

MINUTES OF SEPTEMBER 6, 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 September 6, 2016 at 6:00 p.m.

**1. ROLL CALL**

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

~~Staff Present:~~ Town Manager/Town Engineer David Bracken  
Assistant Town Attorney Judith Propp  
Director of Planning and Building Adam Wolff  
Senior Planner Phil Boyle  
Director of Parks & Leisure Services Mario Fiorentini  
Police Chief Todd Cusimano, CMPA  
Interim Fire Chief Scott Shurtz  
Town Clerk/Assistant to the Town Manager Rebecca Vaughn

**6:00 pm - CLOSED SESSION**

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Property: Gravel overflow parking lot on Redwood Highway (north of Nordstrom at The Village at Corte Madera) APN 024-032-19  
Agency negotiator: David Bracken

Negotiating parties: Macerich (Giancarlo Filartiga and Cecily Barclay)  
Under negotiation: Whether, and under what price and terms, the property could potentially be leased to the Village at Corte Madera

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Closed Session Pursuant to Cal. Gov't Code Section 54956.9(d)(1)  
Name of case: G. Ortiz v. Town of Corte Madera, MCSC Case No. CIV1502264

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Closed Session Pursuant to Cal. Gov't Code Section 54956.9(d)(1)  
Name of case: Larson v. Town of Corte Madera, et al., MCSC Case No. CIV1602760

**7:30 pm - OPEN SESSION**

Mayor Bailey stated there was no reportable action from the Closed Session.

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

**2. PRESENTATIONS**

2.I. Volunteer of the Year - David Kunhardt

The Town Council presented David Kunhardt with a Proclamation naming him as the Town's 2016 Volunteer of the Year.

Councilmembers individually read portions of the Proclamations into the record. A round of applause followed and Mr. Kunhardt thanked the Town Council.

**3. OPEN TIME FOR PUBLIC DISCUSSION - None**

**4. COUNCIL AND TOWN MANAGER REPORTS**

- Town Manager Report

Town Manager Bracken asked that Mr. Fiorentini provide a report on Circus Vargas that has come to town.

Director of Parks and Leisure Services Mario Fiorentini stated Circus Vargas arrived at the gravel lot today and began its set up. The circus will be in town until September 18<sup>th</sup>, with the first show beginning at 1:30 p.m. on Thursday. Tickets are available at the Community Center and he encouraged attendance.

Mr. Bracken gave the following report:

- He met with the Golden Gate Bridge District last week to discuss their mitigation for the ferry channel dredging. They are in the process of getting regulatory permit and he will keep the Council up to date on the matter.
- Director of Planning and Building Services – Tamal Vista East Corridor Study

Mr. Wolff gave the following report:

- The Tamal Vista East Corridor Study will be heard before the Planning Commission on September 13<sup>th</sup>. He briefly discussed the work over the last 10 months on a study of the 7 properties located on the east side of Tamal Vista Boulevard to come up with new land use regulations and policies to guide future development.

The report cumulated all public comments and created policy recommendations, and at that time, staff was directed to launch into developing new zoning ordinance amendments which would codify those policy recommendations.

The draft report and Negative Declaration were released during the week of August 20<sup>th</sup> and the matter will be heard and discussed by the Planning Commission next Tuesday, September 13<sup>th</sup> at 7:30 p.m. The Town Council will hear it in early October.

- Council Reports

Councilmember Andrews gave the following report:

- He attended the Marin Clean Energy Board meeting in Mayor Bailey and Vice Mayor Furst's absence. MCE presented their 2015/16 financial statements which showed they are financially solvent and getting stronger. Also discussed were proposed amendments to MCE's JPA.

Councilmember Condon gave the following report:

- She attended the CDBG meeting and Roy Bateman, Executive Director has retired and an interim director is serving in his place. The federal government is providing less funding for various programs and cities have been encouraged to decrease the amount of projects it contributes to.
- A meeting was held and 67 people attended regarding the Twin Cities Village. The volunteer program is for people aged 60+ who would like to volunteer, provide services and for those who need services. It operates throughout the country very successfully and a steering committee will meet tomorrow morning to further discuss the programs.
- Age-Friendly Corte Madera, the Centennial Committee and Parks and Recreation held an event at the Community Center on Sunday to honor those aged 90 and above. She noted Andy Vireno will be 104 in December and Pauline Angleman will be 108 in October. There were 23 honorees and at least 100 people. Mayor Bailey presented each honoree with a certificate, reminiscent music was played and

Interim Police Chief Michael Norton provided a presentation. Pictures of the celebration can be seen at [www.agefriendlycortemadera.com](http://www.agefriendlycortemadera.com).

- On September 14<sup>th</sup> at 1:00 p.m., "How to Avoid a Fall" will be the first presentation in a speaker series at the CMPA Community Room on Dougherty Drive.
- She reminded staff of her request for bike trail connectivity between east of Prince Royal Drive and Paradise Drive under Safe Routes to School. Mr. Bracken responded that work is underway on ADA and bike pass standards.

Councilmember Lappert had no report.

Vice Mayor Furst gave the following report:

- She reported on the Transportation Authority of Marin (TAM):
  - TAM is creating a Strategic Vision Plan and will be asking for input from the public.
  - TAM will be developing a micro-website and circulating a survey to obtain people's input on Marin's transportation future. The new site will be launched in mid-September and can be access via [www.tam.ca.gov](http://www.tam.ca.gov).
  - The General Manager of SMART has refused to allow use of the railroad right-of-way in the area behind Cost Plus which is the site of a new bike/pedestrian pathway intended to link the crossing over Sir Francis Drake Boulevard and Corte Madera Creek and direct people behind Cost Plus to connect up with the Sandra Marker Trail at Wornum. This is a key link, it is fully funded and the entire project is on hold. The agreement entered into in 2006 between SMART, the Golden Gate Bridge District, County of Marin, and City of San Rafael and discussed at the last TAM Board meeting.
  - She will expect that the SMART Board will agree to the use of the right-of-way if there are any funds given to the rebuild of the Bettini Transit Center in downtown San Rafael. This facility is owned by the Golden Gate Bridge District; however, a temporary rebuild and permanent solution is required because of the SMART train traveling through and continuing on from Second to Anderson and onto Larkspur, which is SMART's next phase.

Mayor Bailey gave the following report:

- He attended Marin County Legislative Committee meeting and the legislative session has ended mildly. Reports were given on cap and trade, homelessness, affordable housing, and bonds for parks.
  - Assemblymember Levine discussed CalPERS investments.
  - The Committee's work was presented which is geared to protect local control.

## 5. CONSENT CALENDAR

Councilmember Andrews requested removal of Item 5.II for discussion.

- 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 ~~Adopt Resolution 31/2016 Endorsing the Corte Madera Beautification Committee's Oktoberfest and Allowing Temporary Signs in the Public Right-of-Way from September 12, 2016 to October 10, 2016 Advertising the Oktoberfest Celebration and Determining that the Project is Exempt from the California Environmental Quality Act (CEQA) Pursuant to CEQA Guidelines 15061(B)(3)~~  
(Report from Phil Boyle, Senior Planner)
- 5.IV ~~Approve Town of Corte Madera Response to Civil Grand Jury Report, "911 First Responder Referral Program"~~

(Report from David Bracken, Town Manager, and Scott Shurtz, Interim Fire Chief)

- 5.V ~~Approve Town of Corte Madera Response to Civil Grand Jury Report, "Law Enforcement Citizen Complaint Procedures"~~  
(Report from David Bracken, Town Manager, and Michael Norton, Interim Police Chief)
- 5.VI ~~Approve Town of Corte Madera Response to Civil Grand Jury Report, "Marin's Hidden Human Sex Trafficking Challenge"~~  
(Report from David Bracken, Town Manager, and Michael Norton, Interim Police Chief)
- 5.VII ~~Approve Warrants and Payroll for the Period 8/11/16 through 8/26/16: Warrant Check Numbers 214306 through 214382 Payroll Check Numbers 5275 through 5283, Payroll Direct Deposit Numbers 30168 through 30302, Payroll Wire Transfer Numbers 2046 through 2052, and Wire Transfer of 8/22/16.~~  
(Report from George T. Warman, Jr., Director of Administrative Services/Town Treasurer)
- 5.VIII ~~Approve Warrants and Payroll for the Period 8/27/16 through 8/31/16: Warrant Check Numbers 214383 through 214429 Payroll Check Numbers 5284 through 5297, Payroll Direct Deposit Numbers 30303 through 30379, and Payroll Wire Transfer Numbers 2053 through 2057.~~  
(Report from George T. Warman, Jr., Director of Administrative Services/Town Treasurer)
- 5.IX ~~Consideration and Possible Action to Approve Payment of \$12,000 From Centennial Funds for Centennial Snow Day Activity in December~~  
(Report from Mario Fiorentini, Director of Recreation and Leisure Services)

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

~~Item Removed from the Consent Calendar:~~

- 5.II ~~Approve Acquisition of New Stryker Power Assisted Gurney for Medic Unit; and Approve a Supplemental Appropriation of \$53,300 for Stryker Gurney~~  
(Report from Kenny Prete, Battalion Chief)

Interim Fire Chief Scott Shurtz discussed the cost for the Stryker Gurney, stating the Corte Madera Fire Department is the only transport agency in Marin that still has a 100% manual gurney which requires 2 Firefighters or Paramedics to lift it and load it into the ambulance.

Interim Chief Shurtz explained the importance of the option for powered gurneys from back injuries. The price of the gurney is approximately \$18,000 and the power load device which picks it up and pulls it into the ambulance is almost \$22,000. While expensive, it is very high quality, reliable and is used by similar agencies. The remaining \$11,000 in the contract is for an extended, 7-year service contract which he briefly described. The current gurneys used will be outlawed because they do not stand up to SAE (Society of Automotive Engineers) crash test safety standards and the new device does. Chief Shurtz indicated he was available to answer any questions.

Mayor Bailey opened the public comment period and there were no speakers.

Vice Mayor Furst thanked Chief Shurtz for his report on behalf of Battalion Chief Prete who was sent to out-of-county response at a wildfire on the Oregon border.

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 Town Consent Calendar Item 5.II, approving Acquisition of New Stryker Power Assisted Gurney for Medic Unit; and Approving a Supplemental Appropriation of \$53,300 for Stryker Gurney

## 6. PUBLIC HEARINGS

- 6.I ~~646 Oakdale Avenue – A Public Hearing to Consider an Appeal of the Planning Director’s Action to Conditionally Approve Tree Removal Permit PL-2016-0057 Concerning the Removal of a 70 Foot Tall Coast Redwood at the Rear Yard at 646 Oakdale Avenue, Adjacent to 60 Presidio Avenue.~~  
(Report from Douglas Bush, Associate Planner)

Mayor Bailey briefly outlined hearing protocols regarding appeals.

Director of Planning and Building Adam Wolff introduced the item, stating the matter is an appeal where the Planning Director makes the decision on a tree removal permit which, per Chapter 15 of the Municipal Code, is heard by the Town Council and not recommended by the Planning Commission.

Mr. Wolff then introduced Douglas Bush, Associate Planner to present the staff report.

Associate Planner Douglas Bush stated an application was filed in June 2016 by 646 Oakdale Avenue for removal of a 70 foot tall Coast Redwood and an appeal was filed by 67 and 60 Presidio Avenue. He presented a display of the alternate view of the redwood tree behind 646 Oakdale Avenue. The tree is to the rear of the applicant’s fence but within their property line and it sits between 60 Presidio Avenue and 646 Oakdale Avenue.

Mr. Bush explained that a tree removal permit is generally required for any tree in town that is over 50” in circumference at chest height or 4 ½ feet in height. This tree is well over this amount. He noted there are certain exemptions for species of trees which are deemed as nuisances; however, this tree requires a permit.

Mr. Bush then displayed a view of the tree as seen from the end of Presidio Avenue which is 33.6” in diameter and around 110” in circumference. There were multiple arborist reports provided by the applicant and the application was noticed to all neighbors within 300 feet of the property. Staff received concerns from the appellants and as a result, requested further information from the applicant and staff required an arborist report from an independent, consulting arborist.

He then presented a display of the tree as seen from Oakdale Avenue and said the tree is estimated to be between 40 and 70 years old. The lot at 646 Oakdale slopes from the back to the front with 60 Presidio Avenue above and staff cited over 20 factors relating to the decision on the tree removal permit as outlined in the staff report and he briefly discussed criteria in arriving at the decision.

Staff found the need for the tree to be removed for the following reasons:

- The application was initially filed largely based on concern for the risk of the tree falling on the house or limbs failing and falling on property or people.
- With the 4 separate arborists reports provided; 3 provided by the applicant and 1 provided by the appellant from 2014, support removal of the tree.
- There is danger of limb failure which is common for redwood trees.

- It was not established that the tree itself was a risk for failure but if it were to fail or limbs to fall, given its position upslope from the applicant's house, there is reason for concern.
- The tree is currently causing damage to a fence, a retaining wall, and given the age of the tree, the reports indicate that further damage would occur from continued growth.
- The tree is in a very narrow space near the driveway at 60 Presidio Court and there is definite potential from the arborists' reports that further growth could damage the driveway and another retaining wall at the rear of the applicant's property.
- Given the size and location of the tree, it shades the house, the yard and these are factors and considerations.

An appeal was filed shortly after the determination and staff mailed the decision to approve the permit to concerned neighbors to ensure an opportunity to comment. The points on the appeal (Attachment 2) are as follows:

Mr. Bush concluded his presentation, stating that while a tree of this size and age include some environmental benefits; staff weighed many factors. Given the trees' size, hazards, privacy, risk of limb failure, effects of sunlight on the property, staff believed that negatives outweigh the benefits to retain the tree.

Councilmember Condon voiced concerns and questioned the conflicting arborists' reports.

Mr. Bush clarified that the Town differentiates between independent consulting arborists who are not associated with tree-cutting services and those which are in order to eliminate potential bias and conflict of interest.

Mr. Wolff added that arborists are licensed with professional certifications and similar to other independent assessments from consultants the Town uses these individuals to provide a valid opinion. There can be differences in opinions from arborists which were seen in this case.

Vice Mayor Furst referred to page 7 of the Town's Code, number 15.50.060(5); "Preservation/restoration of views and/or sunlight on an applicant's property". She asked if there was any study about the sunlight and shading as a result of the tree on the appellant's property which would show how much of an effect this tree has as opposed to other vegetation.

Mr. Bush said there was no sunlight or shade study performed by the applicant. He clarified that the right to view and sunlight section of the tree ordinance is specific to conflicts between someone who is asserting that right and someone else who owns a tree on a different property. When a tree permit is applied for to remove one's own tree, this section of the code does not apply. He said one factor on the decision of the permit is restoration of sunlight on one's own property, and Mr. Wolff added that at certain times of the day the tree does shade the property and some of the usable areas.

Vice Mayor Furst referred to the 3rd bullet point on page 5 of the staff report on Attachment 3, which is one of the factors articulated in the application; "The trees impact on available sunlight within their home and the impact of shading on their desired vegetation." She asked if the applicants are holding off on a landscaping plan because the backyard is too shady.

Mr. Bush said the matter is about the ability to enjoy their backyard as they wish and the ability for sunlight in their backyard, and he noted that the applicant could speak to this.

Mayor Bailey called upon the appellant to make a presentation.

MICHAEL WEIR, appellant, gave a PowerPoint presentation and introduced his wife, Kristina, as well as the owner of 57 Presidio Avenue. He said his family moved into their

home 14 years ago, have two young boys and do not view themselves as tree activists. They had an oak tree that got sudden oak death which they had to remove in 2004 based on an arborist report.

In going through the report, Mr. Weir stated that it comes down to whether the tree is a nuisance, whether it is a risk for damages, and he thinks the tree is a nuisance; however, it is a nuisance they have come to tolerate.

Mr. Weir stated they did major renovations on their home including a parking pad installed in 2003 and up until the latest arborist report and the one they filed in 2014, the tree has been reported as healthy. Up until May of 2016 they believed the tree to be theirs and their responsibility and have paid for its maintenance over time. They had to obtain a survey when they underwent renovations, which were provided to their neighbors, and it was at this time that they discovered the tree was actually on their property.

In 2014, the Sachs expressed their desire to have the tree cut down and this is when he hired an arborist who opined the tree to be healthy. They decided to leave the tree where it was and they worked with the Sachs to window the tree significantly to try and minimize its impact.

KRISTINA WEIR stated they received permission from the Sachs to trim the tree and ensured their concerns with the large branches were not impacting them. She said the tree is a nuisance for them as they get sap droppings on their car; however, she said part of the reason they moved to Corte Madera was to ensure their family grew up surrounded by trees.

Mr. Weir continued, stating when they filed the appeal they learned the tree did not fall under the category of a heritage tree. He referred to the staff report and said regarding the question as to whether the tree is a nuisance and whether it is an impact given potential damage, when going through the arborist reports they all agree that the risk of total tree failure is low. The tree is healthy and the big risk is branch failure; however, the tree does not have huge, thick branches, it has been windowed on the applicant's side and he feels that the impact of branch failure is not that high. If the tree was sick or dying, they would absolutely support its removal.

Mr. Weir said all reports of the arborists conclude that the tree is not in any danger of falling. Everybody loves redwood trees and their environmental benefits are amazing.

Mrs. Weir added that if the tree was dying or there was imminent danger of falling they would support its removal. Additionally, according to a recent Marin IJ article seniors in Mill Valley fought to keep 3 redwood trees and she asked the Council to consider that every aspect of tree removal matters.

Mr. Weir said there are aspects of damage to the fence, retaining walls and he questioned whether this could be mitigated any other way such as irrigation or additional support for the tree. It seems that based on branch failure any tree could get cut down and, depending on what happens with this hearing, he asked what the plan would be for the stump, the root system and the current location of the fence.

In conclusion, Mrs. Weir admitted the matter is personal and she questioned the definition of a heritage tree which varies by city. She questioned whether she should be looking at the matter in a different way, whether or not it is a nuisance, and said her family tries to be quiet and respectful neighbors but there are also 3 other neighbors in support of the appeal. None of the arborists' reports say that the tree is dying or diseased which she feels is the most important thing to highlight. There is not a high risk of tree failure and while the tree could fall on their house and parking pad, they specifically installed a curved retaining wall so as to preserve the tree as much as possible, as well as trimmed the tree.

Mayor Bailey asked and confirmed one of the photos taken of the tree with Mrs. Loscalzo.

Vice Mayor Furst referred to a photo in the staff report which shows the fence and she confirmed that the brick retaining wall is the one the tree has affected. Mrs. Weir clarified that the neighbor will be speaking to this.

KAREN LOSCALZO, on behalf of the appellant and neighbor across the street on Presidio Avenue, stated she supports the Weirs in their effort to save the redwood tree in question. As a 25 year resident of Presidio Avenue she has observed of all neighbors a concerted effort to live with trees, many of which have existed long before their homes were constructed. Many neighbors purchased homes specifically for the lush, mature vegetation in the neighborhood and learned they could not grow a lawn under an oak tree nor plant corn or tomatoes under a redwood. Instead, they adapted landscapes to co-exist with their trees or learn to garden in pots.

Mrs. Loscalzo said she felt it was odd that the residents of 646 Oakdale Avenue did not recognize that the large redwood growing in their backyard might provide some gardening challenges. They have decided recently that it should be cut down, giving little thought to how such an action would destroy the attractive, natural ambience of Presidio Avenue and its neighborhood vistas. They have not considered the unattractive gap in the landscaping on the street behind their home and how it will affect their neighbors to the south. Their promise to plant mature trees in its place is not convincing as they and the Town planning department fail to realize that the stump must remain to stabilize the hillside and the tree will grow back and its roots will continue to spread across the area. It will be difficult if not impossible to plant screening which has been promised.

Because the Town does not require success or efforts in perpetuity, residents of Presidio Avenue are faced with an ugly reminder of an ill-conceived effort. She strongly encouraged and urged the Council to send the matter back to the planning department for consideration of a plan to preserve the tree, require annual inspections and maintenance until such time and if and when the tree is truly in failure, she will support its removal.

Mayor Bailey called upon the applicant for a presentation.

ADAM SACHS, applicant, referred to the question regarding the independence of the arborist's report, they had their first report prepared by the tree removal service. The Town asked them to have another report prepared by an independent arborist which they did. After the appeal was filed they wanted to ensure the work was correct. The Town then asked them to hire Urban Forestry Associates and he received a truly independent assessment in June after they hired two other arborists. He noted the arborist the appellants hired were not independent certified risk assessment arborists.

He and his wife Joanne moved to Corte Madera 6 years ago. They take the matter seriously and said they love to garden. The backyard was covered in ivy which they removed and they planted peas, tomatoes and 4 fig trees, 6 apple trees, 2 cherry and 1 maple tree. He noted the front of their house was overgrown with juniper and failing retaining walls. They installed new retaining walls and as shown in the pictures, plants were planted too closely together when their house was built.

The redwood tree was planted in the backyard behind their home which became a problem for their neighbors which they windowed out. The redwood tree started killing their 4 Camelia trees which provide wonderful screening. The redwood tree has an aggressive root system and casts a substantial shadow of his home.

Mr. Sachs then presented a photo of a short retaining wall, a brick retaining wall behind it on 60 Presidio Drive, a 6 foot retaining wall 5 feet from his home which has a crack in it because it is off plumb by  $1\frac{1}{2}$  inches and it is pushing the wall over which is holding their entire backyard 5 feet from their home. They have a French drain but nothing drains from it because roots have grown in it. The tree is stressed per the independent arborist from Urban Forestry Associates that the Town recommended. He said there are 5

considerations; 1) Danger of limb failure. There is a danger of limb failure here; 2) Is it close to structures? It is a 76 foot tree, which is 25 feet from their house and is even closer to the appellant's house, but given the prevailing winds, Mr. Sachs said his home is the target; 3) The tree is blocking the French drain; 4) It is taking out the fence and the short wood retaining wall and the large retaining wall is at risk; and 5) regarding danger of branch failure, the arborist from Urban Forestry Associates states "the likelihood of branch failure is moderate to high due to the species' characteristics, the high wind exposure and drought stress.

Although the likelihood of branch hitting the residence has a low probability, this could pose serious damage." When there are southerly winds, he and his wife are worried. If the tree falls it will destroy their home and while the risk of this is low, during high winds, they do not sleep very well. They do not know if the south canopy decline is due to root cutting when the neighbor's parking pad was installed which may have disrupted tension roots. Currently, there is a slab on the south side of the tree which was not there before.

In looking at the tree and its growth over the last couple of years there is no foliage on the south edge and this is where the foliage ought to be, and the concern is that it will fall to their side.

Mr. Sachs stated the redwood tree grows and will continue which is a problem, given its health. The tree's roots have pushed the fence out of alignment and this will continue. One of the most major problems short of the tree falling and killing them, the 5 1/2 foot retaining wall is cracking in two places and is out of plumb. He then pointed to a photo showing an area 30 feet away from the tree which shows expansion of the tree which gradually pushes the wall which will eventually knock it over which is a risk to their home. He then presented a photo of the Camelia trees which are straggly and only have foliage on their tops and are being killed by the redwood tree.

Mr. Sachs then displayed a picture of a healthy Camelia tree 40 feet away from the redwood tree. If the redwood tree is removed, the Camelia will provide screening the neighbors want. He said the tree has been very invasive over a short period of time and in many towns redwood trees are considered nuisances. While beautiful, they do pose nuisances because they end up taking over yards and neighbors cannot plant anything.

Another problem is the fact that they cannot install solar on their southwest portion of their roof. Regarding privacy, nothing can grow under the redwood tree and because it is self-deciduous, branches fall and they cannot achieve privacy without erecting a 15 foot fence which most likely will not be received well.

He stated Urban Forestry Associates gave the tree's health a 2 rating which is 'fair'. Urban Forestry Associates indicated it is on the edge of dying, quite drought stressed, there are root limitations, groundwater limitations, foliage is sparse and depressed, and it is not getting water on the south side which should make it strong. If it were taken out, the neighbors' views would improve, he and his wife's lives would be better and they would have views open to the other side as well.

The matter was appealed and it was stated the tree is over 100 years old, but Urban Forestry Associates estimated the tree is 50 years old and distinguished it as a young tree. The appellants state that their fence and rooftop are unattractive and he displayed a picture of the appellant's fence and said the appellants live above them and will see their rooftop.

Mr. Sachs then referred to views and said the tree cannot be seen until one is standing even with the neighbor right behind the Weirs. He presented a picture of the appellant's home in 2004 showing an oak tree which had a diameter of 20 inches or a circumference more than 50 inches. In 2006 the oak tree was removed and they should have gotten a permit, and there is a gaping hole. He said if the Weirs cared about the gap in the foliage they would have planted trees, but they never have planted trees there. The oak tree was 29 feet tall

and no tree has been planted as a replacement.

Regarding the effect on property values, Mr. Sachs said he received a letter from a broker who said the tree's removal will not affect values. In summary, Mr. Sachs said there are two walls being affected by the tree, a French drain that is failing which does not seep out properly, the fence is being pushed over, it is blocking light, is killing trees, and it is stressed. He said he loves gardening and this is what he wants to be able to do. He will also be planting Magnolias, Maples, and other trees at a 2:1 ratio and have already planted 14 trees. He said what keeps them up at night is the risk of failure and he thanked the Council.

Mayor Bailey asked staff to display the slide showing the bird's eye view of the location of the retaining wall and French drain.

Mr. Sachs pointed to both pictures and clarified that the retaining wall is about 5 feet from their house and the French drain goes the entire length and roots have come in and filled it so it does not work.

Vice Mayor Furst pointed out that there is a view of the retaining wall with dimensions and distance to the tree on page 3 of 5 of the Urban Forestry Associates report which shows the retaining wall is 15 feet from the tree trunk.

Mayor Bailey opened the public comment period.

LAKS SAMPATH, 700 Oakdale Avenue, said he has lived on Oakdale for the last 20 years and his main concern is that next door to him was a similar redwood tree and 17 years ago, he just moved his 5 year old daughter out of their breakfast nook area when he heard a crack. The tree fell and missed his house, took out 2 mature apple and peach trees out and the fence. He said when standing at his house and looking over, there is a huge oak tree on his neighbor's property that blocks his complete view. He has never approached the Council to have the tree removed to enhance his views, but he thinks the redwood tree is a safety issue. When it does come down, he questioned who would be responsible if the tree is not allowed to be removed today.

JEFFREY GORDON said he and his wife have lived on Presidio Avenue for 17 years and are the neighbors to the south of the Weirs. When he drives up Presidio and into their driveway he and neighbors have enjoyed seeing the beautiful, majestic redwood tree and ambience of the street. Mr. Sachs states the tree is on the verge of dying but Mr. Gordon said he has looked at the tree and the shoots are green and nothing compared to other trees in the area he has seen. He said he would rather see a beautiful redwood tree than have a view of a freeway which sends noise and pollution.

He thinks Town staff has overlooked how cutting the tree down would affect the environment on Presidio Avenue. Some of the arborists state the tree is healthy and one rates it at level 2. He used to be an attorney and said he could "shop" for a judge to rule in his favor, and this strikes him as being the same situation. Also, Mr. Sachs discusses the drought over the last 2 years, but reservoirs have been full in Marin. He did not think the tree has been negatively impacted and is not about to die; it is growing and is very healthy. The Sachs made a decision to purchase the house knowing the tree was there and he hoped the Council will consider the equity of this.

GEORGE MUELLER, 623 Oakdale Avenue, said to own a home and a backyard is part of the American dream for immigrants and he thinks there is no overriding community interest in this particular redwood tree. It is not a historic monument that needs preserving nor a rare species, and he thinks private property should be respected as well as the wishes of homeowners. He therefore asked that the permit be granted for the tree's removal.

Councilmember Andrews noted that his neighbor periodically prunes his redwood tree and asked if the tree was pruned symmetrically.

*Rebuttal – Appellant*

Mrs. Weir, co-appellant, said the tree was trimmed more on the applicant's (south) side because of the concern with branch failure. She and her husband were of the belief that if the tree was not dying or sick they should do everything they could to save it. She said she cut the tree on her side for windowing, but they asked first if this was okay. She referred to the eminent danger which is the question that the Council should consider. She said her father who is 86 lives with them and he could be a nuisance like a tree, but wants to maintain the beauty of Corte Madera. They have 2 children, aged 10 and 13 years old and she wants to live amongst the trees.

Councilmember Lappert said he does not like the Council's ability to intrude in people's personal lives and make laws that pit neighbors against each other and cause these problems. He does not consider the matter to pertain to the health of the tree and the tree belongs to one property owner who has the tree on his property. He can do as he pleases and is not the caretaker or steward of the redwood tree and therefore must live with it. He may have purchased the property with the idea of taking the tree down at some time and in his opinion, the owner has a right to do that. He was baffled with the idea that a tree is more important than a human being and the livelihood of the people who purchased the property. He said the applicant is a gardener and wants to plant other trees, as well and he supported removal of the tree.

Vice Mayor Furst said she was torn and felt like what was heard tonight was less than genuine or in alignment with what the arborist reports state, such as the tree blocking a French drain or being stressed. She has a large redwood tree which is stressed by the drought and she has had to garden around the tree. Regarding the risk of falling branches, the tree's branches are modest in size and the bottom branches have been cleared. The Council was also told about someone killed in San Francisco from a branch, but there is no evidence this was from a redwood tree and she questioned what Christmas Tree Hill would look like if owners were allowed to simply clear spaces in their backyards for gardens.

However, Vice Mayor Furst said she was concerned with the retaining wall which is 5'2" from the Sachs' home. She did not have enough information to judge whether the tree is compromising it and questioned if there was a solution to deal with this. Lastly, an update to the tree ordinance has been brought up over the last few years and she would suggest this be done within the next year.

Councilmember Condon said she agrees with Councilmember Lappert's comments regarding the Council's involvement with trees; however, recently there was dispute and polarizing in a neighborhood because heritage trees were removed for construction of a new spec home and permitting was questioned. There was very little room for the home to be built if the trees were retained and they were removed. In looking at the Urban Forestry Associates' report, she was troubled because she could not understand whether the arborist was chosen by the applicant or staff, that the report was independent and that there would be an opinion involving potential risks from branches or the tree falling.

Councilmember Condon stated the tree is part of the landscape of the neighborhood and property. She lives next door to a beautiful oak tree which was diagnosed with sudden death syndrome, and neighbors have been paying to maintain the tree due to an absent homeowner and it would have been awful if the tree was removed. She feels the Town has been pushing for something more definitive in its tree ordinance and thinks the retaining wall can be fixed, the French drain altered, and she would support saving the tree.

Councilmember Andrews voiced his support to save the tree.

Mayor Bailey said he was also torn like Vice Mayor Furst, and it is obvious that these are good people, a good neighborhood and everybody loves their trees and plants regardless of what happens. He disagreed with the staff report in that there is an interpretation that the heritage tree section of the Municipal Code does not apply because the tree is on private

property. He said Section 15.50.100; the right to view and sunlight explicitly states that “no right to view or sunlight may be established under this article as to any heritage tree and heritage trees may not be altered, destroyed or removed on the basis of any provision of this article.” He said there is no implication by its location within the section to link it to the fact it does not apply to the owner of this site. Staff did an excellent job in the staff report; however, he did not believe this issue was analyzed correctly. There are multiple reasons why the owner should have the right to remove the tree, but listing sunlight or view cannot be listed as a basis for removal.

Mayor Bailey said the largest issue for him is one of safety. He thinks that people should generally have a right to do what they want with their own property; however, this is not without exception. Occasionally, the Council imposes things on people and the Town has a Municipal Code. He would argue that one’s Constitutional right to property is impacted by local ordinances and other things which affect the way people interact with one another. He thinks it is unfair both to Mr. Sachs and to his neighbors, but it is disingenuous to refer to the arborists’ reports as being uniform in describing anything. He has read them and he thinks they can be used to argue any position and it makes it hard for him to determine whether the situation is unsafe or not. If unsafe, he would agree the tree should be taken down.

Additionally, he said Mr. Sachs has his own property rights and did not think it was fair to support a tree if it is damaging the retaining wall, French drain and impacting his house. It is not clear there has been an effort to rectify these things by some other method and was not sure if it is possible to correct the problems without further damaging or injuring the tree, but there is an inconsistency of simultaneously saying the tree should not be there because it is growing too large and it is about to die. Both arguments, while possibly true, any one of them can be true at any one time.

Mayor Bailey agreed with Councilmember Condon’s statements about whether there is confidence in the report and who the expert is. He has found that one can pay an expert to say virtually anything and he finds it hard for the applicant and the appellant to determine what the story is and there is an emotional investment in this which he would ask the community to remove. He finds that whenever the Council discusses larger policy issues, they fail and to succeed, they must keep things purely operational in nature. Therefore, the question is not generally whether the Council should protect property rights but specifically, should this tree be preserved. Therefore, it is not perfectly clear to him.

Councilmember Lappert said if the neighbor’s sunlight and fear of limb failure was before the Council, he questioned whether the Council would require the property owner to do something with the tree.

Mayor Bailey asked if the fact that the tree is a heritage tree matters at all, and Councilmember Lappert said he did consider this a heritage tree regardless of what the code states, other than the fact that it has outlived some people.

Vice Mayor Furst posed the question wherein a person purchased a home on Christmas Tree Hill which was surrounded by lovely trees. The new owner decides they want to install a garden and have sun and cut down trees, she asked how Councilmember Lappert’s concept of property rights would apply in this setting, knowing so much of the neighborhood character is intrinsically tied to trees and greenery.

Councilmember Lappert asked at what point is the Town going to be calculating how much carbon dioxide is being taken out of the air. He thinks if a property owner does not want something on their property, he would defer to the owner. He would also ask for reasonableness and alternatives, but he thinks this is one tree which is aggravating to the owner. At one point no one even knew who owned the tree and while of a certain age and character, the tree will someday die. The pictures of Mr. Sachs’ garden tell him he is serious about gardening.

Mayor Bailey concurred but also thought that the 60-70 year age of the tree is not as dramatic as some things the Council has seen, such as 150-200 years old. Mr. Sachs is also replacing and planting additional trees.

Councilmember Condon noted that heritage trees are in the Town's ordinances and are not to be removed which are not less than 50 years old.

Vice Mayor Furst said she does not think the case has been made that there is a consistent view of eminent danger by reading the arborists' reports. There is some question about the retaining wall but she did not have enough information to know that it is directly related to the tree and secondly, there is nothing that can be done to mitigate any impact to the retaining wall.

Mayor Bailey echoed his position with Vice Mayor Furst's except that he does not think it is fair to tell an owner it is not dangerous enough; that the danger to their family however low and while immediate and terrible, is remote. He said the appellant's statement is that every tree is dangerous and judgment must be applied, but the arborist report does not help in this regard. He questioned how the Town can say someone cannot protect their family and property from destruction because of the conflicting arborists' reports and he thinks his position is that the Council should allow the property owner to protect their family and property.

Vice Mayor Furst referred to Christmas Tree Hill and the trees' importance to the neighborhood and asked if the Council was supportive of an arborist's report that says low risk and possibly setting a precedent.

Mayor Bailey said while this problem worries him, that problem is not before the Council. He did not think this would set a precedent because the Council is examining itemized details to come to a lone decision.

Councilmember Condon said this is a difficult decision, it becomes subjective, she cited the importance of tree preservation, and the Council's action to enforce its policies, and she thinks the ordinance defines a heritage tree even though and every description of the tree is a low risk.

Mayor Bailey said he does not think the Town can tell an owner they cannot protect their family and property because there is only a 5% chance that the tree or branches will fall.

Mayor Bailey suggested calling the question.

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

To grant the appeal and deny Tree Removal Permit PL-2016-0057, thus saving the redwood tree

## **7. BUSINESS ITEMS**

- 7.I ~~Consideration and Possible Action to Adopt Resolution No. 32/2016 Approving Modifications to the Color Scheme of the East Elevation of Building 1 (Facing Nellen Avenue and Highway 101) at Tam Ridge Residences (aka 'Wincup')~~  
(Report from Adam Wolff, Director of Planning and Building)

Director of Planning and Building Adam Wolff stated before the Council is consideration of modifications to the color scheme on the east elevation of Building 1 at Tam Ridge Residences, which faces Nellen Avenue and Highway 101. This matter follows up on a public meeting regarding colors and color scheme on this elevation at a joint Planning

Commission/Town Council meeting on April 19<sup>th</sup>. Subsequently, the applicant took direction from that meeting to revise the color schemes, returned to the Planning Commission on August 23, 2016, presented revised schemes and the Planning Commission is unanimously recommending approval of Option 3 which he displayed.

Mr. Wolff stated there were 5 options presented to the Commission on August 23<sup>rd</sup> and he presented them all on the screen and said the applicant can address them. He distributed material samples to the Council and he referred to the details regarding noticing which he said was also included in the Council packet.

ERIC OLSON, Architect, McFarlane Partners, said he was available for questions of the Council, noting that the Commission made a unanimous recommendation for Option 3. In summary, Option 3 replaces the light colored Prodema with the dark colored Prodema which makes all 4 sides of the building the same and also tones down the view from the freeway. The light and dark greys also work well with the dark wood and it provides a consistency and appropriate scale moderating medium and he thinks it is the right decision of the Planning Commission.

Councilmember Lappert requested Option 3 be displayed.

Mayor Bailey opened the public comment period and there were no speakers.

Councilmember Condon stated she likes Option 3 and confirmed the pronunciation of "salsify" which Ms. Levinsohn confirmed was the name of a vegetable. Councilmember Condon stated she visited the site and made a motion to support Option 3. Vice Mayor Furst seconded the motion.

MOTION: Moved by Condon, seconded by Furst, and approved unanimously by the following vote: 4-0-1 (Ayes: Condon, Furst, Lappert and Bailey; Noes: None; Abstain: Andrews)

To Adopt Resolution No. 32/2016 Approving Modifications to the Color Scheme of the East Elevation of Building 1 (Facing Nellen Avenue and Highway 101) at Tam Ridge Residences (aka Wincup)

#### 7.II ~~Review of Draft September 20, 2016 Town Council Agenda~~

Vice Mayor Furst commented on the numerous items on the agenda.

Mayor Bailey questioned the junior second unit item and clarified that it will be agendized in the near future and the Council will hear it after the Planning Commission.

#### 7.III ~~Approval of Minutes of August 16, 2016 Town Council Meeting~~

MOTION: Moved by Lappert, seconded by Andrews, and approved unanimously by the following vote: 4-0-1 (Ayes: Andrews, Condon, Lappert and Bailey; Noes: None; Abstain: Furst).

To approve the Minutes of the August 16, 2016 Town Council Meeting, as submitted

### **8. ADJOURNMENT**

The meeting was adjourned at 9:45 p.m. to the next regular Town Council meeting on September 20, 2016 at Town Hall Council Chambers.