weeks prior to the first hearing. She said that measuring height from finished grade effectively eliminates a height limit and sets a dangerous precedent for design within the Town. She said that with nearly two acres, the applicant should be able to find a less intrusive location for their home. She said the reservoirs are a public safety issue and requested a report from an independent engineering company.

Guy Benstead said his appeal is based on several aspects of the project, most notably its significant impact on privacy. He said that he asked the applicant to design something that respects and maintains the privacy of all parties, and instead is faced with a project that maximizes the negative impacts on his family. He said this home design was actually created for the site at 699 Hawthorne Drive in Tiburon; a site that is relatively flat, faces the street, and allowed for a finished roof height that would be only 10' above existing grade. He said this home would loom over his property and stare directly into the rooms of his children, his in-law residence, and his back yard. He shared photos with the Council and stated that the applicant has removed, without the proper permits, nearly all the trees that previously screened this portion of the property and stabilized the hillside. He cited General Plan Policy LU1.10 and said the applicant has been unable to ensure there are sufficient easements for development access to the site. He said he also opposed the project due to the significant public safety hazard posed by the 2 reservoirs. He cited 2 reports which deemed both reservoirs a hazard 30 years ago, said no improvements have been done in that time, and cautioned that any problems created as a result of overflow will be dealt with by the town and paid for by taxpayers. He said this has the potential to be a remarkable piece of property if the residence is situated nearly anywhere else on the 2 acres and requested that the Council uphold his appeal until the all other options have been given due consideration.

Ted Christensen, applicant, said he has spent the last 20 months working with staff, public works and the Planning Department to develop a home that meets all of the design criteria indicated by current ordinances. He said the design underwent 3 iterations prior to a completion determination by the Planning Department, followed by another 3 at the direction of the Planning Commission. He said he has been considerate of the Benstead's comments by increasing side yard setbacks, reducing the height of retaining walls, cutting further into the hillside, relocating and restructuring the driveway, and reorienting the garage. He reviewed the boundary adjustment performed in 1996 which complies with the Subdivision Map Act to ensure access easements and the availability of utilities. He has put forth considerable effort just to get to this point, at a total cost of \$90,000 with over \$21,000 spent just in the planning process. The reservoirs are not impacted by the proposed project and that there are no legal requirements that can be put upon the property owners relative to a building permit application. He acknowledged that some trees have been removed from the site, said that there are still over 285 standing trees that are in excess of 6 inches in diameter, and noted that the landscape plan proposes to plant additional trees for screening purposes. He cited the Zoning Ordinance's definition of height and stated that neither the walls nor residence are anywhere near the height stated by the appellant.

Mr. Christensen read from the 1987 Earth Science report referenced by the appellant, noting that it states an understanding of the desire to construct a 2 or 3 story wood-frame single-family residence on the southeasterly portion of the property. He noted that this is exactly the location he has proposed. He said that homeowners should recognize that buildable lots will someday be built upon and that may mean another house will be visible from their back yard. He said it is ludicrous that the Benstead's should ask him to relocate his home simply so they do not have to see him. He said that the Planning Commission is tasked with the responsibility of balancing public interest and private property rights through a timely process of permits and a high quality of development. He said that

the facts have overwhelmingly demonstrated that this project is within the scope set forth by the Town and requested that the Council deny the appeal.

Assistant Town Attorney Abaci advised the Council that this is a de novo hearing, meaning that the Council is to consider everything presented this evening as evidence.

Bobbi Herdes, Recon Environmental Consultants, said she was retained by the applicant to assist with issues related to CEQA compliance. She said she visited the site, reviewed all documents, met with planning department staff, and ultimately came to the same conclusion that the categorical exemption given under CEQA is appropriate for this project. She said that, as existing conditions, the two reservoirs on site are only considered by CEQA in terms of whether the house would impact the reservoirs or the reservoirs would impact the site. She said that she did not find either to be a result of this project and noted that the applicant has agreed to take certain measures to improve the general safety of both reservoirs. She said that staff made the appropriate interpretation and that no further environmental review should be necessary.

Jim Netto, 385 Corte Madera Avenue, said his driveway is situated immediately adjacent to the lower reservoir. He cited concerns with the ongoing issue of overflow that no one seems to take responsibility for. He said substantial flooding washes down his driveway, bringing with it debris which threatens the entire hillside. He said he asked the Council to address the problem on numerous occasions. He said he believed the upper reservoir to be 30' deep. He said that a pipe running roughly 100' below the reservoir's concrete creates a seasonal stream which runs several months out of the year and emits enough pressure to move the hillside back 4" to 6" each year.

David McPherson, 431 Corte Madera Avenue, said that now is the time for the Town to exercise any legal jurisdiction it has to mitigate the effects of these reservoirs.

Lewis Biden, 390 Corte Madera Avenue, said he lives directly across from Mr. Netto's driveway and in line of any flow that would result from catastrophic reservoir failure. He said his concerns pertain only to the reservoirs, which he believed to be 22' deep, and not to any development.

John Glass, 133 Birch Avenue, said that the issues associated with this project are obviously problematic and supported the appeal. He said he could not imagine how it must feel to have a towering mansion erected in your back and suggested a resolution which relocates the home elsewhere on the property.

Chad Graco, 1001 Meadowsweet Drive, said the applicant has the right to buy and develop their property. He said the town is lucky to have such a responsible family take over the property, that the drainage pipe will still be clogged even if no project is approved, and that the tax revenue lost by this drawn out process could have financed the repair of the reservoir. He urged the Council to uphold the Planning Commission's action.

Al Selby, 217 Chapman Drive, asked the Council to consider the safety of Corte Madera residents

above all else.

Bill Bane, Larkspur, said he supports both the facts and the applicant and voiced disbelief that a project involving only 4% FAR with an allowed 40% FAR could create such issues. He said that Mr. Christianson is better suited than most to take on the maintenance of the reservoirs and requested that the Council uphold the Planning Commission's action.

Bill Johnson, San Anselmo, said he was personally involved in 3 lot sales in this area, the last of which is before the Council tonight. He supported the applicant's proposal, stating that they will take on the responsibility of maintaining the reservoirs for the safety of the Town and themselves. He countered previous statements, stating that the Tiburon home is built in to the hillside just as the applicants have proposed here. He urged the Council to vote in support of the Planning Commission's decision.

Bill Seifert, 126 Golden Hind Passage, asked why the applicants have done nothing to improve the reservoir drainage in the 4 years they've owned it. He said he has friends in a similar situation as the Benstead's and that the neighboring construction has completely eliminated their private enjoyment of their home. He said that the Benstead's have been taxpaying citizens of a historical Corte Madera home for 15 years and suggested the project be resituated to decrease its impacts.

Michael Hooper, Larkspur, stated support for the appellant. He said the design of the home is inarguably beautiful but robs adjoining neighbors of their privacy.

Michelle Slade, applicant, said that Marin has undoubtedly changed since she moved here in 1986. She said that development occurs no matter what and that the best method of approach is ensure that is undertaken with the best interests of the entire community at heart; said this project has taken in excess of 20 months and considerable financial investment to reach this point; the Planning Commission worked diligently to find a reasonable compromise in their action; she and her husband are very excited to build their first home together in Corte Madera, cited examples of their ties to the Marin community, and said they love Marin for its great access to the outdoors; and her husband has spent tireless hours working on this project for the last 2 years, has over 40 years in the construction and development business, and that it is this competence and perseverance that will allow him to succeed over others who have attempted to build here.

Bob Bundy, 89 Golden Hind Passage, recalled that the Flood Control Board's comprehensive review of drainage and potential flooding did not include this system because of a lack of easements and Public Works involvement. He cited concerns that the reservoirs seem to have outlived their life expectancy, said a homeowner could not possibly keep up with the necessary maintenance, and cautioned that a catastrophic failure would wipe out anything situated downstream. He asked the Council to use this opportunity to request that the reservoirs be taken down and the land returned to a more natural state.

John Art, San Anselmo, said he is a personal friend of the applicants; they love Marin, are very

excited to build a beautiful home here; and Mr. Christensen takes great care with everything he does. He acknowledged that this is a difficult circumstance under which to enter a neighborhood but assured everyone that, given a chance, they will make great neighbors. He said that suburbs are for neighborhoods and not necessarily for people after wide-open spaces.

Sean Callahan said that he moved to Sonoma County where they don't waste 20 months welcoming neighbors to the community. He said the applicants could have chosen any location to build their dream home and have chosen to do so here. He said they are well-educated and responsible people and urged the Council to support the project.

Patrick Macklewayne said this is clearly a residential project in a residential neighborhood, which meets or exceeds all ordinance and code requirements and creates no compliance issues. He said that catastrophic failure is certainly an issue that should be dealt with but is not affected by this project.

Michael Harlock, 533 Redwood Avenue, said there has been a tremendous failure of imagination in determining the siting for this property. He said that the lot offers many alternatives which include turning the existing reservoirs into a part of the home and that doing so would give the owners greater incentive to maintain and mitigate the reservoirs. He said that the current proposal is clearly designed to place the home in spot which is easiest to build on but produces the greatest nuisance to neighbors and does a similar disservice to the owners.

Guillermo Montoya, 331 Tamalpais Drive, said that the applicants have owned their property for 4 years but have not yet found any Corte Madera residents to speak on their behalf. He said he was concerned about the transparency of the proceedings and explained that he was told the owner had hired an architect who is a member of the Planning Commission and is also married to a Council member.

Mr. Pendoley explained that at the first Planning Commission hearing, Commissioner Esteb reported that he had been approached by the applicant to provide design services. Though Commissioner Esteb did not provide any such services, he declared a conflict of interest and left the room. He did the same at the two following hearings.

Mayor Dupar said that, based on these actions, he saw no conflict.

Commissioner Esteb explained that Mr. Christensen approached him via email about creating architectural drawings once the project was approved. He noted that Mr. Christensen was not aware of his involvement on the Planning Commission at that time. He said he immediately spoke with Mr. Pendoley and the Town Attorney who advised him to either decline the offer and hear the item or refuse to hear the project. He said that this is a wonderful project that he would love to be a part of so he chose to recuse himself. He noted that the Brown Act requirements pertain to financial relationships and said there is no such relationship with the applicant. He also confirmed that he is married to Councilmember Cock, who has no financial interest in nor has she spoken with him about the project.

Fred Casissa, 18 Granada Drive, said that a number of those who have spoken on behalf of the applicants are not Corte Madera residents. He said there is clear consensus that the reservoirs need to be addressed in some fashion and asked for assurances that the applicant will be solely liable to homeowners and the town in event of their failure. He also asked the Council to give great consideration to the Benstead's loss of privacy.

Kristen Lane, Tiburon, said that the structure meets what are clearly suitable rules, guidelines, and regulations concerning single-family residential development. She doubted that the care and maintenance of the reservoirs could be in better hands, cited the applicants' commitment to the environment, and noted that the plans have already been thoroughly vetted and approved.

Alicia Kepler, 25 Meadow Ridge Drive, said the Benstead's have been outstanding members of this community for many years. She said she is very familiar with their home; that the proposed project would significantly change their daily lives, and that alternative sites should be considered.

Alan Sandner, 5116 Paradise Drive, spoke on behalf of the appellants and concurred with Mr. Harlock. He said that acrimony is no way to introduce oneself as a neighbor.

Stan Gray, 95 Elm, Larkspur, said the home could clearly be moved about 75 feet to resolve all public health and safety issues.

Alan Daun, 425A Corte Madera Avenue, said he lives in the in-law unit on the appellants' property and has over 40 years experience as an architect. He said that the renderings supplied by the applicant use a bird's eye view which does not appropriately represent the impacts to the Benstead's property. He shared several drawings, cited discrepancies between the plans and actual measurements, and noted that one retaining wall has a visual height of nearly 18 feet and is situated only 20 feet from the property line. He said the house could be much better sited on the lot and noted that the other adjacent home follows the contours of the land much better than the proposed project.

Flora Merigian, 1025 Meadowsweet Drive, said that no one is disputing the beauty of the project or attempting to keep the applicants from building their dream home but noted that in doing so, the appellants would be losing theirs.

Michael Martineau, applicant's project manager, said the retaining wall has been slightly misrepresented. He explained that the existing wall is already 10' above the Bensteads' property line because of the slope and that, as proposed, the additions to that wall would be stepped back rather than creating a sheer vertical mass. He said that anyone who has walked the site can see that this location affords the best views and is the only reasonable layout.

Ms. Slade asked the public to consider that she and her husband do not want to build just any home, but would like to build the one they have fallen in love with. She said that the Planning Commission determined this to be the best possible site for the home and explained that to resituate the home as

some have proposed would mean to build it right into the existing redwood grove. She acknowledged that they do not have many personal friends in Corte Madera and said they would like the opportunity to become part of this community.

Mr. Benstead said he assumed the applicants were aware of the property's difficulties when they purchased it. He said he is most concerned that they have not yet made any improvements to the property despite their promised commitment to the soundness and safety of the reservoirs. He said he always expected that someone would develop the property but did not anticipate that it would come at such a great personal cost to his family. He noted that the applicants have been attempting to sell the property for the last 3 years and questioned their true intent.

Mayor Dupar closed the public hearing.

Mayor Dupar said his primary concern is that this area has always escaped the Town's flood control diagrams. He asked what size pipe would be required to drain the area properly. Mr. Bracken said that the main goal is to drain the reservoirs, which the applicant is proposing to do. The project does not affect the reservoirs and there are no legal requirements in this process that can impose any repair requirements as a result of this project. He said that if the Council would like the matter addressed, the town's nuisance abatement ordinance would be the best way to do so. He noted that there are also ordinances within the Municipal Code which require property owners to maintain drainage through their lot, regardless of what is or is not built there.

Commissioner Condon requested clarification on the town's legal authority. Mr. Abaci explained that the primary issue is whether or not the Design Review findings, as laid out in the staff report, can be made with this project. He said that requirements on the reservoirs would have to be linked to any of the findings associated with construction of a single-family residence. He said there is an analysis of the reservoirs in finding number 7 which matches the Design Review Ordinance but only proposes an improvement to the existing pipes. He said there is no language surrounding the removal of existing structures and that requirements beyond what have already been stated cannot be imposed where there is no connection to or violation of those findings.

Councilmember Condon read from Chapter 7 of the General Plan which requires construction of or upgrades to existing storm drainage facilities when there is new development. Mr. Pendoley clarified that the requirements of that policy limit the Town to ensuring that any drainage from a proposed development site can be properly channeled into the public drainage system. He said that this project proposes to collect that water into a drain system which is ultimately routed into a pipe that empties into the Town's system.

Councilmember Condon cited several examples where projects are required to convert directly to the Town's system, such as a property that was previously utilizing a septic system, and said that is the direction that should be taken here. She said that some sort of resolution is clearly called for whether it takes place as part of the design application or beforehand. She said it is an important project component that has been glossed over in terms of complexity, suggested that the applicants pay for

some sort of peer review if staff engineers are not qualified to make a determination, and requested that the matter be addressed before the project moves forward.

Mr. Pendoley stated that the Design Review Ordinance does not give the Town authority to do so. He explained that if it were determined that this project would somehow destabilize the reservoirs or increase the flow of water, there would then be grounds to require that the situation be corrected. He said that the only facts before the Council come from drainage and grading studies which were appropriately conducted and reviewed by staff and do not indicate that the project will impact either the upper cistern or downhill dam. He said that, as proposed, the project will in fact reduce the identified hazards by dewatering both reservoirs with drains.

Councilmember Condon noted that when remodeling a house, electrical systems must be upgraded to comply with code. Mr. Pendoley explained that only the remodeled portions must be brought up to code and said that since this project does not propose any construction directly involving the reservoirs, that requirement does not apply.

Councilmember Condon said she has strong concerns about the potential damage to neighboring properties and that it is incumbent upon the Council to require those improvements.

Councilmember Lappert said he has always taken pride in how streamlined the Town's planning process is and apologized to the applicants for how long this has taken. He acknowledged that the Benstead's are long time residents of this community. He said the applicants have spent an inordinate amount of money on what is clearly a beautiful home and that he has no desire to engage in its redesign. He said the staff report is one of the most thorough he has ever seen. He suggested that neighbors should be pleased to have the property lived-in and an owner present to ensure there are no further issues with the reservoirs. He found the fence line to be a bit disingenuous and Mr. Pendoley explained that the two homes are roughly 162' apart.

Councilmember Lappert asked what would be unsuitable about building this home in the property's redwood grove, assuming it were not such an ordeal to cut down redwoods. Mr. Pendoley said that the current proposal has siting advantages in that it is less steep than other areas and close to the existing driveway, thereby minimizing grading. He said that as the site is moved to both the northern and western portions of the property, the hill becomes steeper and impacts more significant. He noted that this portion of the property also contains a drain channel which feeds the cisterns and that it is Town policy to avoid the placement of homes over drainage swales whenever possible.

Councilmember Lappert said that when the cisterns are full with a combination of mud and water, they are perhaps not very functional in terms of original design. He asked why collection of that water is necessary and what would happen if the property owner chose to fill the entire system with stones. Mr. Bracken explained that filling the reservoirs would not eliminate hydrostatic pressure on the walls. He said the ideal situation is for both reservoirs to be empty and is something the applicant has proposed to do. He acknowledged that the proposed improvements will require maintenance.

Councilmember Ravasio read from the required findings under Municipal Code Chapter 18.18.120, which states, "The project mitigates any identified geologic or seismic hazards..." He asked if the Council could legally address the reservoir issue under that finding, provided it believed the reservoirs to be a seismic hazard concern. Mr. Abaci said that if there were identified geologic or seismic concerns, it would be required that the project and any resulting improvements to the reservoirs fully mitigate those concerns.

Councilmember Ravasio asked if a finding could be made that the project does not completely mitigate those hazards. Mr. Abaci said that in order to approve the project, the project itself would be required to mitigate those identified concerns.

Councilmember Ravasio said that public comment, statements from the applicant, and the staff report all indicate that the applicant removed a fair amount of vegetation from the building site before any application process was filed. He asked how that affects the findings on visual impacts. Mr. Abaci said that the findings consider whether the development itself, as currently proposed, is sufficiently mitigated by existing vegetation or subsequent re-vegetation.

Councilmember Ravasio said that he has developed property in town, that he believes Corte Madera has the best Planning Department in the county, and that he is very sympathetic for the amount of time this has taken the applicants. He also said he has known the appellants for years. He walked the site extensively and believes the applicant has situated the project in the best place on an extremely difficult lot. This may not be the best house for the lot and he thinks this is unfortunate for the appellant. He concurred with Councilmember Condon that the reservoirs represent a public safety issue and a tremendous liability for both the owners and the Town. He encouraged the Council to find a way in which to condition this project on the resolution of that hazard.

Councilmember Condon noted that the General Plan says the Town may, as a condition of approval for development of existing sites, require storm water retention or detention facilities, on or off site, if necessary to prevent flooding due to run off. She said that it would be in keeping with the General Plan to require remediation of the current situation. She cited additional concerns with the landscape plan and requested that a complete revised plan be submitted in addition to those for the home. She said she visited the site, reviewed the plans carefully, and feels that it would benefit the appellant without harming the applicants if the lower floor plate line were reduced from 10' to 8'. She said this would reduce the masonry fascia without compromising the home's architecture, would retain views while reducing impacts on neighboring properties, and could recover a significant portion of the costs incurred to date.

Councilmember Cock said she would not request that the applicant pursue any further remediation with respects to the reservoirs for two reasons: (1) reports state that the project will not affect the reservoirs and will effectively eliminate the Town's authority to impose any requirements on the matter, and (2) the Town Manager, who is also an engineer, has stated that the reservoirs do not present a problem if properly drained. She noted that the Planning Commission required an updated landscape plan as a condition of approval, with the purpose of that being to increase shrubbery and

privacy for the adjacent neighbors. She said she sympathizes with the appellant, but reminded them of the reality of living in the suburbs.

Mayor Dupar said he has known the appellants for years but that the issues raised seem to be a private matter and not related to building. He noted that the project impacts do not affect the reservoirs and said that anyone building here would have to deal with the same issues surrounding the reservoirs. He said that the applicant would be unable to secure enough liability coverage to protect against catastrophic failure of the reservoirs and it would therefore be incumbent upon him to protect his interests and maintain them. He said he initially wondered why the home was positioned so far upslope and that he realized that any further cutting into the hill would increase the height of the retaining wall on the side of the Conte's. He asked why the applicant could not lower the grade two feet. Mr. Christensen said it has already been lowered several times.

Mayor Dupar said he discussed possible alternatives with staff and now understands the logistical issues associated with those. He believed that no matter where the home was situated, someone would be upset. He assured the appellants that the landscaping would eventually grow in to provide screening and said he must reject the appeal.

Councilmember Condon requested that the reservoirs and dam structure be addressed as a condition of approval. She also requested that the applicant consider reducing the plate line of the first story to 8'. She said that she walked the lot and found the proposed site to be the most suitable but thought that concessions should be made to lessen its impacts.

Councilmember Lappert said he understood the restrictions on the Town's authority but asked if it could assume the responsibility of monitoring the reservoirs as part of the Town's drainage inventory. Mr. Bracken suggested an additional condition of approval which would require the property owner, after making downstream improvements that would drain the reservoir, to provide periodic status reports from a civil engineer. He cited previous examples of similar requirements with respects to erosion control.

Councilmember Lappert supported the recommendation. He asked how Councilmember Condon arrived at a plate height of 8'. Councilmember Condon said she thought to reduce the height of the lower floor by 2' and asked what it would be used for. Mr. Christndrn said it is irrelevant as the roofline is already at grade with the property above him. He said he has already lowered it 8' and anything more would create a sightline directly into the Bensteads' home.

Mayor Dupar asked how to craft a condition of approval that ties the project to the cistern improvements proposed by the applicant. Mr. Pendoley recommended that the Council request staff include a condition that 6" drains from the upper and lower cisterns would be in place prior to start of grading. Ms. Roznowski noted that the size of the piping has not yet been specified.

MOTIONL Moved by Condon

To uphold the Planning Commission action, with the added conditions that the applicant install the drains prior to the commencement of grading, submit a completed landscape plan, and reduce the first floor plate height to 8'.

Councilmember Lappert said he could second the motion if the last condition were removed. Councilmember Condon said she would not remove it.

Councilmember Cock noted that the updated landscape plan is already a condition and concurred with Councilmember Lappert.

Mr. Abaci suggested that the condition should say that the downstream drain for the upper and lower cisterns be improved prior to the commencement of construction of the single-family residence.

Councilmember Condon requested additional language regarding annual monitoring of the cisterns' performance and condition. Mr. Abaci added that the owner is to submit annual engineering reports for drainage to the satisfaction of the Town Engineer.

Mr. Christensen suggested that the improvements condition be tied to the issuance of the building permit.

Mr. Abaci clarified that the condition should require that the downstream drain for the upper and lower cisterns be improved prior to the issuance of the building permit, and that the applicant submit periodic engineering reports to the satisfaction of the Town Engineer for drainage adequacy.

The motion died for lack of a second.

Councilmember Ravasio asked if incorporating this system into the Town's flood control program should be conditioned as well. Mr. Bracken said that staff will ensure it is on the flood control maps.

MOTION: Moved by Lappert, seconded by Cock, and carried by the following vote,

To deny the appeal of the Planning Commission's action to conditionally approve Design Review No. 08-008, with the additional conditions of approval provided by staff.

Vote: Ayes: Cock, Dupar, Lappert
Noes: Condon, Ravasio

Mayor Dupar called a brief recess and the Council thereafter reconvened the regular meeting.

BUSINESS ITEMS

6. Adopted Resolution Declaring Scope and Content Comments for the Development of an

Environmental Impact Report (EIR) on the Highway 101/Greenbrae/Twin Cities Corridor Project

The Town Manager stated that action on this item is a response to a Caltrans Notice of Preparation of a Draft EIR for the Highway 101/Greenbrae/Twin Cities Corridor Project. He said that at the October 6, 2009 Town Council meeting, the Council requested that staff make certain revisions to the draft resolution based on comments from the public and the Council. He reviewed the requested changes and noted that staff assumes the project to include both options D and E in the northbound direction. The resolution requests that Caltrans review the impacts mentioned as well as investigate possible alternatives.

Councilmember Cock said that, as the Town's TAM representative, she understands that if the Town moves forward with its position to not support any project that closes Madera Boulevard, Caltrans will not consider any improvements to the Tamalpais Drive overcrossing. She said that state law prohibits the closure of Madera Drive without the Town's consent and suggested that the taking a more lenient stance would still reserve that right while also allowing regional money to be spent studying the entire corridor. She voiced concern that completions of Phase 1 and 2 will increase traffic at both Madera and Tamalpais, which will ultimately worsen the situation if not addressed. She said she could support the resolution, with the exception of stating that the Town will not support any project which proposes direct closure of Madera Drive.

Mayor Dupar said it has always been the Town's position that Madera Boulevard will remain open. He said he preferred to maintain this position and call Caltrans' bluff.

Councilmember Lappert asked what grounds Caltrans has based its refusal to study Tamalpais overcrossing on. Councilmember Cock said it is based on safety issues.

Mr. Abaci asked if Madera Boulevard is a Caltrans or Town right of way. Mr. Braken said it is a Town right of way via an agreement between Caltrans and the Town. He said he received an email from Valerie Pastoli confirming that the closure of that ramp would require agreement from the Town.

Mayor Dupar said the Town has maintained its position on the closure and that he sees no reason to give Caltrans any indication otherwise.

Councilmember Cock said that the minutes of previous meetings indicate a position that the Town would like further study.

Councilmember Ravasio said that the resolution clearly states the Town's position against the closure as well as the desire for further study. He said that this is only an environmental impact study and that any information gathered now may be useful later. Mr. Abaci stated that any proposed project, beyond what is to be studied, would be separate and apart and require an additional study.

Bill Whitney, TAM Project Manager, said that the current proposal is to move forward with southbound improvements in a phased approach. He said that the goal is to programmatically clear the entire concept but project clear only phases 1 and 2 which deal with the area north of Warnum Drive. He said that the consequence of telling them not to consider Madera Boulevard is that Caltrans will not study any improvements to Tamalpais Drive overcrossing. He explained that there are sight distance issues there which would require the changing of ramps to address and that, in turn, would require changes to other ramps including Madera Boulevard.

Councilmember Lappert said that a resolution is not binding.

Councilmember Condon said that the Town has acquiesced to further study for years and in the time that has passed the Town's position has been minimized. She said that it is critical to address the matter now and firmly oppose any project which closes access to Madera Boulevard. She said that much of what is being addressed are original Caltrans projects and that she wants to ensure this is not another one size fits all approach.

Mr. Bracken said Councilmember Condon's points are well taken. He concurred that the Town's agreement to continued study seems to have morphed into an acceptance of the plan. He said that is not the case and that it is important to make that very clear. He suggested an additional "whereas" statement which says that the Town Council to date has not seen any plans that would justify or mitigate the closure of the Madera off ramps.

Councilmember Lappert acknowledged Councilmember Cock's advice but said it is time to send Caltrans a clear message. He said this project has always extended to the Tamalpais Drive overcrossing and will continue to do so. He said he supported the resolution and requested that Councilmember Cock's vote at the TAM meeting be along the same lines. He requested that she either engage the board in a thorough discussion on the Town's position or craft a motion to that effect herself.

MOTION: Moved by Condon, seconded by Ravasio, and carried by the following vote,

To adopt Resolution No. 3618, Declaring Scope and Content Comments for the Development of an Environmental Impact Report (EIR) on the Hwy. 101/Greenbrae/Twin Cities Corridor Project, with the additional statement provided by staff.

Vote: Ayes: Condon, Dupar, Lappert, Ravasio
Noes: Cock

7. Approve Minutes of October 20, 2009

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

To approve Minutes of October 20, 2009, as drafted.

Councilmember Cock abstained.

Councilmember Lappert thanked Mayor Dupar for his 12 years of service to the Town.

Mayor Dupar thanked his fellow Council members and staff for a great and fun experience.

ADJOURNMENT

The meeting was adjourned at 10:50 p.m. to the next regular meeting on December 1, 2009.