

MINUTES OF MAY 3, 2016

REGULAR MEETING  
OF THE  
CORTE MADERA TOWN COUNCIL

Mayor Bailey called the Regular Meeting to order at Town Hall Council Chambers, 300 Tamalpais Drive, Corte Madera, CA on May 3, 2016 at 7:30 p.m.

**1. ROLL CALL**

Councilmembers Present: Mayor Bailey, Vice Mayor Furst and Councilmembers Andrews, Condon and Lappert

Councilmembers Absent: None

Staff Present: Acting Town Manager/Director of Planning and Building Adam Wolff  
Director of Administrative Services/Town Treasurer George T. Warman, Jr.  
Town Attorney Randle Riddle  
Senior Planner Phil Boyle  
Senior Civil Engineer Nisha Patel  
Director of Recreation and Leisure Services Mario Fiorentini  
Police Chief Todd Cusimano, CMPA  
Town Clerk/Assistant to the Town Manager Rebecca Vaughn

**SALUTE TO THE FLAG:** Mayor Bailey led in the Pledge of Allegiance.

Mayor Bailey announced that the Council received a request to switch the order of Item 6.II and hear it at the end of the meeting. A speaker requested this not be done and Councilmembers concurred.

Mayor Bailey announced that the Council also received a request to switch the order of Item 6.I. He stated that the Council will address this continuance request when the matter comes up on the agenda.

Mayor Bailey reported on the Closed Session the Town Council held at the last Town Council meeting of April 19<sup>th</sup> regarding the following matter:

PUBLIC EMPLOYEE APPOINTMENT [Govt. Code Sec. 54957]  
Title: Town Manager

He said it was announced by the Town Manager David Bracken that he will not renew his contract as the Town Manager which expires in September. Police Chief Todd Cusimano is currently in discussions regarding the Town Manager position with the Town Council and any decision and/or agreement will be available and provided to the public, as necessary. He invited the public to provide comments at any time and said the matter will be agendized.

Mayor Bailey reported that the Town Council will hold a Closed Session item at the end of this meeting, which he will report out after the item has concluded.

**2. PRESENTATION**

2.I Resolution 13/2016 In Support of Public Service Recognition Week, May 1-7, 2016

Mayor Bailey read the resolution into the record in support of Public Service Recognition Week, May 1-7, 2016.

MOTION: Moved by Condon, seconded by Andrew, and approved unanimously by the following vote: 5-0 (Ayes: Andrews, Condon, Furst, Lappert and Bailey; Noes: None)

To adopt Resolution 13/2016 in support of Public Service Recognition Week, May 1-7, 2016

### **3. OPEN TIME FOR PUBLIC DISCUSSION**

PETER ORTH, Meadowcrest Drive, questioned the nomination process for recommendation of the Police Chief to replace the Town Manager and suggested consideration be given to advertise the position and provide more information as to the Council's confidence in having the Chief move forward as the Town Manager.

Mayor Bailey noted that the Council agendas its two upcoming draft Council agendas in advance and the topic can be considered to be placed on a future agenda.

JANE LEVINSOHN, Tamal Vista, reported last week there was a message on Next Door that a 3<sup>rd</sup> grader from Cove School was doing a report on San Quentin Prison. She has volunteered at the prison for over 14 years and will retire this September. This Friday night at 8PM on CNN will be a one-hour documentary of San Quentin Prison, written by author W. Kamau Bell, *The United Shades of America*. At 9PM, CNN will play his experience visiting a KKK cross burning which she hoped people will be able to see. She said as awful and old as the prison is, it is one of the few that has many wonderful programs.

### **4. COUNCIL AND TOWN MANAGER REPORTS**

- Acting Town Manager/Director of Planning & Building Report on Tamal Vista East Corridor Study
  - The Planning Commission ratified their decision to recommend approval of the Corte Madera Inn rebuild project and certified and adopted the EIR on April 26<sup>th</sup>. The public hearing has been deferred after having received information from the Regional Water Quality Control Board regarding the biological resources that exist at the pond on the site, which may change how the pond is described in the EIR. As a result, staff is evaluating the need to revise the analysis and will update the Council when more information is received.
  - There is no report on the Tamal Vista East Corridor Study as staff is working on drafting the report which will return to the Planning Commission. Staff is still on track before the moratorium expires.
- Council Reports

Councilmembers Andrews and Lappert had no reports.

Councilmember Condon gave the following report:

- On May 22<sup>nd</sup>, as part of the centennial celebrations, over 60 cars will be exhibited at the Vintage Car Show at Marin Luxury Cars.
- June 10-12<sup>th</sup> will be Weekend 100, the centennial birthday weekend. Starting on Friday night there will be a family fun night, activities all day Saturday, live concert in the Village on Saturday evening, followed by fireworks presented by the same outfit that presented the Super Bowl's fireworks. On Sunday, a Police vs. Fire Softball game will be held.

Vice Mayor Furst gave the following report:

- She attended the Central Marin Police Authority Police Council meeting:

- The Authority Board discussed the CMPA budget.
- Police statistics and citations have doubled from 2 years ago.
- Information can be found on CMPA's website for the April 21<sup>st</sup> meeting packet.
- CMPA's budget is \$11.4 million. Corte Madera's share is \$ 3.095 million which is up \$93,000 from last year. However, it is not up appreciably from what it was several years ago.
- CMPA has found identified and implemented many efficient measures such as moving dispatch to the County Sheriff's Office saving about \$500,000.
- The Police Council will be working with the Management group consisting of the City Managers from Corte Madera, Larkspur and San Anselmo to determine a process to choose a new Police Chief. They will be discussing this more at the next Police Council meeting on June 2<sup>nd</sup> at 6PM.
- Tomorrow is Bike to School Day.
- She attended the TAM meeting and reported the following:
  - TAM will have a table at the new bicycle pedestrian crossing over Sir Francis Drake Boulevard.
  - The official ribbon-cutting for that bridge will be May 20<sup>th</sup> at 1PM on the north end of the bridge.
  - Larkspur is in the middle of a road project on Magnolia from the southern boundary to King Street and King Street north. People should expect delays or consider taking alternate routes. The project will last Wednesday through Friday, 7AM to 6PM.
  - Regarding the third lane on the Richmond San Rafael Bridge, the planned completion is September 2017.
  - TAM has a couple of projects they are seeking funding for which will help traffic move onto the bridge. This includes improvements on East Sir Francis Drake as it approaches I-580 and also at the Bellam exit. It would include re-striping and changing the turn lanes. TAM's Executive Director attended the MTC meeting to try and get funding for this and was turned down. TAM is still seeking funding at a cost of \$3.5 million to make all improvements to ensure that when the third lane opens, they can be as efficient as possible in moving cars onto that third lane.
  - TAM has a program for electric vehicle rebates for fleet purchases. If the Town or the Sanitary District is going to be replacing any electric vehicles, rebates can be received from TAM.
- ABAG is holding a special General Assembly meeting on May 19<sup>th</sup> from 12 noon to 2:30 p.m. at the Alameda County Administration Building to discuss the potential merger with MTC.
- ABAG is also holding a series of open houses around the Bay Area to discuss Planned Bay Area II. They have scheduled the Marin Open House in Corte Madera at the Community Center on Saturday, June 4<sup>th</sup>. She thanked Mr. Fiorentini for making these arrangements.

Mayor Bailey gave the following report:

- He represents the Town on the Marin County Council of Mayors and Councilmembers' (MCCMC) Legislative Committee and will report at the next meeting on bills going through in Sacramento.
- He represents the Town on the Marin Clean Energy Board of Directors and MCE has absorbed 7 new communities.

## **5. CONSENT CALENDAR**

Mayor Bailey requested removal of Item 5.II.

- 5.I Waive Further Reading and Authorize Introduction and/or Adoption of Resolutions and Ordinances by Title Only. (Standard procedural action – no backup information provided)

- 5.III Adoption of Proposed Resolution No. 10/2016 Adopting the ICMA Retirement Corporation VantageCare Retirement Health Savings (RHS) Plan Number 803626 Corte Madera Department Heads and Town Manager Employees  
(Report from George T. Warman, Jr., Director of Administrative Services/Town Treasurer)
- 5.IV Adoption of Proposed Resolution No. 11/2016 Adopting the ICMA Retirement Corporation VantageCare Retirement Health Savings (RHS) Plan Number 803627 Fire Mid-Management Employees  
(Report from George T. Warman, Jr., Director of Administrative Services/Town Treasurer)
- 5.V Adoption of Proposed Resolution No. 12/2016 Adopting the ICMA Retirement Corporation VantageCare Retirement Health Savings (RHS) Plan Number 803628 Mid-Management Employees  
(Report from George T. Warman, Jr., Director of Administrative Services/Town Treasurer)
- 5.VI Approval of Amendments to Adopted Town Budget for FY 2015-2016  
(Report from George T. Warman, Jr., Director of Administrative Services/Town Treasurer)
- 5.VII Receive and File Investment Transactions Monthly Report for March 2016  
(Report from George T. Warman, Jr., Director of Administrative Services/Town Treasurer)
- 5.VIII Approve Warrants and Payroll for the Period 4/14/16 through 4/27/16: Warrant Check Numbers 213436 through 213549, Payroll Check Numbers 5186 through 5199, Payroll Direct Deposit Numbers 29315 through 29440, Payroll Wire Transfer Numbers 1998 through 2005 and Wire Transfer of 4/26/16.  
(Report from George T. Warman, Jr., Director of Administrative Services/Town Treasurer)

MOTION: Moved by Andrews, seconded by Furst, and approved unanimously by the following vote: 5-0 (Ayes: Andrews, Condon, Furst, Lappert and Bailey; Noes: None)

To approve the Town Consent Calendar Items 5.I, 5.III, 5.IV, 5.V, 5.VI, 5.VII and 5.VIII

Item Removed from Consent Calendar:

- 5.II Approval of Transfer of Appropriated Funds from Green Room Remodel Project (\$40,000) to Skate Park Fencing Project (\$15,000) and Town Park Field Irrigation Valve Relocation Project (\$25,000).  
(Report from Mario Fiorentini, Director of Recreation and Leisure Services)

Mayor Bailey said the Town has had complaints about the Skate Park's hot metal railings and asked if this will be addressed as part of the remodel.

Director of Recreation and Leisure Services Mario Fiorentini stated the fencing and gate project are in direct response to how easily it is for younger children to access the park on their own without parental supervision. The Town has another \$25,000 set aside in the capital project to improve the ramps, but these funds are specifically for the fences.

MOTION: Moved by Lappert, seconded by Furst, and approved unanimously by the following vote: 5-0 (Ayes: Andrews, Condon, Furst, Lappert and Bailey; Noes: None)

To approve the Town Consent Calendar Item 5.II

## **6. PUBLIC HEARINGS**

6.I Appeal of the Planning Commission's Approval of Resolution 16-009 that Approved with Modifications Design Review Permit No. 15-019, Which Allowed an Approximately 465 sq. ft. Addition to the Existing Residence at 359 Chapman Drive. The Modifications Approved by the Commission Included Reducing the Roof Height of the Addition, Reducing the Size of the Addition, Installing Landscape Screening and at the Applicant's Discretion Modifying the Windows on the North Elevation of the Addition, PL-2016-0023-APTC.

(Report from Phil Boyle, Senior Planner)

Mayor Bailey stated the Town received a request received earlier in the week to continue the hearing and he asked if this was still the case.

ANDREW AUGUST, attorney speaking on behalf of Jennifer Larson, appellant, stated they had asked for continuance in order for the Town Council to be able to view the mass of the addition. He asked if this Council has the ability to request the applicant erect or allow them to erect a mock-up of the addition and would like to continue the appeal hearing until this is done. However, they are prepared to proceed this evening.

Town Attorney Randy Riddle stated he had a discussion with the appellant's attorney regarding this. His view is that absent consent by the property owner, the Town Council has no power to mandate that the other property owner allow the appellant onto their property and construct a mock-up of the addition.

MICHAEL CHAMMOUT, property owner/applicant, objected to erecting a structure on the property.

Mr. August responded to the Town Attorney's point, stating he is not asking to enter onto the property but rather that the Council allow the appellant to pay for the erected structure much the way the Council enforces story poles and install what should have been a more robust shielding on the story poles.

Mr. Chammout said he thinks the protocol is to ask homeowners to erect story poles which he already complied with. He thought this will open up a new precedent moving forward and will allow the process to stall and add more requests onto applicants.

Mayor Bailey asked if members of the public wished to address the request for a continuance, and there were none.

Councilmember Andrews said he reviewed the story poles on Saturday, April 23<sup>rd</sup> and thinks they were changed on April 24<sup>th</sup> but he has not been able to view them from Ms. Larson's property. He asked if any Councilmembers had visited the property which might affect the determination one way or the other.

Mayor Bailey asked and confirmed with Councilmembers that they did not wish to continue the matter.

Councilmember Lappert stated the hearing is a de novo hearing where the Council will be presented with every bit of factual information germane to its decision-making.

Vice Mayor Furst asked and confirmed with Senior Planner Phil Boyle that the Council will

be seeing photographs from the appellant's property; that photographs show the old story pole layout as well as the new story pole layout, and further that the change of the story poles was approximately a 7-inch reduction in the height of the addition from pre-Planning Commission to post-Planning Commission.

The other change directed by the Planning Commission was a reduction of the west wall which was moved approximately 1 foot to reduce the size. He suggested Mr. Chammout clarify the date the story poles were changed.

Mr. Chammout said he changed the story poles one week prior to Councilmember Andrews' visit, and therefore, Councilmember Andrews did see the story poles as revised.

Councilmember Condon asked, and Town Attorney Riddle provided, a summary of the de novo hearing process stating that the Council will hear all evidence anew and is not bound by the actions of the Planning Commission.

Senior Planner Phil Boyle gave the staff report, stating the matter is an appeal of the Planning Commission's decision regarding 359 Chapman Drive design review application. He displayed a PowerPoint presentation, gave the staff report and described the scope, layout, and key elements of the proposed addition for a master suite bedroom.

He said relocation of the addition had been considered but a variance would be required due to encroachment into the setback area. He presented views from the appellant's living room prior to the Planning Commission meeting, stated the story pole height was verified, and provided a summary of the planning process and work to find a compromise with both the applicant and appellant which did not result in mutual agreement.

In February, staff was able to make all findings for design review and believed the addition did not have a significant impact on views, sunlight and privacy. An appeal was filed which was heard by the Planning Commission. Mr. Boyle described the grounds of the appeal which include: 1) the approval omitted sections of the General Plan dealing with views; 2) that there were no metrics, facts or analysis used; 3) that the addition would eliminate views; and 4) the addition had a negative impact on the home's value and quality of life. Staff responded in detail to the appeal grounds which he said are outlined in the staff report.

Mr. Boyle stated that on March 8, 2016, the Planning Commission modified the project approval by:

- Reducing the size from 465 square feet to 450 square feet;
- Required the applicant to reduce the height not to exceed 12'6";
- Directed the applicant to plant vegetative screening, and;
- At the applicant's discretion modify the windows on the north elevation to reduce privacy impacts

The applicant agreed to all conditions.

On March 18, 2016 the same appellant appealed the Planning Commission's decision to the Town Council with concerns that 1) the addition negatively alters the relationship of the appellant's house and property to its natural surroundings; 2) that the Town process was unfair and the Commission's proceedings were a breach of protocol and due process; and 3) that community members at the hearing submitted letters and support the appellant's reasoning.

Mr. Boyle stated he has addressed and provided an explanation for each concern as outlined in the staff report. The Council's options this evening are to affirm, reverse or modify the decision of the Planning Commission, and staff recommends that the Council adopt the resolution which affirms the Planning Commission's decisions.

Mayor Bailey called upon the appellant and asked that the appellant assume that the Town Council has read the staff report and packet materials and that the Council has been given the opportunity to visit the site.

JENNIFER LARSON, appellant, thanked the Council for visiting her home and thanked those in support of her position. She turned over the presentation to Andrew August.

ANDREW AUGUST, attorney at Brown, George Ross on behalf of Jennifer Larson, appellant, provided an overview of his review of the record and agreed to take on the appeal, stating that he would like the Council to 'right a wrong' rather than 'perpetuate a wrong.' He said the issue is not about the metrics of the size of the addition but all about visuals and referred to a case: Citron vs. Town of Corte Madera 2002, which is an unpublished decision but very instructive which involved a similar situation.

He asked that the Town Council ask itself whether the findings are in compliance with all statutory and regulatory criteria and requirements, and whether they bridge the analytical gap between the raw evidence and the Council's ultimate decision.

Mr. August then referred to the Section 5 of the General Plan; Design Review and quoted, "Affirmative findings must be made by the Zoning Administrator or the Planning Commission that the project is in scale and harmonious with the area and that the project will not significantly or adversely affect views, sunlight or privacy of nearby residences."

Under the implementing Municipal Code which he said is in conflict with the General Plan, under general findings, findings are identified which must be made: "1) the project conforms with the General Plan and that the project will not significantly and adversely affect the views, sunlight or privacy of any nearby residences."

Mr. August then presented Exhibit B from the Municipal Code which talks about the purposes of the design review; that, "Design review for enlargement of existing residences must occur in a manner which is consistent with the policies of the General Plan." He said if the project is either significantly and/or adversely impacted the Town cannot approve it. He quoted, "It must be harmoniously with surrounding sites and structures and must not unnecessarily block scenic views from other buildings."

He then referred to Section 8.03.020 and said with respect to number 1 it states, "with particular attention to view considerations."

Mr. August then referred to Exhibit C which he said is unlike the photograph of the Planning Department's presentation. The photograph includes foliage in the spring and no foliage in the winter, and story poles can be seen showing the "dental floss" marks of the lines. He then presented a rendering of what the addition was going to look like prior to modifications. He noted that Mr. Chammout and Ms. Larson had been previously married and he felt it was unusual that windows of the addition were positioned to look into Ms. Larson's home. He said modifications include lowering the roofline by 7" and shortening the extension of the addition by 1 foot, and he presented a photograph of the modified view from Ms. Larson's property taken from a rock statue.

Mr. August stated there was discussion by the Planning Commission to possibly eliminate the windows. He displayed what a rendering would look like by removing the windows which shows a blank wall. The Commission recognized the privacy impact and suggested the applicant install a fence and install plantings that would grow up to the eave line of the new roof, but he said the appeal is about Ms. Larson's view and not about the applicant's ability to develop his property, as Mr. Chammout could apply for a variance.

Regarding the story poles, he presented the lines as seen by Ms. Larson's architect who stated the story poles and stringing were inaccurate. His understanding is that Mr. Chammout erected the story poles himself. He then presented the roof/eave line based on

incorrect story pole height and the existing story pole at building corner which states, "incorrect height shown; "Projecting the side wall height using the top of the existing story pole as a guide, the interior ceiling in the proposed addition would be less than 6'6". The string line of the roof eave from the story pole to the existing house is not properly shown on the site. Existing story pole is inaccurate and set too low."

Mr. August said the architect created a correct story pole which he displayed which states, "Corrected perspective of actual roof eave line." The Council will see on the rendering that the roof matches the architect's red lines. The left story pole states, "Line of string line at site slopes down out of level. The story pole at building corner is the same. Corrected heights: Roofline show perspective corrected actual heights of addition wall and roof eave and the slopes of the roofline above. Actual height and impact will be 'significantly greater' than shown by the existing story poles on site. This corrected view assumes interior floor is level with the existing house and interior ceiling height of the addition is 8'0".

Mr. August noted that when standing on the property he noticed a slight incline from the Larson property to the Chammout property which is approximately 16" higher than the Larson property. He also understands there has been some commentary by Mr. Chammout that Ms. Larson did not know about the addition when they bought the house and were married. He said there were plans with her name on it from 2008 and those plans do not show this addition.

Lastly, Mr. August displayed the minutes from the Planning Commission and pointed to comments by Commissioners. He deleted their names and displayed one Commissioner's quote. Commissioners 1, 3 and 4 all commented that the visual impact was very significant and he asked the Council to decide whether the addition is an impact. He quoted his own comments as to Finding #3, which states "no effect on privacy of nearby neighbors, single story."

MICHAEL CHAMMOUT, property owner/applicant, displayed the proposed addition and noted it was actually 1,323 square feet. Regarding approving design review as Mr. Boyle pointed out, the first criteria is conformance with the General Plan; "Compatible with existing neighborhood character, structures and encourage property owner reinvestment and upgrades to existing residences and related property improvements." The proposed remodel and additions will be an improvement to his property which is consistent with the General Plan.

The second criteria under R-1 zoning reads, "conformation with the zoning ordinance to preserve appropriately located areas for family living in a variety type of dwellings at a reasonable range." Regarding sunlight and shade which has been brought up repeatedly, the initial objections were, "His addition will completely obliterate my view" yet Planning professionals opined that "the project will not significantly and adversely affect the views."

Mr. Chammout noted that his home is a patio home with two short wings and a central area. The component of the home in contention and adjacent to Ms. Larson's property is the north wing which constitutes the master bedroom. Ms. Larson's home is 90 degrees clocked to his home so this area is behind her back fence. There is a 5 foot previous code setback to his fence and a 25 to 30 foot setback to where her home is located.

He presented a photo looking out across to Ms. Larson's backyard over her back fence. He said on the backside of her fence is his front yard which currently looks like a park with expansive landscaping. According to the code, he can expand 30% of his lot size and up to 30 feet. The current home is about 8 ½ feet of flat, sagging, leaking tar and gravel roof. The area originally proposed in contention was to go up about 1 foot. The Planning Department and Planning Commission reduced it to 12 ½ feet which is 1'6" higher than it currently is.

He said he was asked to install story poles which he did and said it took from July to December to get through the process. Staff visited the property and surrounding

neighborhood several times before and after story poles were installed. Staff visited both properties multiple times and took multiple pictures. They visited the sites because of the sunlight and referred to Ms. Larson's grandiose statement, "This will block 80% of my sunlight" yet staff's assessment is that at dusk when the sun is at its lowest angle, they observed there were no shadows cast onto the yard or residence of Ms. Larson's home.

Mr. Chammout said the next part of the review process was structure and site plan and he said the proposal is very modest. He is taking a 1320 square foot home with one full bath and increasing it by 400 square feet. The overall height is 1 foot which is nominal. His lot to home square footage ratio is currently at 16% and he can go up to 30%. This increase will bring the FAR up to almost 22% of this lot size. Lastly, staff looks at appropriate landscaping.

He said Ms. Larson appealed the decision of the Planning Department with the argument that "the Town chose not to include key elements of the General Plan. This suggests bias." He believes the staff report is very objective and indicates the project conforms to the General Plan, given reinvestment of upgrades to older homes, bringing them up to code. Staff's opinion is that the "remodel addition is an improvement to the property and consistent with the General Plan."

He said Ms. Larson's next argument is that "it will not only eliminate my short and long-term views, but does so by constructing a massive wall in the foreground that drastically, negatively and forever alters the relationship of my home." Mr. Chammout said Planning staff responded that staff looked closely at the potential view impacts and in their opinion found they were not significant enough to warrant denying the project especially with compromises agreed to.

Regarding argument 3 which states, "None of the General Plan policies focused on the view and preservation", he feels this is redundant and dogmatic. Regarding argument 4, "the addition does not conform to the zoning ordinance", there is no explanation as to why Ms. Larson thinks it does not conform, and staff responds by stating it is appropriately located.

Regarding argument 5 regarding lack of information in the General Plan, staff responds that the guiding principle of the General Plan acknowledges that all Corte Madera neighborhoods are nearly built out so the focus turns to improving the neighborhood character of areas, and the General Plan states, "Growing families add to an ever increasing pressure to expand the size of our existing homes and improve an aging housing stock. Proper design can enhance the character when existing homes are expanded and otherwise remodeled." Mr. Chammout said his home was built in 1949 for returning G.I.s and there is no insulation in the home. There are single pane galvanized windows and he has one bath and two tiny bedrooms. The General Plan encourages residents to bring homes up to code and improve them for the growing demographic of the Town.

Mr. Chammout said the General Plan then outlines an implementation program which states "support upgrades to existing residential structures when consistent with the General Plan and ordinance." He then stated that Ms. Larson continued and got more offensive to the Planning Department staff's statements and recommendations and stated, "The Town seems to not have the bandwidth or direction to do the right thing" and that at the Commission meeting "it was a dog and pony show." She refers to those who supported her opposition that the addition is not conforming, and that every statement is incorrect or inaccurate.

Mr. Chammout said what this comes down to is credibility and integrity. He said the pictures presented by Ms. Larson are not accurate of his home, noting there is 50 feet from her property line and another 14 feet beyond. He noted that the house will be pushed back an additional 1 foot and the height is the same. Her view clocks out to the southwest and he said the views shown were not accurate.

He concluded, stating there are 3 windows on the side of the addition which will look out to her fence and the bamboo vegetation area which will extend down the fence.

Mayor Bailey opened the public comment period.

PETER ORTH, Meadowcrest, said he does not accept staff's rationale and recommendation and supported Ms. Larson's position. He said the Planning Commission declared that the decision was a "qualitative one" and therefore metrics were not necessary which he questioned as part of the assessment. He estimated there will be 80% view blockage and said a qualitative description of the impact would still be that it was totally disruptive and no longer gave any feeling of connection to the ridge to the south. He said his comments at the Commission hearing related to his experience of importance of views in working with his mother's estate in Santa Barbara and he then described a series of dramatic events that occurred at the Planning Commission hearing involving the applicant. He asked that the Council direct staff to apply view metrics and hoped the Council will support the maintenance of the Town's quality of life.

Mayor Baily stated there have been occasional personal peppering and commentary of people's integrity and he asked speakers to refrain from this.

ANDRE PESSIS agreed that the matter should be based on fact and it seems reasonable that it is improper when someone buys a house with a view and then a neighbor wants to build and remove that view. He said the applicant's descriptions of bringing the home up to code and renovating it has no relevance to the fact that the applicant loses her view. He thought the simple solution was a variance for another space on the property, noting that 75% of renovations in the Christmas Tree Hill area have had variances, and he asked why the addition cannot simply be moved.

TINA MCCARTHER, Pacific Union Real Estate, said if the view is taken away the reduction of her home's value is at least \$100,000 or more. The property is predicated on the view corridor and it would be a travesty if she lost it.

PETER HENSEL, Willow Avenue, said the General Plan is the blueprint for development of the Town. All of its elements must be internally consistent and likewise the Municipal Code must conform to the General Plan or be amended. Town planners should view each section within the broad framework of the whole and there cannot be selection application of code to enable a homeowner's expansion project to go forward especially if it impacts a neighbor's view. He believes the playing field has been tilted to allow one neighbor's development rights to overpower another neighbor's right to preservation of a long-range view of an historic, protected open hillside.

He said the applicable section of the General Plan that should have been applied is in Chapter 5.3; "Views from residential properties add to property values and enhance quality of life. At the same time such viewsheds can also create conflicts for owners seeking to develop or construct additions to their homes when construction may impact views from nearby properties. This issue will be regulated with standards that allow for a reasonable amount of development while minimizing significant negative impacts to neighbors' views." Ms. Larson is willing to compromise on the height of the addition over her kitchen which does remove sunlight, but she does not want what will be a visually bulky extension seen through her bay window.

Lastly, Mr. Hensel said the mitigating conditions the Planning Commission placed on this project are so miniscule as to verge on the absurd. He said if this project goes forward, Ms. Larson's sole view from her bay window will be largely eliminated and the end result will be significant loss of value of her home. He asked that the Council uphold Ms. Larson's appeal.

KARIN VOVOGIC said she is a neighbor and not impacted by the project. She submitted a

letter on April 6<sup>th</sup> which was the day she looked at the story poles which she read into the record which cites blockage of 90% of the view of the preserved ridge, blockage of southern exposure of the house and yard, changed garden environment and house heating, reduction of property values, setting a precedent, creation of distrust and anger for not adhering to the General Plan. She suggested directing the applicant to use the opportunity to construct the same structure at the north side of the house.

STEVE KAPETSKY, Chapman, said he lives directly adjacent to Mr. Chammout and forwarded a short letter on April 28<sup>th</sup>. He has been friends with both the applicant and appellant for over 10 years and is fond of them both. He does not want to take positions and to him it is about principles and facts involved. He acknowledged that Mr. Chammout's plans are within regulations under the R-1 zoning district, that the addition does not include a second story, that the claims in the appeal are significantly overstated and not based on fact, and he voiced his support of the applicant with what he sees as a reasonable request which has been approved on two occasions with due diligence.

SAMUEL GARSON SANJOBORG said he knows both groups brought up the question about how much percentage of view is obstructed and he asked if there was a way using math to get the actual percentage. In using that percentage, he said an accurate decision could be obtained of what percentage is allowed to be obstructed by increase in house development size.

Councilmember Lappert commented that all of this is dependent upon where one is standing.

RICHARD WILLIS, El Camino, stated Ms. Larson asked him for his observations and he has a similar circumstance in that his backyard, deck, lawn and garden are the focal point of his home. If he were to lose that area and outlook he would think this is worth \$100,000 or more and thinks Ms. Larson's situation is similar. Most all of his neighbors have added to their homes but there has never been a problem because of consideration. However, his backyard neighbor in 1989 tried to expand his house without permits and he had to present to the Council who concluded that this was outside of the General Plan, red tagged the building and his neighbor left town. He thinks the applicant is trying to expand his property at the expense of the appellant and he asked that this be denied.

PHYLLIS METCALFE, Parkview Circle, Vice Chair of the Planning Commission, stated that part of what was presented tonight was incorrect by staff. What the Commission voted on was that the maximum height of the addition was not to exceed 12'6" and this is not the height at the eave but the height of the highest point of the peak. She believes the slide showed 17'. Therefore, all drawings presented are not correct. She distributed copies of photographs as taken by the Planning Commission Chair Chase who drew in what the extensions would be, which are far different and 5 feet less.

Mayor Bailey asked Mr. Boyle for the approved height of the new work done by the applicant.

Mr. Boyle said the approved height per the Planning Commission's modifications of the project is shown the addition at not to exceed 12'6" to the ridge of the addition or top of the addition. He confirmed that the tallest part of the building is in the middle of the building, and not the addition, and this is approximately 17' high. He stated that the tallest part of the addition shall not exceed 12'6".

Mr. Boyle also said he failed to mention that the Council has several pages of letters that were submitted to the Town after distribution of the Council packet.

Vice Mayor Furst said the roofline or edge to the right is at an angle. At the top it is 12'6" and she clarified with Mr. Boyle that it is a hip roof which slants down.

Vice Mayor Furst asked for the height at the bottom of the hip, and Mr. Boyle said finished floor level to plate level is 8'3".

Vice Mayor Furst asked and confirmed that an 8' fence would start a bit lower than the foundation and come to the top of the windows. With the hip roof, she asked if this would allow for some view of the ridgeline given that it is not 12'6" straight up all the way at the end of the addition. Mr. Boyle said yes and he pointed to resultant views.

Councilmember Lappert asked for the reasons given why the applicant wanted to have this particular layout versus other locations on the property. Mr. Boyle deferred to the applicant for response.

Mayor Bailey called on Mr. Chammout to the podium to respond to questions.

MICHAEL CHAMMOUT, applicant, said the angle of the hip roof slopes away and upwards and the fence is 8' high. The top peak is 12'6" which is what the story poles depict and the entire southwest view is still available. With a 6' setback from the fence and 7 ½' to the peak, plus the 30' setback from Ms. Larson's backyard there still is still a tremendous amount of view. It is a matter of geometry to calculate the blockage and he noted their houses are more like 100 degrees oriented. Ms. Larson's home is clocked more towards the west so her view is looking away, and he pointed to the amount of view still available to the ridge.

Councilmember Lappert asked about why Mr. Chammout he did not agree to locate the house in the back of the property. Mr. Chammout said all of the real estate is located in the area proposed for his addition. The variance would actually extend into Town easements. He pointed to the existing bathroom, heating and air conditioning, and said the plumbing would tandem nicely to the bathroom and closet. He noted Ms. Larson has a 2,000 square foot, 3 bedroom/2 bath home and she now encroaches on Town land with a driveway and parking area. Everybody on Tunnel Lane has small, 2 bedroom, 1 bath post WWII homes and they are trying to improve them.

Regarding the reason not to fill in another area, Mr. Chammout said this is the entrance to the house which is awkward. He noted that the addition will provide him with room for a small dining area and it maintains the original patio home configuration, it is consistent with surrounding homes. By positioning the addition in this way, it allows him to widen the bedroom as well and he could actually get a proper sized bed, a closet and a second bathroom so guests can use the existing bathroom.

Councilmember Andrews pointed to the plan and suggested relocating the bedroom in another area.

Mr. Chammout identified the location of the kitchen, the original one-car garage which is below grade, and the mud room. Part of the plan is to make the whole room contiguous with a proper roof, drainage, solar, and he said it would be very difficult to install heating and air conditioning given the garage is on the original slab. He said he spent 10 years and thousands of dollars on architectural plans, structural engineering and how the house would best be built out in the most congruent and economical and it would be weird to go from the kitchen, walk through another room to get to the master bedroom.

Councilmember Andrews suggested the windows and doors open to the patio which would create a courtyard effect with the bedroom in another location.

Mr. Chammout pointed to the location of Mr. Kapetsky's home and while he recognized the suggestion, he has had two different architects who believe the current proposal is the best layout.

Councilmember Condon said she did not want to get into redesigning the project, but she

visited the site and asked about setbacks. She asked if Mr. Chammout would apply for a variance, continue with the 5 foot setback and consider reducing the addition at the end.

Mr. Chammout said to eliminate the need for a variance he would have to reduce the addition, which he said would not accomplish what he needs for a master bedroom. He said he appreciates trying to propose a compromise. His compromise in the beginning was to design a modest addition. His right would have been to use up his entire lot size or 2,470 square feet. He is simply trying to add 450 square feet for a total of 1700 square foot house. It is within the spirit and integrity of the neighborhood and he is being asked to continue decreasing the square footage which would not address his needs and push it closer to Ms. Larson's house. While he could have a beautiful park like lot, he is only asking to use a portion of his property to add a modest addition and there is already a large green barrier.

Councilmember Condon noted that the General Plan and design guidelines outline broad regulations and she thinks that everybody needs to understand that this does not mean there is an entitlement.

Mr. Chammout reiterated that he and his neighbors believe that the addition is very modest.

Mayor Bailey said the Council appreciates the amount of time Mr. Chammout put in since submitting the application, the amount of effort in thinking through the process and said the Council is not insensitive to things such as cost and removal of work done before, as well as changes. One of the refrains he mentioned a couple of times and now is the difficulty in trying to place part of the structure in the backyard because of the setback issue of 20 feet and the need for a variance. Hypothetically, he asked if Mr. Chammout had confidence that the variance would be granted, would it change his opinion as to whether he would relocate the structure to the back or whether the cost is so significant it would no longer be something he would consider.

Mr. Chammout said this has always been a consideration and several people on his block have extended their dining rooms into their backyards, but none have extended their living quarters in the backyard. He already built hardscape in that location and would have to jackhammer out a flagstone patio and a deck and he did not want to consider this an option.

Vice Mayor Furst asked the Town Attorney and staff if there was any factual information to support allegations made by the appellant regarding inconsistencies with the General Plan.

Mayor Bailey suggested the Council undertake rebuttal by the appellant and thereafter, the public comment period would close and the Council would opine on the matter.

#### *Rebuttal – Appellant*

Andrew August stated the reason why Ms. Larson hired a lawyer is because this is a legal issue. This involves the interpretation of the General Plan and Municipal Code and said perhaps Vice Mayor Furst's comment is something a judge needs to decide. The reality is that the Council needs to be able to say this is not a significant or adverse impact on Ms. Larson's view.

He pointed to the rendering which was taken off of the story poles and said if there is something wrong about this then there is something wrong with the story poles. And again, he said it is all about the words "significant or adverse". To address Vice Mayor Furst's point, it is used in the disjunctive in the General Plan and used in the conjunctive in the Municipal Code.

Mayor Bailey asked for clarification of disjunctive versus conjunctive.

Mr. August said the Council would have to make an affirmative finding that the project will

not significant or adversely affect the views, sunlight, or privacy of nearby residences. The Municipal Code states that the finding that needs to be made is that “the project will not significantly and adversely affect the views, sunlight or privacy of the nearby residences.” Having said that, the answer is that this means both so perhaps the Council does not have to wrestle with this potential inconsistency.

Mayor Bailey asked if there were questions for the appellant.

Councilmember Condon asked what Mr. August’s reference was at the beginning of his presentation regarding Citron vs. Town of Corte Madera.

Mr. August replied that Citron vs. Corte Madera is a published but not yet citable case to a court. It was a 2002 decision upholding the Town of Corte Madera’s Town Council’s decision to deny an appeal of an appellant of a variance request. In the course of that case the court laid out essentially the directives that a municipality needs to follow. One is whether the findings are in compliance with all statutory and regulatory criteria and requirements and second, whether the findings bridge the analytical gap between the raw evidence and the Council’s ultimate decision. This is the guidance the court gave.

Councilmember Condon said while she is not an attorney, but she thinks with that case Ms. Larson would automatically lose her appeal. She said the issue was view blockage.

Mr. August suggested the Council consult with the Town Attorney about this case.

Mayor Bailey said something Mr. August correctly pointed out is that the decision is not cited and cannot be relied upon as precedent. The reason he said he believes he uses it is while it can be considered as a persuasive description of the way someone else looked at a problem and addressed it, but it is not intended to be something to control the Council’s decision but simply guidance in the Council’s decision-making process. Mr. August confirmed and said it is a standard and it is all it does.

Vice Mayor Furst asked staff for comment about the alleged inconsistency between the General Plan and the Town’s Municipal Code and whether that means the Council needs to approach the matter from a slightly different perspective.

Director of Planning and Building Adam Wolff said he does not believe there is any inconsistency. He said he was unsure of what section or chapter was cited by the appellant, but page 4 of the staff report discusses in detail the policies in the General Plan related to views. In addition, staff also discussed this as well in the last Planning Commission hearing as well. He thinks it is very clear in the Municipal Code that views, whether it is ‘and’ or ‘or’ shall be considered as part of the findings that the Commission and in this case, the Council, should be considering. He does not find any inconsistency between the two, but asked for what section of the General Plan was being referred to.

Vice Mayor Furst suggested Mr. August provide the section to the Council. She stated that in Mr. Boyle’s original presentation he said that the story pole placement was verified. She asked when this occurred, who verified it and whether the story poles are accurate.

Mr. Boyle presented a photo of him checking the story poles on April 29<sup>th</sup>. He checked the height of the vertical poles but said he did not check the height of the strings or confirm that the strings were the absolute correct pitch per the plans.

Vice Mayor Furst stated if they are straight from pole to pole, she asked and confirmed with Mr. Boyle that they should be accurate, recognizing that there is a slight bow.

Mr. August said he handed Mr. Wolff the section of the General Plan Section 5.0. In juxtaposing this with the Municipal Code section on the board, there is a discrepancy between the word ‘and’ in one place and ‘or’.

Mr. Wolff stated the entire section discusses the existing regulatory framework that already exists in the Town. It talks about the Town's existing design review process as of 2009 which has not changed. The section simply explains what is already in the Municipal Code.

Councilmember Andrews said not being a lawyer and having taken college logic and having to program computers on occasion, as he understands the use of 'or', if it is significant then the finding can be made. If it is adverse, then the finding can be made. If it is 'and' both significant and adverse must be true in order to make the finding. Therefore, he is not certain which criteria the Council would like to use.

Mayor Bailey said given a legal interpretation, hypothetically if the Council were to find that there is a significant and adverse impact on a view but that every other part of Finding 3 under 18.30.070 is met and that all other items are met, he asked Town Attorney Riddle if this requires the Council to grant the appeal and deny the underlying application.

Mr. Wolff further clarified the question, stating that if one of the findings cannot be made but all of the other findings can be made, did this trump the other findings.

Town Attorney Riddle said at the beginning of Section 18.30.070, it states, "on the basis of the application the Planning Commission makes all of the following findings". It appears that all findings would have to be made in order for the Council to approve the application.

Mayor Bailey closed the public comment period and returned discussion to the Council.

Councilmember Andrews said having visited the property and being corrected in terms of him looking at the adjusted story poles which were verified on April 29<sup>th</sup>, he believes the addition has a significant impact on view and it is adverse, noting that he could stand in Ms. Larson's living room, look out the window and think it is significant and adverse. Therefore, he does not need to worry that the conjunction is 'or' or 'and'. He suggested either applying for a variance and expanding the addition towards Chapman Avenue or building the addition on the southern side of the property.

Councilmember Lappert said he did visit the property, although no one was home. Having sat on the Council he has reviewed a few appeals from the Planning Commission and believes the Council has never referred something back to the Commission. This is to say it is a testament to the Planning Commission's work. The Council spends a lot of time selecting Planning Commissioners and they work tirelessly to review projects. He gives them full credibility for their positions and the Commission is supported by an able staff and not given misinformation. They come to proper decisions which are balanced, given there are problems and they are resolved.

He thinks the problem is that this is a situation which has other facets to it and consequently the parties were not able to reach a compromise which is not surprising. He understands views and generally when the Council hears appeals he believes in defending views but also balancing rights of other people to develop their property. This is not a court in the sense decisions must be made based on what something looks like, its color, whether it is in keeping with Corte Madera's small town character and other variations.

Councilmember Lappert said his opinion is that the view involved is affected from a particular point and photos provided show a view from a sofa and a living room. This is not the only view and by going to another part of the house or yard, the view is completely different. When he looked at the view he saw a gigantic palm tree and not the hill. By moving to another area something else can be seen.

He understands the appellant's desire to retain the full view when she purchased the home, but the Council wrestled with the WinCup project which is the result of people moving into town and as a result, homes getting developed and also getting bigger. Most homes in the

town were constructed as summer cottages for San Francisco residents. They have no insulation, and they are being improved which is part of the Town's General Plan. The applicant has proven to him that he wants to make a modest addition to a home which he could propose as a much, much larger home with full FAR and no variances.

In this case, Councilmember Lappert said he thinks the appellant is lucky and he finds that the addition is perfectly within the scope of the Town's General Plan and code, thinks the views impacted are not significant and thinks this is part of modern life in the suburbs.

Vice Mayor Furst said she agrees with part of what Councilmember Lappert stated and said she visited the property twice; once into Ms. Larson's home and once in the backyard to see the views. She took a picture and her picture does not look like the picture that the appellant's attorney provided. Above the story poles and lines she can see the ridge. There are many trees and it seems to her that the view that will be lost from the vantage point of where she was standing when taking the photo is of trees close to the fence line. It is not the ridgeline of the view lost. She presented the photograph and pointed to where the line is and said the entire view of the ridge is preserved except for a few areas where there are shrubs and trees.

Vice Mayor Furst said there will certainly be a building there and when standing in certain locations it will affect certain view corridors, but in her opinion this is not significant. She believes that the applicant is making a modest addition to the home. She also reviewed the floor plans and tried to consider how else the addition might be situated and the way he is proposing it onto an existing bedroom is logical. Therefore, she said she believes she can uphold the findings of the Planning Commission.

Councilmember Condon stated she sat on the Planning Commission and one thing that the Commission was always urged to remember was that they were considering the property, the impacts on the property around it and they had to separate themselves from the homeowners, and it made decisions much easier. However, she found this decision was difficult for her knowing the homeowner.

She referred to the picture and said as beautiful as it was, it showed a lot of blockage but it did not show everything to the right where there was still sweeping views of the ridge, the palm tree and the fact that the roof is sloped where there will still be views. She felt that the addition had an impact on the neighboring house but did not find that it was that significant. She impressed on the fact that she is sensitive to views, is fortunate to have a view from her own home and has experienced when her views were impacted, but she had to decide whether she was happy where she lives or whether she should move.

She believes the application was fair and a reasonable addition, thinks the addition adds value rather than detract from values of neighboring properties, and said she visited Ms. Larson's home and sat where she thought the addition would impact her most in the living room on her sofa. She would say that the eaves will not be noticeable if planting non-invasive plants which she thinks will soften the fence line. She would have liked it if Mr. Chammout could agree to move the addition but does not believe the Council could mandate this, and therefore would uphold the Planning Commission's decision. She hoped that the plantings will be enough to mitigate any impact that the new addition will have.

Mayor Bailey said he also agrees with some of the other comments about how the Council ought to remember to compliment the Planning Commission who does difficult work. They give back to the community and receive nothing for their work which is usually done under trying circumstances.

He recognized those who wrote letters and said two authors said there ought to be metrics for things like view which makes sense to him. He said there is a value sometimes of not having things perfectly regimented, as people do not live in a society where it is perfect to have everything regulated down to the end degree. Sometimes there is value of allowing

the application of our own judgment because one size does not always fit all especially for things like views.

He said he appreciates Mr. Kapetsky's utility that this improvement is well within the scale and consistency of the neighborhood. He agrees with Mr. Willis that neighbors ought to be more considerate. In his own experience, he worked as a settlement conference panelist for many years in Marin Superior Court and San Francisco Superior Court and has seen many disputes like this. He knows the applicant and appellant recognize this and they are both entitled to have a final decision from the Council, but Ms. Larson and Mr. Chammut are still living next to each other and he asked to try and remember it is not the end. He said there is an emotional attachment to property that ought not to be minimized regardless of who the decision goes in favor of. He asked to remember that the community and its neighborhoods are as important as the dollar figure of the property.

He agrees with Mr. Bogavich that there ought to be a common sense solution and thanked him for his letter. Ms. McCarther is a well-respected local real estate agent and her opinions matter to the Council. He complimented the appellant and applicant for being good citizens and asked them to continue to stay involved and active in the community and thinks there should be some willingness to bend. He said this is a modest addition, that it is logical and appropriate under the circumstances but a problem he cannot get around is that the Council has findings that need to be made. The only thing that matters to him in this application is when going through the Municipal Code, Section 18.30.070 (1-8) and whether the Council can make the 8 findings. It is beyond him how anybody could not make 7 of those findings immediately.

He thinks people should be encouraged to improve their homes so they can stay in town. However, he voiced a problem with Finding 3; does the project significantly and adversely affect the views. He cannot get around the fact that he cannot make that finding. He does not know how someone could be on Ms. Larson's property and not acknowledge that there is a significant and adverse impact on her view. There are alternatives he would have liked the applicant to consider and it is his right not to consider these alternatives, but it is beyond him how the Council cannot agree that this finding has some meaning.

He said he was on the Planning Commission for 6 years and has seen many of these applications. He has also advocated for many real property cases and has never seen one where there is so singular a view so thoroughly impacted. He thinks the Council must look at what they are saying in how people improve the community and for future owners of both of these parcels.

The current owners of both parcels have an immediate right to have their say, but the Council should be thinking about future generations and whether this is appropriate, and it is not clear to him whether preserving a single view is more important than allowing the general right for people to develop their property. It is hard for him to find any way not to agree this view is significantly and negatively impacted and he cannot make the finding.

Town Attorney Riddle stated the Vice Mayor referred to photographs she took and he asked if these could be provided. He suggested reopening the public hearing for the sole purpose of having them introduced as evidence.

Councilmember Andrews said he would like to introduce a photograph he took as well as a Google Earth map which shows the property.

MOTION: Moved by Lappert, seconded by Andrew, and approved unanimously by the following vote: 5-0 (Ayes: Andrews, Condon, Furst, Lappert and Bailey; Noes: None)

To reopen the public comment period to allow comment regarding photographs

Three new pictures were presented to the Council and the public was invited to view the photographs and provide public comment. The three photographs were then made part of the public record.

Mr. August referred to the photograph taken by Vice Mayor Furst and said the Council considered the architectural overlay they did. One of the reasons for continuance is because these story poles did not do the project and impact justice. He said a photograph was taken by Vice Mayor Furst which is slightly off to the left and he submitted that if she did an overlay on her photograph it would be even more impactful than his photograph/overlay which is directly head on from just the outside of the living room window.

BOB SILVESTRI stated he prepared the renderings for the appellant and said he has been doing this for 45 years. In October, he will have done this for 50 years. The projections he did based standing in the center of the window were taken at the average view at the center of the window. They were taken in the middle of the day so light would not distort them and taken at the height of someone standing on the ground. They are realistic and perspective is perspective. He was parallel to the buildings at the time which means there is no slope to a ridge. Anyone else's photograph that does not show that was not taken in the proper place.

He cannot say the Council cannot measure off of this with a ruler, but he can say it is significantly and substantially accurate. He thinks the Council owes the public a definition of 'adverse and significant.' He said 'significant' is a subjective word and 'adverse' is not that subjective and there is no way one could say this is a positive impact. The idea that improving someone's house trickles down to the next house is not true. Houses negatively impact other houses all the time and he said WinCup negatively impacts or any other addition. He then asked the Council to particularly consider what Mayor Bailey said which is very logical and re-think its consideration because this is an adverse impact.

Town Attorney Riddle noted that the purpose of re-opening the public comment period was to review the photographs.

Mr. August said Vice Mayor Furst's opinion was based on her photograph that she took that the appellant did not have an opportunity to consider up until 5 minutes ago. He asked that the Town Council continue the matter so a rendering can be done by the Planning Department and then asked that the Council reconvene with that photograph along with the other photographs.

Mr. Chammout said this is the second time that the appellants introduced a rendering or photo that was not from the correct perspective. He said this clearly was not from her Ms. Larson's but from the more east side of her property which creates an illusion or angle that amplifies the impact of the structure.

Mr. Chammout said he was also not sure what Mr. Silvestri's credentials were in preparing these renderings and said he respects those Councilmembers who did visit the properties.

Mayor Bailey closed public comment and returned discussion to the Council.

Vice Mayor Furst stated she really resents the accusation that for some reason she was not standing in the proper place when she took her photograph. She was led to this location by the appellant who was standing next to her when the photo was taken. There were also comments made about the matter getting personal. It was the appellant's representative who brought up the subject of a previous marital relationships and she did not know Ms. Larson and Mr. Chammout were married until the comment was made. She said she was not changing her mind. The viewpoint that she saw first when she walked in and took her photo was her standing from the middle of the living room window.

MOTION: Moved by Lappert, seconded by Furst, and approved unanimously by the following vote: 3-2 (Ayes: Condon, Furst and Lappert; Noes: Andrews and Bailey)

To uphold the decision of the Planning Commission and adopt Resolution 16-009 that approved with modifications Design Review Permit No. 15-019, which allows an approximately 465 sq. ft. addition to the existing residence at 359 Chapman Drive. The modifications approved by the Commission include reducing the roof height of the addition, reducing the size of the addition, installing landscape screening and at the applicant's discretion modifying the windows on the north elevation of the addition, PL-2016-0023-APTC

**BREAK**

Mayor Bailey called for a break at 10:15 p.m. and thereafter reconvened the regular meeting at 10:20 p.m.

6.II Public Hearing Nuisance, 614 Oakdale Avenue – Determination Whether the Property Conditions Constitute a Public Nuisance as Designated in Chapter 9.04 of the Corte Madera Municipal Code and Direction to Staff for Further Action

(Report from Adam Wolff, Director of Planning and Building)

Director of Planning and Building Wolff gave the staff report, stating staff will be discussing a property at 614 Oakdale which is being brought to the Council's attention pursuant to Municipal Code Section 9.04 to determine whether or not property conditions constitute a public nuisance as designated and whether there is sufficient cause to order abatement of the public nuisance.

Mr. Wolff pointed to an aerial showing 614 Oakdale as outlined in red and photographs that show a garage at the front of the property and a yard in the middle and the house at the rear. The Council is being asked to review complaints the Town has received from the property to the east at 618 Oakdale which have been documented in the staff report from 2004.

He said the staff report includes the specific nature of the complaints which range from overgrown weeds, debris, garbage storage containers, bags of unknown items to the lack of proper building maintenance, unsightly conditions and inappropriate behavior, concerns over fire safety and rodents over several years. One change since 2004 is that in 2011 the current nuisance ordinance was adopted which itemizes the 13 property conditions that indicate whether or not a nuisance exists or not (Attachment 1).

Mr. Wolff said for the most part, the actual complaints revolve around the front entryway. Over the years in response to complaints there have been some physical improvements to the property. The garage was painted, a window was repaired in 2012, but currently there is a view from a second story which was added to the structure in 1979 down into the adjacent yard and there is an accumulation of junk, trash bags, and other debris which is shown in some photographs.

Also included are photographs of the property at various times over the last 18 months. He noted that the Planning Department and Fire Department have spent a lot of time trying to address complaints regarding condition of the property. Each time, they talk to the property owner and explain complaints received, the nuisance ordinance, and ask that the items remain out of sight. Generally, these have been addressed and in February 2015 he wrote a letter and made a determination per the code to indicate there was not a public nuisance at that point in time. He noted that items return and go away, some progress is made and then the complaints are received again, so it is a recurring complaint and cycle of

events.

He and Town Manager Bracken had felt it was important to present the issue to the Council to help staff determine for the property owner and complainant whether or not this does rise to the level of a nuisance that must be abated or other solutions. More recent photographs taken yesterday were provided to the Council as well as a letter from the property owner who could not attend tonight's meeting and requested a continuance. He said the Council has in the past provided more time to give property owners additional time. He said he also has additional photographs in his slide show.

Councilmember Condon asked and confirmed the complaints have been generated by one person.

Mr. Wolff presented a photo since January 2015 and he said an inoperable truck has been removed and is no longer in front of the property. In February 2015, there was no public nuisance in his opinion and he presented a photograph of the house in May 2015 with most of the items removed and no apparent issues. He presented a photo from October and in November staff discussed complaints again with the property owner, and then most recently in March and April of 2016 which were complaints about debris and items as viewed from the second story.

Councilmember Lappert said he understands the property owner could not attend the meeting, but asked about her situation. Mr. Wolff said the property owner appears to be a single woman in her 50's or 60's. Staff was not invited into the house and knows no other personal information other than she does not own a car.

Mayor Bailey opened the public comment period.

MARIE GIARRATANA YOUNG, 618 Oakdale Avenue, stated her husband, Dr. Howard Young, her daughter Mara and she are here together. They have lived in their property for 12 years and it is not without feeling and concern that they have tried to deal with the issue of their next door neighbor and the amount of episodic and interval clutter that has been very much a problem for them. The big issue is being able to enjoy their property when they moved from Connecticut 12 years ago. Their second floor is their family room and a bedroom. They have a deck they cannot ever use because of the extreme amount of clutter and debris on the adjacent property.

Ms. Young said this is not about wanting to be mean or insensitive and many neighbors have tried to work with her given they have a working understanding that this goes beyond simple recalcitrance or pure negligence. In her opinion, there is clearly an issue around hoarding and an obsessive compulsive disorder. She has observed the property owner to have periods where she is in extreme control of the property and other times where it is impossible for her to.

The situation has gotten to the point where the alarm was sounded for several times because she has been living on the lawn and sleeping on a chaise lounge at the front door. They called adult protective services and the police. They have heard moaning, coughing, and concerns about the overall status there. She said the property owner across the street purchased one of the cars on the driveway for years. She said she and the neighbors next door reached out to the police because the cars were not registered, loaded with debris and at various times the property owner was sleeping in the car. She said it has become overwhelming and they are not able to enjoy their property at all. They are forced to look at what was a quilt hanging for the last six months and she distributed a recent picture of a construction sized tarp which is in full view of their entire second floor and their only windows they have on their second floor.

She questioned what to do as a community and as individual homeowners. The tarp now hanging is being used as a cover who is literally disrobing in full daylight and is sleeping on

the lounge behind the quilt which is in full view of her children's bedroom and family room on the second floor. She asked how to address this from the perspective of offering support and help and taking this to the place of managing this.

DR. HOWARD YOUNG, 618 Oakdale, said this is his first time speaking before the Council and as seen from the photos, it is a very disturbing situation. They have a lot of compassion for their neighbor but it has gone to the point of being unbearable. In a previous life he was a health inspector in the City and County of San Francisco and he has been in hoarder's homes, the Tenderloin, and other areas. Unfortunately, the neighbor has deteriorated the quality of his family's life as well as the neighborhood and their property values.

Dr. Young said the time is booming but he honestly asked who would purchase a home next door to this. He thinks there is a clear detriment to property values, quality of life and he asked that something be done. They also have had an infestation of rats in the last 8 months which is really bad.

Councilmember Lappert asked and confirmed that Dr. Young is a physician. He said he understands and deals with this and asked him what he thinks the law allows the Town to do.

Dr. Young said he has read the Town's regulations, but morally he could not address whether the neighbor is a danger to herself, but she does sleep outside in very bad weather. She has an awning, yet she has a house.

Councilmember Lappert asked that as a health inspector, what did the City and County do about similar problems. Dr. Young said they would hold abatement hearings and if someone was not maintaining their residence, there would be hearings where the property owners were ultimately responsible. There would be a period of time to address the matter and come into compliance. If that was not met, the City and County would make the abatement proceedings and levy a property tax onto the property.

ALOTIA 'LETI' LANES said she lives adjacent to Barbara Case, the neighbor in question for the last 25 years. She has been the most kind and watchful friend of her son and his friends. Her characterization is embarrassing in a public forum. She was sick this evening and is breaking out from stress this is causing her because her neighbor has complained since the day she moved to her home 11 years ago. Ms. Case has lived on the property since she was 3 years old and the family has owned it for 51 years. The complaint is of a view looking down from a window down on someone's property when they could easily look out the window and see Mt. Tamalpais and Christmas Tree Hill.

She said she visited the home yesterday, took photographs and provided them to the City today. What is called clutter is Ms. Case's treasures. She collects statues, loves bunny's, and has furniture outside. It is inconvenient that the neighbor's office window is at the end of the property and looking down at the only spot she has private. The porch is 75 feet into the property. There is a garage, a walkway, a lawn and her home at the back of the property. Her porch is 3 feet by 20 feet. She hung a blanket so neighbors would not look at her and take pictures of her constantly. She thinks the person being harassed is Barbara who does not have the private use or enjoyment of her own property. She questioned why the neighbor cannot frost their glass windows or reverse their blinds and said she is embarrassed by the staff report.

Ms. Lane read from the report where Ms. Case is called the nuisance which she said is outrageous. She said Ms. Case is over 60 years old, is single, on a fixed income, and walks everywhere. She said she was informed that police reports indicate that she has brought back Safeway and CVS carts but she has permission from the managers. Adult services have visited her and Ms. Case told her they said her place is cluttered but clean. She is not a hoarder. She did not realize how serious this has gotten until she received the full Council packet and read it.

She thinks there is no nuisance and she spoke about her help installing the tarp where Ms. Case has a lounge and put up a sign that states "love thy neighbor." She suggested the neighbors frost the glass that looks into her patio, put a privacy film on windows or reverse the window shade, install a screen, grow some bamboo or foliage and not look down at the neighbor's yard. She has been a broker in real estate for 40 years and is outraged that this is happening.

JOSEPH SHARADO, 228 Sausalito Street, said the Councilmembers are lay people and representatives of the community and Barbara Case lives at the back of his property and she has been a great neighbor since he moved to his property in 1993. His house was rat-infested when he moved into it and is a shack. It was built WWII and it was built like a fence. His father used to call himself a pilot who piled things. He was a machinist and used to say he was into heavy metal. He recently passed away and he had to clean out his house in Mill Valley which was a huge task. Rather than jeopardize his relationship with his father he looked the other way.

He said Ms. Case's house is literally rotting from the inside and is a bit scary, but he has a lot of compassion for her and would rather the Town and community do something for her without alienating her and angering her.

Mayor Bailey closed the public comment period.

Vice Mayor Furst said her father lives in Orinda and his next door neighbor is a hoarder. There are things on three sides of the house, down the hill and it is now encroaching in the driveway, although he put up lattice work. It is very bad and they are having difficulty dealing with the City of Orinda. She therefore knows what clutter, hoarding and nuisance looks like. She said this does not look like a nuisance to her in the strict sense which is outlined in the Town's ordinance. There is clutter and collections, but this does not rise to the level of a nuisance.

She then read a portion of number 8b under conditions of the ordinance: "The stockpiling of trash, junk, debris on any portion of the property that is unenclosed or semi-enclosed as to be visible from a private roadway (neighbors) has to be materially detrimental to the value of nearby adjoining properties or materially detrimental to the use and enjoyment of adjoining or nearby property."

Vice Mayor Furst said when the Town passed the ordinance, it did not write it in such a way that it read like a homeowner association's list of rules that people must abide by. The community is about people being able to live their own lives, having respect for others and being able to have their own home as long as it is not a real nuisance to neighbors. She said it is difficult to know the source of rats and her neighbor had rats which like ivy, but just because there are rats does not mean it is the result of one property owner who happens to have clutter in their yard.

She said if there are issues regarding her health and welfare, this is a huge concern. She is somewhat relieved to know that the County's Adult Services Agency visited and said there were no site or welfare concerns and likewise the Fire Department has determined there is no significant safety risk. Therefore, she has a hard time believing that the inside of the house is so bad that it is not habitable, although it could use some repair/renovation.

She said she knows that Age-Friendly Corte Madera, Rotary Club and the Lion's Club have a program where people can get some help and asked Councilmember Condon for her comments about this.

Councilmember Condon said she also does not think this constitutes an abatement issue at all. There have been frequent complaints from a single neighbor and every time the Town or County has responded, no one to date has qualified it as a nuisance. Having the

decorations may not suit someone else's taste and there are no weeds growing up above window sills where the Council has seen in previous cases. She agreed with Ms. Lane that it disturbs her that there is a feeling that this person is not capable of caring for herself or her property or that what she has in her backyard reduces the value of the neighborhood. She thinks that the Town is perhaps condemning someone for their lifestyle and said she will discuss this with Age-Friendly Corte Madera, the Rotary or Lions Club where minor repairs can be done to homes at no charge. She also suggested that CMPA is partnering with Age-Friendly Corte Madera to fund an "Are you okay" program where phone calls are made to those living alone and check on their welfare. Therefore, she does not believe this is an appropriate situation as a public nuisance.

She noted that she was happy to have the public nuisance process developed. The first step is for neighbors to get together and go to the person's house and offer help, and this is not the case. She agreed to work with the "Are you okay" program and Age-Friendly Corte Madera and thanked neighbors for keeping an eye on Ms. Case.

Councilmember Andrews urged the neighbors who get along with Ms. Case to introduce her to Age-Friendly Corte Madera.

Mayor Bailey said the two issues are what can the Town do to help the owner of the property and what can or should not be done to help the neighbor who has appeared here today. He said the process seems to be working and noted there are no health and safety problems. However, this does not mean that complaints were not legitimate at the time and he thinks the Council's consensus is that this may not rise to the level of a nuisance. He suggested time to determine whether Ms. Case can be assisted. He suggested a 30-day period and follow-up with the cited programs and to determine whether circumstances have changed. He suggested a motion that this does not constitute a nuisance.

Councilmember Andrews asked if it would be an imposition by the Planning Department to visit the property quarterly to check on the status of the property. Mayor Bailey noted that this may be unnecessary if Ms. Case connects with resources.

Councilmember Lappert stated he likes everything to look good at his home and when any neighbors bring ugliness to the community, it affects him so he acknowledged concerns from neighbors. Unfortunately, they have someone next door who is less neat, but agreed this is not a public nuisance.

MOTION: Moved by Lappert, seconded by Condon, and approved unanimously by the following vote: 5-0 (Ayes: Andrews, Condon, Furst, Lappert and Bailey; Noes: None)

To determine that a nuisance does not exist as designated in Chapter 9.04 of the Corte Madera Municipal Code

Mayor Bailey noted the time as 11:00 p.m. and he asked if the Council wished to extend or conclude the meeting.

MOTION: Moved by Lappert, seconded by Furst, and approved unanimously by the following vote: 5-0 (Ayes: Andrews, Condon, Furst, Lappert and Bailey; Noes: None)

To extend the Town Council meeting

## **7. BUSINESS ITEMS**

- 7.1 Discussion and Possible Action or Direction to Staff Regarding the Application Process, Permitting Fees, Insurance and Liability Related to the Placement of Pedestrian Flags at Uncontrolled Intersections on Tamalpais Drive

(Verbal report and request for discussion and possible action or direction to staff will be given by Mayor Bailey)

Mayor Bailey stated there was an issue relating to flags that had been approved by the Town Council and placed. There was uncertainty as to the flags and they were removed under threat for failure of the Town to get a permit. Because of the potential for immediate lift safety issue, the item was agendaized for this meeting to get the flags re-installed at the uncontrolled intersections on Tamalpais Drive. He asked that the Town Manager provide commentary on issues at which time the Council and public can discuss it, which include:

1. What sort of permit is required?
2. What fee is required and can it be waived?
3. Is this covered by the Town's insurance if someone becomes hurt or injured?
4. Is there a liability issue the Council needs to be apprised of if flag devices are used?

Mr. Wolff stated he had answers to some of the questions. He said the Municipal Code requires an encroachment permit for the flags and this is one way the Town could achieve indemnity which relates to liability.

Town Attorney Riddle stated there are encroachment provisions as well as the obstruction of right-of-way. For either one there is a requirement that insurance and indemnification be provided.

Mayor Bailey asked and confirmed that the permit carries a fee. Mr. Wolff stated he was not sure whether there is anything he found regarding the Town being able to waive the fee.

Regarding indemnification, Mayor Bailey asked that if the Town fails to get an indemnity from whoever signs the permit he asked if any injury might not be covered by the Town's insurance. Mr. Riddle said the Town is covered up to \$250,000 and the basis of liability would be a dangerous condition of public property which resulted in injury. He said there have been no traffic or engineering studies to determine whether the flags are safe or unsafe, but if someone was injured in any way the exposure could be significant.

Mayor Bailey said if there was a catastrophe and the injury was in excess of the \$250,000, he asked if the Town's excess insurance cover this. Mr. Riddle said it would most likely be a dangerous condition of public property and this is a type of incident the Town's insurance would cover.

Vice Mayor Furst asked what process is usually followed in decided whether or not to implement a safety device.

Senior Civil Engineer Nisha Patel replied that normally the Town would look at the Manual of Uniform Traffic Control Devices or a normal standard like Caltrans specifications or standards, but in this case, she did not think it is included in a standard.

Councilmember Andrews suggested the Council defer the matter until the Town Manager returns and asked that he draft a stern letter and provide 3 weeks to remove the flags. He asked when the flashing beacons would be installed. Ms. Patel stated design is underway and the plans are supposed to be ready to bid in July with an anticipated construction at the end of August/beginning September.

Mayor Bailey suggested hastening that process, and Ms. Patel said the work has been expedited but there are many improvements.

Mayor Bailey opened the public comment period.

PHYLLIS METCALFE, Parkview Circle, said many years ago she was an insurance underwriter of public entity insurance. This is the Town's project and it would be covered

rather than having it as someone else's project much the same way the school district will have a crossing guard and not require engineering studies or an EIR. The Town would undertake it as a safety issue covered under its insurance. She also said if there is a problem in doing it, the Town does not have to write letters, given school will be out until June and letters can be sent until then.

JENNIFER HARRISON, Hawthorne Avenue, Safe Routes to School Parent Volunteer at Neal Cummins, stated school gets out the third week in June and flags are being used by preschoolers, toddlers and elderly people. She is one of the people who did put up the flags and this was done in the Town of Fairfax and was passed by the town. They have donated all materials to Corte Madera and she asked to see this in place until the Town installs the flashing beacons.

Mayor Bailey asked and confirmed that Ms. Harrison received a permit application from the Town Manager but did not complete it.

DAVID MACPHERSON, Corte Madera Avenue, said this matter has been discussed by the BPAC over the last 4 years and when there were a number of near misses, he continued to email the Town Manager to state that if volunteers raised the money and installed the program where it is being used in various states, he indicated that on face value, he did not have a problem. He took this as a green light, purchased materials, created flag holders and wrote a letter to every stakeholder and alerted the Town that in approximately 10 days they will install the holders, have parent volunteers at each intersection instructing kids on how to use them. They received no objection but statements in support.

Mayor Bailey noted that in that sequence was a request by the Town Manager to complete some paperwork and pay a fee. Mr. Macpherson said he was not positive to when that request occurred, but when it was brought to his attention, the Town Manager's email indicated that he needed an encroachment permit, \$1 million of insurance, and that most importantly the pedestrian flags violate the Manual on Uniform Traffic Control Devices because it is a rapid control device. He researched this and found that the DOT Federal Highway Administration ruled specifically in interpreting the Manual that pedestrian flags are not a traffic control device; they are simply to make pedestrians more visible and are akin to construction workers wearing fluorescent vests. The municipality who requested that interpretation was told specifically they were free to experiment with the pedestrian flag program.

Mr. Macpherson said the letter he sent to all stakeholders was that they were donating the flag program and not in any position to obtain insurance. He said this is not their encroachment into the Town's right-of-way but a gift to the Town on an interim basis until the flashing beacons are installed. Therefore, the Town must simply make a decision as to whether this is something they will adopt as their own for the next 10 months and he said the Town is covered under its insurance. He noted there are many places that use these flags and at every uncontrolled intersection there are 10-15 flags used by everybody in Town and vehicles slow down, and it has been successful. As an interim measure, he encouraged the Town to adopt it as their own program so the encroachment permit is not necessary.

Mayor Bailey asked if Mr. Macpherson ever suggested that the Town adopt it as its own program. Mr. Macpherson said BPAC never reached a point where it was included in the BPAC master plan but they have discussed it for a long time and it only gained attraction after there were near misses and parents on Next Door were upset.

Mayor Bailey said it may have been the Town's impression that this donation was being provided to the Town. In fact, he clarified with Mr. Macpherson that what is being provided is the raw materials and a request that the Town assume responsibility and accept the donation in case there were any problems.

Mayor Bailey asked and confirmed with Mr. Macpherson that there is no standard for an installation but simply that they be placed close to the crosswalk which solves the problem and this is an interim measure.

Councilmember Lappert said he was supportive of serving the citizenry and said as long as the Town understands it may get sued he is happy to support the donation. If a person in a wheelchair uses the crosswalk the Town has the risk of being sued because the measure is not ADA-compliant.

Councilmember Andrews said he would want to check with the Town's insurance carrier if it accepts the donation of the flags that they will be covered.

Councilmember Condon commented that she has received positive feedback from the use of the flags and she voiced support of them.

Vice Mayor Furst agreed with Councilmember Lappert's concerns and said in addition to ADA issues, the Town must ensure the way they are mounted must be ADA-compliant. She asked that they be ADA-compliant, ensure the liability issue is addressed, and recognized that in 4 months a slurry seal project will be underway, with ADA improvements, improved bike lanes and curb bulb-outs to enable pedestrians to be out further which increases visibility. Also, rapid flash beacons will be installed for a much improved roadway.

She noted there is a crossing guard at Eastman Avenue for all students as well as a signalized light at Madera, and students should not cross at other crosswalks unless they are with a parent. While she loves the flags, she suggested the Town be careful when encouraging children to cross at non-signalized and unguarded locations during morning and afternoon peak periods. Therefore, she does not have enough information on the issues, but if the Town is covered she supported keeping the flags up. She asked to continue the matter to receive answers. She also said she is a Safe Route volunteer and the message should be consistent with what the Safe Routes Program is advocating which is for students to cross where the crossing guards are.

The Town Council directed staff to determine ADA-compliance and liability and insurance requirements and continued the matter.

7.II Consideration and Possible Action to Approve the 2015 Town of Corte Madera Bicycle and Pedestrian Plan  
(Report from Nisha Patel, Senior Civil Engineer)

Senior Civil Engineer Nisha Patel gave a very brief PowerPoint presentation and recommended the Council approve the 2015 Bicycle and Pedestrian Plan, which has been a 2-year effort of Town staff, TAM, Alta Planning and the public. BPAC Chair Bob Ravasio is present, as well as Kyle James from Alta Planning and Design and Scott McDonald from TAM who will discuss the background and development of the plan and prioritization of projects.

Scott McDonald, TAM, stated that TAM received a grant to update 9 plans in Marin County. Alta Design was brought on to assist in updating the plan. They basically took the work of the 2008 Bike Plan and integrated a pedestrian component and introduced Kyle James with Alta Planning and Design.

Kyle James, Alta Planning and Design, stated out of the 9 plans this has been by far the most extensive public outreach process. It included 2 public workshops, 10 BPAC meetings, an on-line survey, social media outreach and the 30-day public review process.

Mr. James highlighted feedback received and major themes surrounded crossing Hwy 101, getting to schools, improved access to transit stops, Alta Tunnel and a large focus on expanding and maintaining the existing multi-use paths along with improving safety along

Tamalpais Drive. He noted there is a section regarding terminology as well if there were any questions, a map of the proposed bike projects, existing bikeways and the proposed pedestrian projects.

Ms. Patel stated in the plan there are more projects as far as Class I, II, II and IV as well as pedestrian projects. From their compiled list, they prioritized the top three Class I priorities which: 1) A gap will be provided to link the multi-use trail along the south side of Paradise from Westward to Upland Circle which is part of the Bay Trail. The improvement will be on the south side of Paradise Drive and the Town has a grant for the project; 2) the multi-use trail along the north side of Paradise Drive from San Clemente Drive to Prince Royal Passage is a Safe Routes to School project and is part of the Bay Trail and will provide a link to the existing gap in the Bay Trail in Corte Madera; and 3) the Corte Madera Town Park Pathway from Tamalpais Drive to Neal Cummins Elementary School.

Class II priorities were Tamalpais Drive, San Clemente Drive to Redwood Avenue and the Town is looking at whether they can fit in bike lanes within their curb limits currently as part of the Tamalpais Improvement Project. They are looking at traffic calming which would narrow the lanes as well as to determine if bike lanes can fit in at this time.

Regarding Tamal Vista Boulevard northbound Fifer Avenue to Madera Boulevard, they have already started preliminary design and they can fit in Class II bike lanes northbound and southbound they can only fit it from Wornum South to Madera Boulevard.

The last Class III priority is the small stretch of Sanford from Tamalpais to Meadowsweet, Tamal Vista southbound from Fifer Avenue to Madera Boulevard, and if they cannot fit the Class II bike lane from Fifer to Wornum, they will put in sharrows or signs. They will do the same for Meadowsweet to Fifer to Casa Buena if they cannot fit the Class II bike lane in those locations.

Other priorities include Paradise Drive from the Hwy 101 to Casa Buena Drive overcrossing, Tamal Vista Boulevard to Wornum Drive intersection alterations and they will look to determine if they can put in a grade separated crossing which is at the entrance of the Sandra Marker Trail.

Regarding pedestrian priorities, Paradise Drive at Golden Hind Passage is pretty much complete; however, the alignment may be tweaked of the left turn and restripe with thermal plastic. Intersections along Tamalpais Drive along Chapman Drive, Eastman, Sausalito, Lakeside, Meadowsweet, US 101 southbound off ramp and Redwood Avenue at Montecito Drive will be improved as part of the Tamalpais Drive Pedestrian Crossing Improvements project except for US 101 southbound off ramp.

They have a conceptual plan for putting bulb outs at Paradise Drive at Prince Royal Passage Pedestrian Crossing Enhancements and she believes this is in their capital program.

Councilmember Condon asked if flashing beacons could be placed similar to what is over Golden Hind Passage. Ms. Patel said they could look into this.

She then presented a map showing improvements and said the bike plan brings a single vision for biking and walking infrastructure in Corte Madera and it better positions them to pursue grants and it will enhance their multi-modal system.

She noted that tomorrow is Bike to School and Bike to Work is May 12<sup>th</sup>. The Council will have an energizer station at Sandra Marker Trail with REI at 6:30 a.m.

Mayor Bailey said there is a controversial issue about reopening the Alta Tunnel and he asked if there is a recommendation in the plan of any kind. He referred to page 45 under Table 4-9, multi-jurisdictional proposed Class I Bikeways which states, "To be determined." Because things are not yet determined, he wanted to be sure that the Town is certain about

something that it so uncertain.

Ms. Patel said Project 14 is not a project priority and it is the multi-jurisdiction proposed Class I bikeways. The Town has a project in there which states "continue exploration of potential options identified in the 2009 Mill Valley/Corte Madera bikeway study. This was looking at the three different paths.

Mr. James clarified that the Alta Tunnel was referenced and included in the summary of feedback received in the public workshops. In the PowerPoint presentation he included it as a highlight of something discussed at the workshops.

Councilmember Andrews referred to page 41, which reads "For example, reopening the Alta Tunnel was identified by members of the public as a high priority." He asked to reword this to read, "North/south lane from Corte Madera to neighboring communities was identified by members of the public as a high priority." Ms. Patel said if the Council wished to approve the plan and change one sentence, this could be done.

Vice Mayor Furst disagreed with rewording the sentence, and noted this only refers to something the public identified, and Councilmember Lappert concurred.

Mayor Bailey said he wants to be cautious if they are not implicitly approving that project or putting the Town on a path to do that project without diligent review. Mr. James said his recollection is that BPAC members can also chime in. There was a conscious effort not to elevate that to the level of the priority projects given the complexity and challenge and actually doing cost estimation given the complex nature of the plan.

Mayor Bailey asked if the Town Council was at this time taking a position on the plan. Ms. Patel said the Tunnel is not in the plan at all. There is reference to resurfacing the existing path that approaches the Tunnel which people use, but the Tunnel is not in this plan.

Councilmember Lappert asked and confirmed with Chief Cusimano that they have reviewed the plan.

Vice Mayor Furst said one of the priorities is the overcrossing from Paradise to Casa Buena. She asked if there was consideration of other locations for a freeway overcrossing. Ms. Patel said yes and it was from the Village to the Town Center, but the BPAC agreed they were only going to put in one over-crossing as a priority and this was the one they selected. The one between the two shopping centers is still in the plan.

Vice Mayor Furst said when talking about priorities, she asked whether this is setting the Town up to insist that that is the priority designation the Town follows as in using the word "shall" rather than "may." Mr. James said there is no language of "shall". What it sets the Town up for is when going after grant money that the Town is elevating some projects and saying they are a priority for the community compared to all other projects and this makes them better candidates to receive money.

Mr. McDonald added that it is a framework for pursuing grants but it does not compel the Town. Some grants have certain criteria and they are set up to fund specific types of projects. If that type of project is not the number one prioritized project in that category, it would not preclude the Town from pursuing a logical candidate project at the discretion of staff.

Ms. Patel noted that a BPAC meeting was held on April 21<sup>st</sup> and they voted to recommend the Council adopt this plan.

Vice Mayor Furst referred to the overcrossings and asked BPAC Chair Bob Ravasio as to whether he feels it is in the Council's best interest to list one as the preferred overcrossing in this plan.

Mr. Ravasio said consensus of the BPAC focused on the one from Casa Buena by Marin Joe's. He did not see any real difference in including it in the plan and the Town's ability to fund it if they were to make both as the same priority, but the most important thing it is included in the plan which allows them to find grant money.

Mayor Bailey opened the public comment period.

CINDY WINTER, Larkspur, said she has attended every BPAC meeting and she can attest that the Town is exceptionally fortunate for having a BPAC body which she said is very skilled and committed. This is an excellent plan because it has many items in it which is fallback insurance in case grant money becomes available, a new need that arises, and it is in the plan because it is a possibility and not carved in stone. She hopes the plan is approved as it is a wonderful work product and something the Town can point to with pride.

DAVID MACPHERSON, Corte Madera Avenue, reminded newer members of the Council that the Town of Corte Madera has passed a resolution about 6 years ago supporting the on-going County studies towards reopening the Tunnel. So until the Town takes a different position has already spoken on that in support of on-going studies. The County of Marin just completed a property rights study and this week put out for bid the geotechnical study with experts going into the Tunnel to determine its current status and to get a better idea of costs to reopen it, stabilize it without reopening it, or what would happen in case of a collapse.

Mayor Bailey stated that being in favor of a study is different than being in favor of the conclusion of that study. Mr. Macpherson said he does not think the resolution binds the Town, but simply says if the County is going to spend the money the Town encourages the County to study it.

Councilmember Condon said she remembers the resolution which approves the study if the County has the money; however, it did not advocate for the opening of the Tunnel and it went no further than that.

Mr. Macpherson said he will review the resolution but simply wanted to remind those that were not on the Council at the time. Mayor Bailey said he thinks that this should be determined only because the Town either needs to be consistent with the resolution or change it.

Vice Mayor Furst said she found where both overcrossings were located in the plan, but said at a TAM meeting, new technologies came up. She said it is likely in the next 5 years, they will see creative electric-assist or completely electric-powered personal vehicles that could go on bike paths. Therefore, she suggested adding something in the plan to consider the needs of newer technologies as they look to implementing new facilities, such as electrical outlets by bike racks to making sure that they are up on state and federal policies regarding vehicles traveling on multi-use paths.

Ms. Patel concurred and said she can find a location in the plan for it. Vice Mayor Furst said she thinks it should be mentioned because it is a value in the community that they keep up on the infrastructure to support it, and she thanked staff and representatives for their work on the plan.

Councilmember Lappert moved and Vice Mayor Furst seconded to approve the plan as amended by adding the statement to consider needs of newer technologies in implementing new facilities.

Councilmember Andrews suggested including his previous request for rewording of the Alta Tunnel reference on page 41.

Mayor Bailey clarified there is a sentence at Section 4.6.1; "Proposed Class I bikeway shared use path on pages 41 or 52 which lists that "for example, the opening of the Alta Tunnel was identified by members of the public as a high priority so that bicyclists and pedestrians could travel a north/south link from Corte Madera to neighboring communities." He said Councilmember Andrews is suggesting this be changed to state, "For example, a north/south lane from Corte Madera to neighboring communities was identified by members of the public as a high priority."

Mr. Ravasio stated the public identified the Alto Tunnel as the specific of three choices. That was the highest ranking. Mayor Bailey said he thinks it is troubling to accurately recite what people said. He is cautious about where elsewhere in the plan or here and asked if the Town would take a position in favor of opening the Alto Tunnel. Mr. James said the plan does not do that.

Councilmember Condon also asked to follow-up and to determine the intent of the resolution.

MOTION: Moved by Lappert, seconded by Furst, and approved unanimously by the following vote: 5-0 (Ayes: Andrews, Condon, Furst, Lappert and Bailey; Noes: None)

To approve the 2015 Town of Corte Madera Bicycle and Pedestrian Plan, as amended to add a statement in the plan to consider the needs of newer technologies as they look to implementing new facilities

### 7.III Review of Draft May 17, 2016 Town Council Agenda

Councilmember Condon requested the process for filming be updated and added on an agenda, stating this is the third time she has asked for its placement. She noted the Town just lost the opportunity for a 10-series filming with Selena Gomez. Mayor Bailey asked that Councilmember Condon work with Mr. Wolff and provide examples she has of other cities.

Councilmember Andrews asked that an item be agendized in the future for a hotel/motel zoning ordinance. Mayor Bailey asked Councilmember Andrews to discuss this issue with Mr. Wolff and determine the appropriate way to address this.

Vice Mayor Furst referred to Item 5.Ii and the Sanitary District flow meter and isolation valve replacement item and she asked to agendize this as an item not on the Consent Calendar and instead have this be the start of a conversation about how the Town's relationship with CMSA is going.

Town Clerk Vaughn stated the reason Mr. Warman wanted both the Sanitary District and Council item on the Consent Calendar was because of having to stay and talk late into the night under a public hearing. She said she could agendize it as a Business item and Vice Mayor Furst stated she did not think the item required Mr. Warman's presence. Ms. Patel stated Mr. Warman wanted to be consistent with the work he had done regarding appropriations.

Vice Mayor Furst asked that both items be agendized under Business items, and Mr. Warman could choose to speak on them.

Vice Mayor Furst referred to Town items 5.IIii and asked for a better description of the item and that it could remain on the Consent Calendar.

### 7.IV Approval of Minutes of April 19, 2016 Special Joint Meeting of the Town Council and the Planning Commission

MOTION: Moved by Lappert, seconded by Furst, and approved unanimously by the following vote: 5-0 (Ayes: Andrews, Condon, Furst, Lappert and Bailey; Noes: None)

To approve the Minutes of April 19, 2016 Special Joint Meeting of the Town Council and the Planning Commission, as submitted

Approval of Minutes of April 19, 2016 Regular Town Council

MOTION: Moved by Furst, seconded by Condon, and approved unanimously by the following vote: 5-0 (Ayes: Andrews, Condon, Furst, Lappert and Bailey; Noes: None)

To approve the Minutes of April 19, 2016 Regular Town Council, as submitted

**8. CLOSED SESSION**

The Town Council adjourned to Closed Session at 12:15 a.m. to discuss the following matter:

PUBLIC EMPLOYEE APPOINTMENT [Govt. Code Sec. 54957]  
Title: Town Manager

The Town Council reconvened its regular Town Council meeting at 12:50 a.m. and Mayor Bailey stated there was no reportable action.

**9. ADJOURNMENT**

The meeting was adjourned at 12:50 a.m. to the next regular Town Council meeting on May 17, 2016 at Town Hall Council Chambers.