

MINUTES OF SEPTEMBER 20, 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 20, 2016 at 6:45 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
Director of Administrative Services/Town Treasurer George T. Warman, Jr.
Town Attorney Randy Riddle
Police Chief Todd Cusimano
Director of Planning and Building Adam Wolff
Senior Civil Engineer Nisha Patel
Associate Civil Engineer Kelly Crowe
Fire Chief Scott Shurtz
Town Clerk/Assistant to the Town Manager Rebecca Vaughn

6:45 p.m. - 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

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code Section 54957
Title: Town Attorney

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 p.m. - 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. OPEN TIME FOR PUBLIC DISCUSSION

FRANK VILLAREAL requested that there be an item for discussion at the October 4th meeting regarding infrastructure and roads in the Marina Village neighborhood.

3. PRESENTATIONS

3.I David Bracken – Commendation for Service to the Town of Corte Madera

Councilmembers individually read portions of a Proclamation into the record regarding

Town Manager/Town Engineer David Bracken's service to the Town of Corte Madera. A round of applause followed and Mr. Bracken thanked the Town Council.

3.II Dan McCadden - Commendation for Service on the Planning Commission

Mayor Bailey read a Proclamation into the record regarding Dan McCadden's service on the Planning Commission. A round of applause followed and Mr. McCadden thanked the Town Council.

3.III Tom McHugh - Commendation for Service on the Planning Commission

Mayor Bailey read a Proclamation into the record regarding Tom McHugh's service on the Planning Commission. A round of applause followed and Mr. McHugh thanked the Town Council.

4. COUNCIL AND TOWN MANAGER REPORTS

- Town Manager Report

Mr. Bracken gave the following report:

- At 1:40 a.m. on September 14th the Fire Department responded to a working structure fire at 23 Redwood Avenue. Within 3 minutes units arrived and discovered a ground floor unit fire. The fire was controlled and a 71 year old burn victim was found outside of the apartment and treatment was rendered. At present, the victim is in critical condition and details of the fire have not been released.
- Two hours later crews received a call and responded to a vegetation fire in the marsh. The fire was $\frac{1}{4}$ acre in size and was controlled by two wildland engines from San Rafael and Mill Valley.
- The Town's new Building Official Brian Fenty began employment with the Town today and will work with Mark Flatter who is retiring on October 10th. Mr. Fenty had worked with the County of Napa, two private consulting companies and prior to this, served as Building Official and Building Services Division Manager for the City of El Cerrito for 10 years, and also has experience as a general contractor.
- Circus Vargas has left town and great feedback was received on the circus, especially from kids.
- An accident occurred on Paradise Drive and Prince Royal Drive last Friday which created a lot of concern, given a child was walking across the intersection. Very soon a flashing beacon, striping, signage and accessible ramp improvements are scheduled for installation.

- Director of Planning and Building Services - Tamal Vista East Corridor Study

Mr. Wolff gave the following report:

- The Planning Commission at its September 13th meeting recommended approval of the proposed zoning ordinance amendments for new mixed use zoning on The Tamal Vista Boulevard at the existing commercial properties between Wornum Drive and Madera Boulevard. The matter will come before the Town Council on October 4th when the proposed amendments will be discussed.

Councilmember Condon referred to a new law which states that if affordable housing is built within $\frac{1}{2}$ mile of transit, cities must approve developer requests for reduced parking. Mr. Wolff stated staff will look specifically into this bill as it relates to development.

- Council Reports

Councilmember Lappert had no report.

Vice Mayor Furst gave the following report:

- She attended the Transportation Authority of Marin (TAM) Executive Committee meeting and reported that the third lane on the Richmond Bridge will hopefully be open in one year.
- The San Francisco Estuary Partnership issued a report available on-line called, "The 2015 State of the Estuary" as well as the "Comprehensive Conservation Management Plan" (CCMP) which include a series of actions that need to be taken to improve the Bay. There are 32 actions and each have specific tasks with specific milestones. Two are of interest to the Town. The first relates to sewer lateral repair ordinances and the task is a 5-year plan to gather data about how local agencies are managing repairs. The second relates to the ways local cities and counties can 'green' their infrastructure such as water runoff, permeable pavements, etc.

Councilmember Andrews had no report.

Councilmember Condon gave the following report:

- Carol Zeller, the Town's representative to the Commission on Aging gave a speaker series sponsored by Age-Friendly Corte Madera, Parks and Recreation and Marin Villages on how to prevent falling, and over 40 people attended.
- Age-Friendly Corte Madera is progressing with the establishing of Twin Cities Village and will be meeting tomorrow to form a steering committee. She thanked CMPA for donating meeting space and partnering with them.

Mayor Bailey gave the following report:

- He thanked the Corte Madera Community Foundation and Practical Martial Arts for sponsoring an Annual Coastal Clean-up for the wetlands on Saturday. Over 12 cubic yards of trash and recyclables were collected by Boy Scout Troop 27 and other Scouts provided much of the work. Special thanks go to Jim Navarone from Mill Valley, Refuse that provided debris boxes and recycling bins, as well as Public Works, Kevin Kramer who provided buckets and hand-held pickups.
- He appeared as the Ring Master at Circus Vargas on Saturday night where he congratulated the Town on its 100th anniversary.

5. CONSENT CALENDAR

- 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.II ~~Adoption of a Resolution Declaring October 1, 2016, to be Bay Day in the Town of Corte Madera~~
(Report from Rebecca Vaughn, Town Clerk)
- 5.III ~~Adoption of a Resolution Requesting MTC Allocate FY 16-17 Transportation Development Act Article 3 Pedestrian/ Bicycle Project Funding to the Redwood Highway Multi-Use Pathway Repaving Project~~
(Report from Nisha Patel, Senior Civil Engineer)
- 5.IV ~~Approve a Supplemental Appropriation for Purchase of EMTRAC and Consultant Services for Signal Synchronization~~
(Report from Nisha Patel, Senior Civil Engineer)

- 5.V ~~Approve Warrants and Payroll for the Period 9/01/16 through 9/14/16: Warrant Check Numbers 214430 through 214483, Payroll Check Numbers 5298 through 5305, Payroll Direct Deposit Numbers 30380 through 30452, Payroll Wire Transfer Numbers 2058 through 2061, and Wire Transfer of 9/30/16.~~

(Report from George T. Warman, Jr., Director of Administrative Services/Town Treasurer)

MOTION: Moved by Furst, seconded by Andrews, 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.II, 5.III, 5.IV and 5.V

6. PUBLIC HEARINGS

- 6.I ~~Consideration and Possible Action to Introduce Ordinance Changing Election Date for Mayor and Councilmembers from November of Odd-Numbered Years to June of Even-Numbered Years~~

(Report from Rebecca Vaughn, Town Clerk)

Town Clerk Rebecca Vaughn stated at the August 16th Town Council meeting the Council reviewed options for changing the dates of Municipal Elections for Mayor and Councilmembers based upon what was deemed to be a necessity in order to comply with SB 415. This bill goes into effect January 1st requiring towns to move their election dates to coincide with a state election if they have low voter turnout.

The Town met that low voter turnout threshold and after reviewing options proposed at the August 16th meeting the Town Council directed staff to bring back an ordinance for introduction and the changes requested to options voiced by the Council.

The Council asked to review an ordinance that would propose changing the elections from November of odd-numbered years to June of even-numbered years by 2022 and to get to this point for the next two election cycles, officeholders would be elected to 4 ½ year terms.

Ms. Vaughn said if the Council agrees with the proposed ordinance it would vote at this time to introduce it. Once introduced the ordinance could be voted on at a subsequent meeting and would thereafter go into effect 30 days after its adoption.

Mayor Bailey opened the public hearing and there were no public comments.

Mayor Bailey said while there were pros and cons about the issue, the concept was to provide an opportunity to get a better turnout during elections. He asked and confirmed that the Town stands to save election costs. Ms. Vaughn noted that while the County was unable to provide an exact quote, generally the cost is spread by the number of jurisdictions participating and the number of items on the ballot.

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

To Introduce Ordinance 957 by Title Only, Amending Title 2, Chapter 2.38 of the Corte Madera Municipal Code, General Municipal Elections, Changing Election Date for Mayor and Councilmembers from November of Odd-Numbered Years to June of Even-Numbered Years

Recused:

Mr. Bracken recused himself from participating in Item 7.I and left the Council Chambers.

7. BUSINESS ITEMS

- 7.I ~~Consideration and Possible Action to Adopt Proposed Resolution No. 34/2016, A Resolution of the Town Council of the Town of Corte Madera (1) Adopting the Position Classification and Job Description of Director of Public Works/Town Engineer/Manager of Sanitary District No. 2/Assistant Town Manager; and (2) Deleting the Position Classification and Job Description of Director of Public Works (Engineering & Public Works Administration)~~

And

~~Consideration and Possible Action to Adopt Proposed Resolution No. 35/2016, A Resolution of the Town Council of the Town of Corte Madera Amending Compensation Schedule B and Compensation Schedule C of Resolution No. 38/2015 – A Resolution of the Town Council of the Town of Corte Madera Fixing Compensation and Establishing Certain Benefits for Department Head Employees of the Town of Corte Madera Effective September 26, 2016 (Sets Salary Range of New Position Classification – Director of Public Works/Town Engineer/Manager of Sanitary District No. 2/Assistant Town Manager)~~

And

~~Consideration and Possible Action to Approve a Supplemental Appropriation of \$170,600 for Filling the Vacant Department Head Position in the Public Works Administrative Office
(Report from George T. Warman, Jr., Director of Administrative Services/Town Treasurer)~~

Director of Administrative Services/Town Treasurer George T. Warman, Jr. stated former Director of Public Works Barry Hogue retired April 30, 2015. During the time Mr. Hogue served as Public Works Director, Mr. Bracken continued his role as the Town Engineer because he is a licensed and registered civil engineer. The salary range proposed for Mr. Bracken would be 15% above Mr. Hogue's salary range and if Mr. Bracken had not become Town Manager/Town Engineer in September 2006 he would have been receiving 10% less than what is being proposed.

Mr. Warman stated the recommendation is for the Council to adopt the new job description and salary range of Director of Public Works/Town Engineer/Manager of Sanitary District No. 2/Assistant Town Manager and delete the previous position classification and salary range for Mr. Hogue of Director of Public Works (Engineering & Public Works Administration). Mr. Bracken's position would be 10% below the salary of the new Town Manager.

Mayor Bailey asked and confirmed that the request is to authorize approximately \$70,000 for the position that has been previously vacant, and Mr. Bracken will stay on with the Town to fill that role.

Mr. Warman further clarified that the position of Director of Public Works was not budgeted in this year's budget and the supplemental appropriation request is for 9 months of Mr. Bracken serving in the position.

Mayor Bailey clarified that Mr. Bracken has been filling the role as Town Manager, Town Engineer and Public Works Director. He confirmed with Mr. Warman that the Town is not creating a new position.

Mr. Warman added that the Town has in excess of \$1 to \$2 million from last year's budget which has not been spent because the Town did not have staff to process projects. At one time the Engineering Department had 7 full-time positions and if the Council authorizes the recommendation there will be 4 full-time positions. Also, staff did not anticipate during budget discussions that Mr. Bracken would be stepping down as Town Manager and the position would have had to be filled.

Councilmember Andrews referred to the staff report and asked in what way was the position not comparable to any positions in Marin.

Mr. Warman explained that the majority of Public Works Directors in Marin County are not licensed civil engineers. The Town is also one of the few agencies with its own Sanitary District. Therefore, Corte Madera engineering and public works staff is involved in doing its own sewer work daily. Also unique is the fact that the Town has an extensive storm drain and flood control situation given that over half of the Town is over sea level in high tide.

Councilmember Andrews asked and confirmed that the proposed salary was contained in the resolution and that it includes not only the salary but medical and retirement benefits as well for 9 months. Mr. Warman noted that the amount is a lesser amount than what Mr. Bracken has been receiving as Town Manager/Town Engineer.

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

Vice Mayor Furst read into the record the duties of the four titles Mr. Bracken will be taking on, stating it was very impressive. She said the Town is lucky to have Mr. Bracken stay on and noted that he had designed and created the Town's flood control system. She made a presentation on the system and commented that the Town has invested over \$50 million over the decades for flood control. The Town has 10 to 11 pump stations, the High Canal, the Low Canal and many other conduits. The Town has 6 retention basins and 1 detention basin and has an incredibly complex flood control infrastructure.

MOTION: Moved by Furst, seconded by Condon, and approved unanimously by the following vote: 4-1 (Ayes: Condon, Furst, Lappert and Bailey; Noes: Andrews).

To Adopt Proposed Resolution No. 34/2016, A Resolution of the Town Council of the Town of Corte Madera (1) Adopting the Position Classification and Job Description of Director of Public Works/Town Engineer/Manager of Sanitary District No. 2/Assistant Town Manager; and (2) Deleting the Position Classification and Job Description of Director of Public Works (Engineering & Public Works Administration)

MOTION: Moved by Furst, seconded by Condon, and approved unanimously by the following vote: 4-1 (Ayes: Condon, Furst, Lappert and Bailey; Noes: Andrews).

To Adopt Proposed Resolution No. 35/2016, A Resolution of the Town Council of the Town of Corte Madera Amending Compensation Schedule B and Compensation Schedule C of Resolution No. 38/2015 - A Resolution of the Town Council of the Town of Corte Madera Fixing Compensation and Establishing Certain Benefits for Department Head Employees of the Town of Corte Madera Effective September 26, 2016 (Sets Salary Range of New Position Classification - Director of Public Works/Town Engineer/Manager of Sanitary District No. 2/Assistant Town Manager)

MOTION: Moved by Furst, seconded by Condon, and approved unanimously by the following vote: 4-1 (Ayes: Condon, Furst, Lappert and Bailey; Noes: Andrews).

To Approve a Supplemental Appropriation of \$170,600 for Filling the Vacant
Department Head Position in the Public Works Administrative Office

Councilmember Lappert requested that in the future there be discussion amongst Councilmembers if there is a descending vote on a particular matter. Mayor Bailey agreed and noted that at times the Council may be persuaded by a “no” vote and, if Councilmember Andrews did not support or agree with a direction the Council was heading towards, he asked that vetting occur.

Noted Present:

Mr. Bracken was noted present for the remainder of the meeting, and a round of applause and congratulations were given to Mr. Bracken.

7.II ~~Consideration, Discussion and Possible Direction to Staff Regarding an
Amendment to Resolution 2214, “No Parking” Areas located on the 900, 1000
and 1100 Blocks of Meadowsweet Drive~~
(Report from Kelly Crowe, Associate Civil Engineer)

Associate Civil Engineer Kelly Crowe gave the staff report and said the recommendation is to modify language within Resolution No. 2214 which establishes the “No Parking” areas along Meadowsweet Drive along the 900, 1000 and 1100 blocks. Specifically, the resolution bans parking with specific exceptions where a roadway width is 20 feet or greater in front of certain addresses.

He said Public Works operations use these resolutions to guide them for maintenance and repainting of red curbs and about one month ago there was a dispute between a resident at 978 Meadowsweet Drive and Public Works staff regarding the repainting. Staff repainted and based upon the resolution, the area was slated for repainting. The dispute involved what the 28 foot roadway width meant.

Important to understand is the roadway definition the Town uses and relies upon which is in the California Vehicle Code. The definition is outlined in the staff report but is more in line with the travel way for the improved road for vehicular traffic which is more or less edge of pavement to edge of pavement. Mr. Crowe stated staff visited the site to measure and verify the actual width and arrived at 24 ½ feet. This did not necessarily conform to Resolution 2214.

In going through the objection by the resident staff looked into the background of the original resolution’s adoption in 1984 and the number of “28 feet”. Through research, no staff report or supporting documentation could be found that provided the 28 foot width justification and staff reverse-engineered it to determine why the number was selected. Staff determined that Meadowsweet Drive is classified as a minor collector street. Each lane should be between 10 and 11 feet. A standard parallel parking space is 8 feet and when adding this up staff arrived at 28 feet which provided the actual intent of the resolution at that time.

Mr. Crowe said by and large, parking on Meadowsweet Drive is within the shoulder area and off of the traveled way. There is one space at 1044 Meadowsweet on the pavement area and in a turn-out and off of the traveled way. The parking area at 978 Meadowsweet would meet the conditions of being 28 feet in total width.

In reviewing roadway width, staff wanted to match the intent of the actual conditions and take into consideration the resident at 978 Meadowsweet Drive’s request. Staff modified the language of the resolution to state that the “No Parking” areas will extend on the west side between 900 and 1100 which would not change from the existing conditions. On the east side, parking would be allowed on shoulders greater than 8 feet wide which also would not change from existing conditions.

He said the only slight modification would be to the east side. Parking in pavement areas would be allowed only in stalls marked out in white paint. Staff would take the 28 feet total width and carve out 8 foot stalls in front of 978 and 1044 Meadowsweet Drive. This would assist in traffic flow and delineation, assist CMPA in understanding where legal parking exists, help Town staff to understand where red curbs should be, it would provide emergency access and it would delineate Bike Route 5 which is a major bicycle thoroughfare in Marin County.

Councilmember Lappert asked Mr. Crowe if this would be similar to what exists on Christmas Tree Hill with respect to parking only in those marked areas; a homeowner could obtain permits and pay to have a cut-out for parking in the west side on their property given the fact that there is open land and it is not used.

Mr. Crowe clarified that if the property was private; the homeowner would have to enter into a license agreement with the Town.

Councilmember Lappert asked if there were any other areas that could be marked off and painted for parking by other homeowners.

Mr. Crowe said options are limited along this stretch due to topography; however, there are options if there is available land and homeowners wish to pay for and obtain permits to install parking areas.

Councilmember Andrews questioned the degree of striping work to channel traffic on the street.

Mr. Crowe stated in addition to Meadowsweet Drive having varying dimensions of road way there is no centerline stripe south of Hawthorne, but north of Hawthorne there is a centerline stripe. Currently, there is no edge striping along there. Town staff would install the marked stalls which would help delineate traffic away from possible obstruction. In addition, signage would be installed indicating that parking would be allowed only in marked stalls.

Mayor Bailey stated he received a variety of emails from people who live in the area and two concerns were voiced. The first concern is the speed of traffic and he asked if the work will improve current conditions. Secondly, he asked if 28 feet was a road standard which would make driving situations safe at designated speeds.

Mr. Crowe said the 28 feet was the number used from the Federal Highway Administration for a minor collector street. Regarding traffic calming, Meadowsweet Drive goes through many different pavement widths. The minimum width there was 17 feet. At this time at 978 Meadowsweet there would be 11 to 11 ½ feet from the centerline stripe to the white marking, and this would be a wider path than what exists now and very safe.

Mayor Bailey opened the public comment period.

Public Comments:

ROSEMARY DUHUR said she lives at 1167 Meadowcrest Drive and said she can drive on either Meadowsweet Drive or Casa Buena Drive to get to her home. She asked how the matter came about and asked if it was because one homeowner has created a hazard with parking and working on cars as well as speeding along Casa Buena and Meadowsweet Drive. She stated about 6 weeks ago she almost was hit by a white BMW with 4 teenagers in it on the wrong side of the road. She reported the incident to the police department and asked them to patrol the road more frequently.

Mayor Bailey noted he received several emails regarding speeding and he asked if Ms.

Duhur supported the proposed resolution. Ms. Duhur said she was not sure of her support and asked if the resolution was to address the situation of neighbors who constantly work on their vehicles in the road.

COLLEEN HOOPER said she lives at 1035 Meadowsweet Drive for 24 years and several years ago red striping was painted on the curb. Her concern is that there is a great cut-out at 1044 Meadowsweet Drive which is not the owners land, but two cars can comfortably fit there. She said it sounds as if the Town is proposing to reduce this to fit one car. She stated she was familiar with what occurred at 978 Meadowsweet Drive, recognized there is speeding along the road and she voiced support for the proposed resolution except that she did not want to see the one space taken away from 1044 Meadowsweet Drive.

CHRIS MOSER said he is the current owner of 978 Meadowsweet Drive since 1994 and previously lived there for 15 years. He is in favor of the resolution but thinks the wording is still a bit unclear as to what qualifies as "roadway" and the fact the Town will be relying on paint to maintain parking spaces. He agrees with Mr. Crowe's interpretation and said currently he has a lot more than 28 feet to his fence. He suggested the new resolution not state "from edge of pavement" but instead state "from 10 feet from the center of the road and the remainder qualifies as shoulder", given the road was repaved in 2002 and there was about 3 feet more of asphalt in front of his home. He noted at 1044 Meadowsweet there is a cut-out and the wording would not recognize this as being a parking space.

Mayor Bailey asked Mr. Moser to identify exactly where his suggested wording should be inserted and replaced.

Mr. Moser referred to the following wording and asked to replace "Except on level shoulders greater than 8 feet wide measured from edge of pavement" with "Except on level shoulders greater than 8 feet wide measured from ~~10 feet from the center of the roadway or marked lane~~".

HUNTER SIKES said he lives at 978 Meadowsweet Drive and thanked the Council and Mr. Crowe for responding to his emails. He voiced support of the resolution with a few caveats. His home is a duplex property and this has had a drastic impact on the lives of his family as well as the downstairs neighbor at 980 Meadowsweet Drive. It came without warning while he was away on a business trip for over a week and his wife could not address the matter because she works and is also busy with their 2 ½ year old. He asked that the Town identify a way in the future to directly speak with those affected.

He said the resolution allows them to park in front of their homes but it will only allow one parking space. Their small garage fits only one vehicle but it is full of storage and the other spot is down a steep sloping driveway is their neighbor's spot. Therefore, they must park one car in front of the garage and the neighbor must park up the steep hill in order to get out. They have a big dent in their car from what they believe was from their neighbor who is 71 years old and if they are only allowed one stall they still must deal with the lack of parking for the duplex. Most of the homes on the east side of Meadowsweet are duplexes and many have granny units so there are more vehicles. He asked the Council to determine if there is a way to have two stalls in front of 978 and 980 Meadowsweet Drive, but he supported the resolution.

JAMES BARBICK said he has lived at 1015 Meadowsweet for over 50 years and they have at least 5 cars parked in their driveway all the time given his adult children and grandchildren park there. Meadowsweet Drive has always been a problem and was upset when the Town painted both sides of the street red. It is a long way to get to the bus stop especially during the winter months. He said he has the original audiotape from the meeting and said the road was level with 20 feet with parking on one side. Someone changed the parking and he asked why the street was being referred to as a collector street, as no other streets access it except for bikes and thinks more study is needed prior to the resolution being adopted.

Mayor Bailey asked how Mr. Barbick would change the resolution.

Mr. Barbick stated he would return to the 20 feet which would give Mr. Sikes a chance to park his two cars. He understands there are plenty of streets that are less than 28 feet and he did not think it needed to be that wide and thinks people should be able to park along the street.

FLORA MARIGI said she has lived at 1025 Meadowsweet Drive for 30 years and said she is very much against the red curbs on the west side and cannot understand where people are supposed to park during family gatherings. She chose to stay in Corte Madera because it is a very family-oriented community with children, and there seems to be plenty of room to have some parking on Meadowsweet Drive. She has never seen any problems on the street and in fact, cars are driving faster now because there are no cars parked along the street. She is against the resolution and wants more parking along the street.

RENEE POWER said she lives on the west side at 1037 Meadowsweet on a steep driveway. They were dismayed when the Town began painting all of their curbs red. They have limited parking where she lives and when they had events and gatherings she would park her family's cars down on the street and on the dirt and allow their guests to park at the house. The red stripes appeared and at times they must park along the road and it is very inconvenient. They are conscientious about bicyclists and drivers when backing out of their driveway, but did not think parking was an issue. She thinks the Town should re-think all of the red painted curbs and go back to the 20 feet on either side because it would allow neighbors to enjoy parking, not worry about ticketing and make due. She thinks the 28 feet is too restrictive and more thought and consideration should be given for those who live on Meadowsweet.

TOMMY NEWMANVILLE said he lives at 1071 Meadowsweet and is in favor of the resolution. He likes the Christmas Tree Hill idea and said he grew up there and said it makes sense when roads are tight. He measured all of the roadway in front of his house which varies from 22 to almost 25 feet and then back down to 19 $\frac{1}{2}$ feet. He thinks there should be something in the resolution about 20 feet of open asphalt from a red curb because in front of his house, the center of the road is 12 feet.

Also, just past his house there is a fire hydrant with a dirt level spot next to it. He was parked behind the red line and on the dirt and he got a ticket for being in a red zone. He also got another ticket for being too close to the hydrant which he agreed with, but said he contacted police who gave him a pass on the first ticket. He suggested a sign by the hydrant to leave 10-15 feet so there could still be one parking space allowed there.

Mayor Bailey asked if Mr. Newmanville was in favor of the resolution and wanted it modified for 20 feet. Mr. Newmanville said he supported the resolution, suggested it state there must be 20 feet of clear roadway and asked to only allow for a minimum amount of space by the hydrant and supported the white boxes where they can be put in.

Mayor Bailey asked Mr. Crowe on his thoughts about amending the resolution to take measurements from the centerline out and about whether 20 feet is needed.

Mr. Crowe said the problem with the centerline is that south of Hawthorne there is no painted centerline but north of it there is. Staff did consider this in one of the first rounds with the language, but they ran into problems.

Regarding the 20 foot roadway width it seems plausible; however, there are situations where there is less than 20 feet and there is an 8 foot shoulder. The language could be massaged to state that in areas where there is 20 feet of roadway width, a parking spot could be provided.

Mayor Bailey asked if 20 feet was enough and questioned whether traffic would be

impeded.

Mr. Crowe said a minimum travel width of 20 feet is what is recommended by the roadway classification, or two 10 foot lanes. He would not recommend allowing parking within that swath.

Councilmember Condon asked what width is needed for emergency vehicles.

Mr. Crowe said one of the engines was measured at 11 feet which is standard.

Fire Chief Scott Shurtz commented that the Fire Department needs 10 feet of width to be able to make it through and this is not a situation where they would be able to drive quickly, but similar to areas on Christmas Tree Hill where there are tight areas with minimal widths.

Mayor Bailey asked if people are being endangered if smaller widths are implemented, and Chief Shurtz stated no.

Mayor Bailey asked if it was true that just because there is not a pre-existing centerline in the road does not mean there is a center of the road.

Mr. Crowe said yes, but there is nothing established to measure from the center.

Mr. Bracken stated the centerline is an issue because the Town cannot paint a solid centerline where there is not 20 feet because vehicles are not allowed to cross the centerline according to the Vehicle Code. He has seen dashed lines on narrow streets and the Town could look at doing this. He and Mr. Crowe visited the site and had trouble deciding what they should measure from and thought about having a centerline measurement because this is what the police enforce.

He suggested painting a dashed centerline in locations south of Hawthorne where there is none. Cars and trucks would drive over the dashed line, there would be no violation of the Vehicle Code if the road was painted dashed and police could measure from a defined point. He thinks it would be important to establish a minimum lane width and he would recommend continuing the item.

Mr. Crowe noted that the intent was to not change the existing condition but to simply allow a space where one could be installed. He said by and large, much of the parking in that area is allowed on shoulders and out of the traveled way and 1044 Meadowsweet is the only place on pavement where people have been parking to his knowledge.

Councilmember Andrews asked if striping could be on either side of the road with signage.

Mr. Bracken said this could be done but the line cannot be striped where dirt exists. The best way to sign this is to indicate that traffic must maintain a 10 foot travel way and police can measure from the center line. He suggested the item be continued for staff to review the resolution and to make appropriate changes.

Vice Mayor Furst supported continuance, stating this issue is larger than just the two blocks. She said when the item returns she asked to be able to see a Google maps aerial photo with the striping plan laid out on it because people are very concerned with parking issues.

The goal should be to maximize the number of parking spots and she would be concerned with not having an easy way for residents to be able to determine that they are 10 feet off center. She also was not sure a center line is the right solution and in her neighborhood there are none and everything seems to work. She thanked Mr. Crowe for his report and asked that staff further research the matter.

Councilmember Lappert stated he visited the area and did not support the curb painting, noting that the nature of the Town is such that there are not boulevards and people simply move out of the way when another vehicle is approaching. Additionally, since the Council is talking about increasing its housing stock and junior second units, he thinks there should be the ability for people to park their vehicles and there is no reason why the west side should be striped all red. He suggested possibly staggering the parking while still creating ample parking.

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

To continue the matter and direct staff to return with additional information as outlined in the record

7.III ~~Consideration, Discussion and Possible Direction to Staff Regarding Encroachments on Railroad Right of Way Between Willow Avenue and Montecito Avenue~~
(Report from David Bracken, Town Manager)

Town Manager Bracken stated the matter involves an encroachment permit along the backyards of Willow Avenue and Montecito Avenue between the properties that the Town executed a quit claim of a railroad right-of-way from Marin County and he briefly explained the quit claim process which released any claim Marin County on the property.

The Town acquired the land from the County in 2006 which is approximately 100 feet wide and at that time there were encroachments from the properties along Willow Avenue into this right-of-way. Normally, the Town issues encroachment permits through its Municipal Code for anyone developing when they touch a right-of-way. He attached a sample to the staff report on Chapman Avenue which the Town issued recently.

As background, several years ago the Town needed more stringent wording on its encroachment permits for permanent and semi-permanent retaining walls, parking structures and also fences. Because of this, the Town issues a license agreement which was drafted by the previous Town Attorney and it gets recorded, goes with the land, and it eliminates any liability the Town would have where the encroachment occurs, and it requires insurance and it definitely allows the Town to remove the encroachment at any time in cases where the Town wishes to return the property back to its original state.

Last May a homeowner built a fence along Willow Avenue without permits and the Town instructed the homeowner to obtain a permit which became contentious. He held conversations with the Planning Commission about it and several individuals, and in August Mr. Conti contacted him about his request to install a fence in his backyard and line it up with the two fences on either side, which encroaches 13 or 14 feet on one side and along the property's corner on the opposite side. He indicated to Mr. Conti that he could not grant the permit and wanted to get direction from the Town Council.

Mr. Bracken stated he noticed all homeowners along Willow Avenue of the meeting tonight as well as those who spoke at the Planning Commission meeting about it and he displayed the MarinMap aerial map.

Councilmember Lappert asked if this area was similar to the situation near the Sandra Marker Trail area where homes on Birch abut the trail near Redwood High School and are getting closer and closer to the trail.

Councilmember Condon provided an historical account, stating about 10 to 12 years ago the County wanted to reclaim all of the property of the residents who had since fenced in

along Willow Avenue. At the time she walked the property with the former Town Manager and the Marin County Director of Parks and Steve Kinsey.

The County owned that property along with Menke Park; however, the Town had been performing all of the maintenance and the matter was brought back to the Board of Supervisors. The County quit claimed the property to the Town so the Town would gain ownership of Menke Park and the right-of-way up to the bollards before getting to the opening of Alto Tunnel. The intent was to save the homeowners on Willow Avenue from losing a good portion of their backyards, but this is as far as it went. There was never any agreement made between the owners of the property next to the right-of-way to either rent the property from the Town or purchase the property but nothing occurred and this is how the Town acquired Menke Park.

Mr. Bracken displayed the MarinMap aerial photo showing the south end of Willow Avenue and north end of Tunnel Lane. He pointed to the area the Town acquired which is a portion of the path from Menke Park down, and the County owns the railroad right-of-way south of that. In the quit claim deed, the County retained a 20 foot easement down the middle for future pedestrian use.

He then pointed to the edge of the right-of-way, the property line where the cited fence is encroaching into the right-of-way and the series of homes and structures with fences which are encroaching into the right-of-way. The Council could direct him to move all of the properties' encroachments and noted it would be very easy for this to be done for the home with the one license agreement. But, he would advise the Town to obtain legal counsel prior to doing this.

He then discussed the variety of fences and structures encroaching into the right-of-way and restated the request by Mr. Conti to extend a fence on the north end of his property's corner and an about a 13-foot encroachment on the other end to connect to the two fences on the other sides of him.

Mr. Bracken apologized for having to bring the matter to the Town Council, stating that since the 1980's he has tried to make everybody happy; however, at this time he was having trouble. He did not like what the Town went through in May and feels Mr. Conti should not be banned from having a fence while everybody else has a fence. He likes the license agreement process because it does legally let the Town remove encroachment(s) at any time and stated he would like to hear from the public and receive direction from Councilmembers.

Vice Mayor Furst referred to the Conti survey in the Council packet and noted it indicates that the southwest corner of the fence would encroach 13 feet and meet up with the neighbor's fence which is also encroaching 13 feet. She asked if the Town has a sense of the number of feet the various properties are encroaching, noting that some are small and others larger.

Mr. Bracken said he was not sure of the exact amount, but he would review MarinMap, review the west edge of the right-of-way which is to the edge of pavement of Montecito and would need to manually measure the area.

Vice Mayor Furst stated Councilmember Condon spoke regarding the process of acquiring this property from the County. She asked if several of these encroachments along the stretch of Willow Avenue pre-dated the time Corte Madera acquired the properties.

Mr. Bracken stated that a vast majority pre-date this time. Prior to acquiring the properties the Town had many issues with Marin County relating to maintenance responsibilities.

Mayor Bailey opened the public comment period.

Public Comments:

DAVID MACPHERSON, Corte Madera Avenue, Vice Chair of BPAC and member of Safe Routes to Schools for the Cove School, said Corte Madera is fortunate to have Mr. Bracken agreeing to stay on and the importance of bringing this matter before the Town Council. He said this is not a driveway easement, a mailbox or retaining wall easement where the Town receives something back in return. The pathway from Menke Park to the north portal of the Alto Tunnel is an incredible public asset. It is park-like in nature and the people who live along it are constantly talking about its idyllic nature for walking and they do not want more public to use it because they would be able to see them using it from their backyards.

He stated there is an internal contradiction where people over the years since the railroad ceased operations have pushed their backyards out and now there is an expectation that the public property is now their property, and there will always be push-back when taking back that public property. He would therefore strongly encourage the Town to not grant Mr. Conti's request for a legal encroachment even with the provision that the Town can take it back at any time.

He also asked that the Council review rescinding the encroachment for 240 Willow Avenue which was not properly granted and all of the 17 encroaching properties along Willow Avenue, and property owners be put on notice that they cannot build into the public's property and not expect that the public will take it back. Lastly, he said this stretch is the last remaining gap for the North/South Greenway that would run from Sausalito to Cloverdale so there has always been work to open the Alto Tunnel so that a flat, safe and direct path can be realized instead of the 2-mile detour down Tamalpais Drive and over Horse Hill. He stated 16 years ago the Town Council took a position that they supported the feasibility study of re-opening the Alto Tunnel and he did not think the Town Council could do this while simultaneously grant private property owners encroachment into that public path.

PHYLLIS METCALFE, Parkview Circle, said as a resident of the Town she said there are two clauses in the license agreement as written which can be detrimental to the Town. She referred to clause 5; Indemnification and Hold Harmless, and said often times hold harmless agreements do not hold up in court and she said the Town should be added as an additional insured in respects to the parameters shown in Exhibit A.

Secondly, the description of the needed insurance in clause 6 is miswritten as to its intent. It states, "\$1 million combined single limit." The policy attached shows the amount for the property at 241 Willow Avenue and then it shows liability or CGL or Comprehensive General Liability at \$300,000. This is what covers damages done to other people's property. Property damage on this type of policy or a homeowners' policy covers only the owner's property. If a tree falls on one's property, this is what is covered under property damage. If the tree falls and knocks over the neighbor's fence and shed, this goes under the CGL coverage which covers bodily injury and property damages. Therefore, the policy limits which Mr. Hague has at 241 Willow Avenue should be raised to \$1 million as soon as possible and the Town should be added as an additional insured under the policy in respects to that parcel.

Regarding backyard encroachments, most permits are issued for a semi-public purpose like driveways, carports and other structures. The existing fenced off background encroachments along the railroad right-of-way have no semi-public purpose, do not enhance the public's benefit in any way and are for the exclusive use of the property owner, and this could be perceived as a gift of public funds. Allowing property owners adjacent to the railroad right-of-way to fence off public property to increase the usable size of their backyards could lead to other owners wanting to do this throughout the Town. Both the County resolution giving the quit claim deed and the acceptance resolution of the Town make mention that the Town would continue the present use of the property and in the future maintain the property for recreational purposes, uses of park, bicycle, equestrian

and pedestrian corridor. If the Town does not want to maintain the property, the Town should determine the current value of the property and sell it to the individual property owner who would then be responsible for its maintenance and additional property taxes.

GLENDIA CORNING said she and her husband believe that access to the Alto Tunnel should be maintained in a park-like setting and disagree that fences should be allowed to encroach on public space. The fences that have been allowed make it feel like an alley which has been a detriment to the pastoral beauty of the site. She said this is an area for public benefit and should not be allowed to be possessed by private individuals. The encroachment allowed by Mr. Bracken without public notice or comment was a mistake and she and her husband believe it should be rescinded, and she asked that the Council rectify errors made and protect this area as public parkland and potential access for the Alto Tunnel.

MICHAEL REX, Architect and one who advocates strongly for building Marin-wide multi-model transportation systems so people have options other than driving. He asked that the Council vigorously preserve the public right-of-way for public use, to take action to firmly demonstrate the public's ownership of this right-of-way, and to allow no new encroachments. He asked to retain the services of an attorney now to provide legal advice on how to avoid possible prescriptive easements or claims for such easements and that any known encroachments that have occurred in the last 5 years be notified immediately through notice that the Town reserves the right to ask for the encroachment to cease and the land back at any time, that the Town fund a survey for the entire length of the easement which is essential to demonstrate the Town's ownership, and that those boundary lines be staked with iron pipes and mapped, and that any encroachments that are identified by the survey are given a notice that is revocable at will. Once the Town learns it exists and can prove it, they have 5 years to put the property owners on notice. As properties change hands, the existing encroachments should be removed. Where possible, he asked that the Town put a grape stake rail or something along the property line and post it as public property. If the Town does not prove ownership, it will be more difficult to dispute and defend against prescriptive easements.

Mayor Bailey said as he understands it, the easement is 100 feet and that a Class I path for bicycles and pedestrians can be done for 12 feet, and the County has already apportioned 20 feet. He asked if this was inadequate.

Mr. Rex stated this is inadequate and he said the Town needs to preserve its ownership of the entire 100 feet and to the extent it is wider than the path, the Town can landscape it and create buffers between the private properties so there is less negative impact for the public's use on those private properties and less demand by the private owners to avoid that conflict. He said the Town can always allow those encroachments but the Town can never get them back if the Town does not survey them and put the property owners on notice.

JOHN MURRAY said his family has lived at 239 Willow Avenue for 28 years and he and his wife got married on the property and held their reception there. They are now retired and he questioned where the issue is coming from. He has never had one person comment to him about the back fence which has been in place for 50 years. He has documentation from the prior owner who had conversations with the County.

He said Councilmember Condon was correct and said the only reason the Town took that property is because the County did not want it. It was a quit claim deed and the County did not know what percentage they owned and they only received a quit claim deed from the railroad, and the other part of the property is owned by the Pixleys and it is not a clean claim and never has been. This is why they could not sell it to him or anyone else that was associated along the line. At the time, Corte Madera acquired it in part just because there was a lot of encroachment up and down the line for decades. Therefore, it was not like homeowners were trying to get away with something. He did not change anything from the prior owner nor did that prior owner, and he asked where the matter is coming from,

stating this is not the Corte Madera he knows or would want to retire to, and he asked that the Council stop what is being done.

ED CONTI stated he is the owner of 221 Willow Avenue and applicant for the encroachment. He purchased the home a few months ago and his intent was to put up a fence. He thinks he is the only property without a fence along the right-of-way and was not even aware of the issue at the time and the neighbor suggested he speak with the Town Manager. He learned about the issue and then applied for the encroachment permit.

He also has learned that even though the prior residents of his home lived in the home for decades, they have used the back just like everybody else has. There are 3 trees planted, a poorly done rock barrier but no fence. He said he is essentially asking for the ability to be treated like everybody else and is not asking for anything different.

He respects everybody's opinions, supports opening the tunnel but he was a bit disappointed in one of the documents submitted which he thought significantly misrepresented what he was asking for. It is not a 15 foot encroachment or a 1,000 foot land grab or an 8 foot high fence. It is a basic 6 foot high fence, some work on undulations in the land, and at one corner he is matching the property line because it matches his neighbor's fence on the north. On the other corner he is matching the neighbor's fence on the south which the wedge is 13 feet.

He added that he thinks the fences and vegetation really add to the path which is serene, private and quiet. When getting to his yard people can look right in his back window and it is somewhat uncomfortable. He said no one has mentioned the safety issue, given the steep slope. It slopes down and last night he was reminded that when an owner's dog was defecating on his property, they had to come on his property to clean it up. He has seen dogs and their owners come all the way down the slope before getting to Willow Avenue so the fence is a good idea and he thinks it adds to the atmosphere. He also has a dog and three children and needs a fence for those reasons and would like to be treated like everybody else.

Councilmember Andrews said if Mr. Conti installs a fence on the path side of it, he asked if he would be willing to install shrubbery. Mr. Conti said yes if he can he would and thinks shrubbery, trees or bushes look wonderful which has been done by some of the neighbors.

ALAN BRIGHT said he lives at 8 Grove Avenue and was part of the trouble at the May meeting with his wife, stating they are not in favor of the encroachment of the fence to continue on. They know Mr. Murray and said they won a beautification award together for beautifying the path. Mr. Murray has 2 fences and does have one that is 50 years old against his house but he has another one that sits in the path about 15-20 feet that he built about 10-12 years ago.

Mr. Bright referred to surveys in the area and said BKF Civil Engineers prepared a survey about one year ago that went all the way through the area and it shows all boundaries. He stated the boundary is not 100 feet but more like 60 feet. Therefore, this is important to note and the entire area has been measured and marked. The properties in question when they returned to the Town in May when they indicated they were worried about 241 Willow Avenue, there were markers placed over 10 years ago on their site that were still there when they began tearing the shrubbery down and put the fence posts up that he noticed and asked why they were doing it. They indicated that his neighbor's fence was way out and he said he wanted to join up with his neighbor's fence. He told him that it was not his property and he asked him why he cared. The intent was to stop, follow the property lines, and while he does not want to stop Mr. Conti from doing what he wants to do, he has a property line like everything and he asked why his fence could not stay on his property line like most people. He said the more the Town allows for this, it situation will permeate and people will take publicly owned land.

NICK JAVARIS said he lives at 315 Willow Avenue cited Joe Biden's comment, "It seems like a lot of malarkey" and asked how the area would remain pastoral with 3,500 bicycles a day coming through the area. Secondly, he asked if the Council realizes there is a 3 ½ foot drop that is useless from the path to the bottom of his fence. Down to his property line is another 1 ½ feet and then another 1 ½ feet which is 5 feet of drop. He said everyone recognizes that at some point the Alto Tunnel might open and at that time the property can be given back. The issue to him seems unfriendly, not neighborly and almost mischievous to suggest to people that they obtain liability insurance. People are causing no problems along there and there are not many more houses that could ever encroach on the property because they have already encroached at the end of the property. He therefore suggested the matter be dropped because it is not practical. The land is useless until such time as the path is widened. The Town will have to raise the land and build retaining walls to keep the dirt out of his property and he thinks the issue is nonsensical.

KEITH HAAG said he is the owner of 241 Willow Avenue and the person issued the license agreement in May 2016. When he spoke to the Council during the open forum and pointed out a couple of important issues he admitted at the time that he did not seek prior approval. He simply thought there was a precedent that had been set at that time. After the posts were put up he was stopped and sought the proper protocols to have the fence built.

One of the reasons he asked for the fence was due to safety. He would encourage anyone to come to the property side of those fences and he has photos he could email the Council that shows that from his fence to his retaining wall there is over a 4 foot width where there is nearly a 6 foot drop in elevation. From that 6 foot drop there is an 8 ½ foot retaining wall. There is some blackberry bramble in the back which kept some people out, but there were giant holes and as his neighbor mentioned. Dogs come through that area and their owners come through as well. He also experienced a situation where an elderly woman almost fell off of his wall prior to the fence being built.

Therefore, there is some benefit to homeowners to build structures and, in his case, he landscaped the area with plants. It is beautiful and he removed the troublesome blackberry bramble, but thinks there have been enhancements to the Town's property which has reduced liability. He also has a number of plants outside his fence. When walking along 241 Willow Avenue the Council will notice that it looks quite nice. He therefore hopes the Council will allow them to continue to beautify the path along Willow Avenue.

JOE MEYLAN said he lives at 150 Willow Avenue and agrees with what Michael Rex said. He thinks what is in the best interest of the Town should take precedent over a few individuals who live along the area. While he can sympathize with their situation, it is in everybody's best interest to address the property that belongs to the Town. He thinks when homeowners purchase property they are given a deed and boundaries and they know where their properties are. To think they get an extra 10-15 feet just because it is there is wrong. The best interest of the Town should be to maintain that 60 feet as part of its property. While there are variations in elevation and steep banks, he thinks the Town should be able to maintain the path and once an exception is made for one person, it continues. Therefore, he supported keeping the area encroachment-free.

JEFF VAUGHN said he lives at 235 Willow Avenue and between Ed Conti and Keith Haag. He has a fence that encroaches and has lived at his home for 15 years. The fence was there when he arrived in 2001 and he "connected the dots" with a more substantial fence, given the previous fence seemed unsafe. He said he and his family really enjoy the right-of-way and are there all the time. He installed some trees which were given to him by the Corte Madera Beautification Committee which have grown. He also built a planter box which is also outside of his fence and it was for everybody to enjoy.

He appreciates the dispute about who owns what and he thinks everybody would agree that if there is a point in time when the tunnel is opened or reclaiming of land, he was not sure people would react, but he does not see much maintenance there by the Town. The

things there are his trees, neighbors who planted some redwood trees, a woman who grows pumpkins and corn and they are simply taking care of their little "zone" and think of the area as everybody's. There was never a point where neighbors were trying to land grab. His property line is right up next to his house and when he bought the home, the fence seemed like a logical place to be located within those lines. Lastly, he thinks the Town has other things to do with its money than make the area look like the median on Tamalpais Avenue and he thanked the Council.

PETER CHASE, Montecito Avenue, said he drives up and down the pathway every day and he supports Mr. MacPherson and his efforts to promote the BPAC. Also, Ms. Metcalfe's comments about insurance are accurate from his experience in the construction business and it is important that this be fixed. He does not think the Town is in the business of granting property to people for their enjoyment and he might as well move his fence out 10 feet into the street and take some property. He said this is a piece of property that is a potential jewel for the Town and the Town should not grant any further encroachments. The process by which the Town might take land back could take some time.

He said he has personally seen the BKF survey which describes the property very accurately. The railroad gave up the property a long time ago and it will take some time to get it back. Therefore, he suggested the process begin to start acquiring the land back, take the matter seriously, and with the talents of people like Nisha Patel the Town could design the corridor to truly become a park-like setting instead of a dirt path with trees planted. While he recognized there were improvements made by residents, it is the Town's property. The Town has inadvertently allowed a few encroachments over the years but he asked to fix the problem which might take 10 years regardless of the Alto Tunnel.

Mayor Bailey allowed Mr. Murray to add another comment.

JOHN MURRAY of 239 Willow Avenue reiterated that he has photographs when he first bought the property that there was a fence there 28 years ago and paperwork from the prior owner that will date the fence back 40 years. While it is not the same fence, there was a fence there. Secondly, he planted dozens of plants on the hill on the other side of the path for 20 years while he was living there, including irrigation. The Beautification Committee gave him an award for that and a grant which he refused to take. Therefore, a number of people were taking care of beautifying the entire area.

KIRK WALLACE said he lives at 310 Willow Avenue which is the other side of the street and said he used to play on the property as a child and pick blackberries when the train tracks went through the area and walk through the tunnel. It was never a park-like setting, but he also walks his dog there regularly, regularly commutes into San Francisco by bicycle and knows how dangerous Camino Alto and Chapman can be. The area is now in play in a much greater way than it ever has before and not just for Corte Madera but for the entire commute corridor and greenway. He thinks it is time to protect this land which has been taken away bit by bit. He would like more property in his yard too but now that this has become clear as a needed pathway, he thinks there will be repercussions as the freeways are getting choked. He asked that the Council allow homeowners to build fences but on their property. He knows there will be a fight because he is a lawyer and works for the State of California and knows people are raising money for lawyers to stop the Alto Tunnel already and will not give up easily. He asked that the Council not make it more difficult than it already will be.

TYLER JOHNSON said he lives at 331 Willow Avenue and said he backs up right onto the right-of-way He had their property surveyed a few years ago and did not think they had anything specific to worry about encroachment-wise, but they do have an impact they bear from having an off-leash dog walkway and people hanging out and talking. While it does not bother him too much, over time if the tunnel opens, the impact will become substantial and he supported the notion of beginning a study process now to install plantings or come up with something that looks better and visually masks the path and protects people from

falling down on the rocks.

ANN SIMPSON said she lives at 8 Grove Avenue and stated her recollection on Mr. Murray's fence is there may have been a fence there 50 years ago, but what she remembers is when he planted beautiful roses in the public right-of-way and then he put in a temporary fence. There was a day there were some redwood posts there and the County happened to be there and wanted to stop the work. Mr. Murray asked if it could be open so people could still enjoy the roses but then it got boarded up. She thinks it started to create a back alley effect and it does encroach further than some of the other fences. She watched some of the homeowners "connect the dots" and she agrees the issue is difficult that will take time. Her issue is that she did not want to see more people granted additional encroachment permits. As for Mr. Hague, if there were people and dogs going into his backyard, she was not sure how they could get through all of the dense vegetation. Lastly, she prefers to see more greenery and not as many fences.

JONATHAN SKOLNICK said he lives at 439 Montecito Avenue and was at the previous meeting where a presentation was given showing the consequences or steps that led to the most recent encroachment which was a powerful presentation showing the way the fence was stepped up beyond their property line. It was clearly marked and how the vegetation was obliterated and a beautiful tree was chopped in half. It was emotional to see how the state of change occurred there.

He said it seems reasonable and fair to him to expect people to adhere to their property lines and he can understand why someone would want to "connect the dots" and continue on where somebody has been allowed to encroach but it seems like a bad thing to perpetuate. The concept of giving public land to private ownership seems illogical and strange and he asked that the Council not grant further encroachments.

He noted that someone asked where the matter was coming from and he said it is coming from a point of view where you see things slowly being chipped away and to continue to see the beautiful area slowly eroded is painful. The previous owner of his house who he thinks was on the Town Council actually planted redwood trees across the street in the public realm and he put irrigation under the road. He thinks it comes down to the question of adhering to one's property line. If properties have slopes, this is what homeowners got through their purchases and they should not expect to absorb the slope into their property.

BRAD OLDENBROOK said he lives at 323 Willow Avenue and said the Council has a tough job. He thinks laws are passed because there must be order to some things. He condones Mr. Bracken for bringing up the matter. On the agenda is approval or disapproval of 221 Willow Avenue and whether the easement is granted, but the Council has heard issues relating to the Alto Tunnel, about making this a City-wide issue which it is not. Encroachment is not an issue that is just granted for personal preference. There are private encroachments on public lands throughout the entire Christmas Tree Hill, on Willow Avenue on the front side as well and every single property on Willow Avenue from 241 all the way down to Tamalpais has a 5 to 8 foot encroachment. He knows this because he bought 241 Willow Avenue and he built the retaining wall in the back yard prior to current owner.

One thing which is very important to this discussion is that when he built that retaining wall, it was not because the property line or map said something, but it was because the county came out in conjunction with the City in the early 2000's and they actually staked with brown markers where the property lines were. He built the retaining wall 1 or 2 feet before the established survey line, and the problem is that there is a mix dating back over 60 years that has confused where the actual property line exists.

When looking at the map, the line does not go right through the patio and before the retaining wall. It was right up against it trying to maintain what was there. He commended the Council for listening to comments and wanted to paint the perspective that it is a tough

position that the Town will grant someone access to public use. He thinks there is something better where both sides could come together to beautify the trail and public space.

Mayor Bailey said when the County came out to do the survey in the early 2000's before they deeded it to Corte Madera, he asked Mr. Oldenbrook if the line with the markers was consistent with the map the Council saw.

Mr. Oldenbrook said absolutely not and he said they are completely different by +10 feet. He stated the yellow line was drawn right through the patio and then the rest of the patio and retaining wall was outside.

Mayor Bailey said when the County installed the markers he asked which side were the existing fences on in the early 2000's.

Mr. Oldenbrooke said the fences on the other side of the line were not marked because the County did not go onto their properties.

JEAN SEVERINGHOUSE, Greenbrae Boardwalk, said she lives in unincorporated Marin County who stands to appreciate this pastoral strip of land that will lead to the Alto Tunnel which will be the safe way for many people to get to Mill Valley. She said she does not think the Town should be granting any more encroachments into the public right-of-way regardless of what the history has been. No one knows how the land will be used and she did not think a report has even come out on the technical study on the tunnel yet, and she asked the Council not to grant the extension but grant the ability to build a fence to Mr. Conti. He has a nice back property line on his property and he could put vegetation in the triangle.

MIKE GASPERS said he lives in San Anselmo and he urged the Council not to do anything to jeopardize the future Alto Tunnel project especially when it comes to encroachments. He rides his bike between San Anselmo and has family in Sausalito including an ailing step-father and the Alto Tunnel hopefully when completed will be the only safe, non-motorized route between Mill Valley and Corte Madera. It is a regional resource and the Alto Tunnel corridor is a public transportation commons that should not be encroached upon. There seems to be a dangerous trend all over the country and he hoped the Council takes this into consideration.

Mayor Bailey allowed Mr. Javaris to make one final comment.

NICK JAVARIS said he thinks everybody agrees that people will give back property if the Alto Tunnel is built which is not an issue and he asked that the Council deal with the new encroachment.

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

Councilmember Condon said it bothers her that this issue has created so much animosity and it is sad. She knows at the time she thought saving some people's backyards was a good deed and many people are here condemning that issue.

Separate from the item, it is important for the Town to spend time to discuss the properties which are encroaching on public property. She received many emails that the Town is gifting public property and asked the Town Attorney that if the property is Town-owned was the Town exempt from prescriptive easement.

Town Attorney Riddle said there are many legal issues here tonight and thinks the matter might be better communicated confidentially and as a legal opinion, given there are other issues in terms of what the Town's legal interests are here.

Councilmember Condon said she recalled that walking along Willow Avenue, the drops and fences started at were at the top of the slope and she does not remember the property being usable or easy to maintain. The homeowners had taken it upon themselves to do this consistent fencing but also landscaping around it. She thinks the Town needs to investigate the entire matter and does not imagine any of the fences would impede the Alto Tunnel being opened. She also thanked Ms. Metcalfe for her points about insurance and does not believe the Town's intent was to give away public property in the past or now.

Councilmember Andrews said he would like to see a current survey of the path to determine property ownerships. When the Town issues encroachment permits along that path, he asked that staff be very clear in what it is authorizing and if the Town is authorizing the construction of a fence, the Town is not also allowing homeowners to chop down trees to put up the fence. He thinks the clearing off of the brush upset many people and this brought up concern about the encroachments.

Lastly, if the Town does allow encroachments, people have suggested selling the public property and he would be satisfied with some sort of in-kind rent whereby homeowners put greenery on the path side of the fence.

Councilmember Lappert said his initial vote were to grant the applicant the ability to build a fence. He also used to run through the tunnel when he was a child and knows why people put up fences. He was not a big believer of government owning land given wildfires are sometimes created if land is not maintained property. He said the land is brambly and ugly and the only part that is nice is the part taken care of by homeowners that are here.

He said the bulk of those opposed relate to thoughts regarding the greenbelt, bike path and tunnel so he tends to discount the encroachment a bit. If the tunnel is someday built and a path goes through it will get done, but for now he wants to make sure the tunnel can be propped up without having it cave in. Also, while he would like to have the tunnel open but it is not a thoroughfare.

He has walked through the tunnel all of his life. It drops off precipitously and it is dangerous and ugly. If someone wants to put up a fence he would allow it given there is an agreement in place that the Town can take it back. He agrees with Michael Rex that the Town needs to stake claim to the property, ensure that neighbors understand the Town owns certain property and can take it back, and to notice homeowners so they understand that at some point in the future fences and landscaping could be removed and replaced with something else.

Vice Mayor Furst said she did not agree with Councilmember Lappert and believes the public is being good stewards of land they do own. She thinks the Town needs to protect this land for future generations, and at some time she thinks the Alto Tunnel will be open and this will be a real jewel and park-like setting. At that time, the Town will need to reclaim all or a significant portion of the areas that have been encroached upon. For these reasons the Council needs to be very clear with all residents in the area about the Town's intentions and other government agencies to use the land.

She thanked Ms. Metcalfe for her recommendations regarding insurance and thinks that the Town should protect itself in terms of liability, and does not think it should give away pieces of land for private use. She noted that the area is being used now and as much as she would like to approve the encroachment for Mr. Conti because everybody has done this for decades, there is the right to the public to also have public right and use of the land.

She also agrees with Councilmember Andrews about confirming the property lines through work with the County, as surveying the entire length of the pathway would be costly. Finally, she wanted to touch on the terrain. There is a slope, an uphill slope on the other side and they do not know where the pathway will be.

Vice Mayor Furst added that she has worked quite a bit on the North/South Greenway in the Greenbrae/Larkspur northeastern Corte Madera area behind Cost Plus. It is very complicated trying to fit the pathway when there are certain things they are trying to work around or habitat areas and cautioned people to not assume that a pathway could simply go anywhere in the area.

Mayor Bailey said his first observation is there is common ground that there be a nice path there for a variety of reasons. Secondly, the process is reasonable and thinks the debate was civilized. He was not sure a final decision should be made tonight because at any public forum there is clash between a public policy desire and an operational reality. There are big picture issues about use of public lands, non-motorized travel and bike and pedestrian pathways and these can divide people's perspective about the basic constitutional right to someone's property and the use of public property.

The question is whether or not Mr. Conti can install a fence that encroaches into public property and the debate should be limited as to whether the Alto Tunnel is a good thing or a bad thing or whether people can do things with public property.

Regarding operational issues, he questioned if there were safety issues and said he was not clear. He agrees the insurance issue should be reviewed as well as other good points. What is being proposed is a temporary encroachment permit that can be revoked at will on 60 days' notice. He understands the adjoining property owner has a similar deal. He did not know whether there has been an uncompensated use of public property under the conditions where someone is temporarily allowed to improve it for the benefit of themselves and/or the public with the condition that they must return it to the public when asked. Therefore, he was reluctant to make a decision tonight. There are significant issues, some of which are legal in nature.

However, it strikes him that the Town should be able to make specific decisions without linking them to other larger decisions. He did not know why the Town could not simultaneously preserve and protect the ability to have a Class I bike path through the tunnel and still allow a relatively minor encroachment so Mr. Conti does not have dogs and people coming into his yard. He thinks they could simultaneously clarify that the Town has a right to that property forever, improve the landscaping in the area, protect for the future that there could be a pathway there but they cannot preserve the fact that someone is encroaching temporarily on public property. Therefore, the only decision he was prepared tonight would be to ask for further factual and legal information from the Town Manager and Town Attorney and he suggested returning the matter at a future meeting.

Councilmembers briefly discussed the cost of a survey for one property which Mr. Conti indicated his survey cost \$5,000 to \$7,000.

Councilmember Andrews asked that the encroachment permit provide more detail as to what exactly will be included in the encroachment. Mayor Bailey suggested working out an arrangement whereby adjoining property owners agree that the pathway is there and in exchange for not forcing them to take down their fences that they improve it, and he asked how long the Alto Tunnel process might take.

Vice Mayor Furst stated the feasibility study has not been completed so they do not know what the structural issues are; however, they are significant and there are homes above. There is also the issue of funding.

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

To allow the encroachment requested by Ed Conti at 221 Willow Avenue

MOTION: Moved by Furst, seconded by Bailey, and approved by the following vote: 4-1 (Ayes: Andrews, Condon, Furst and Bailey; Noes: Lappert).

To continue the matter to the next available meeting

7.IV ~~Appointments to the Sales Tax Citizens Oversight Committee and the Flood Control Board to Fill Vacant Seats~~
(Report from Rebecca Vaughn, Town Clerk)

Ms. Vaughn stated a vacancy exists on the Sales Tax Citizens Oversight Committee which was vacated earlier this year when a member moved out of the jurisdiction, as well as a vacancy on the Flood Control Board.

On September 13th the Subcommittee consisting of Mayor Bailey and Councilmember Condon met with two applicants for the Sales Tax Citizens Oversight Committee. They interviewed Deanne Morton and Nathan Blomgren. During the course of the interviews, Mr. Bromgren identified skills he had which could serve as a tremendous asset to the Flood Control Board, and he was asked and agreed to serve on the Flood Control District Board. Deanne Morton was interviewed and very much interested in the Sales Tax Citizens Oversight Committee.

After interviewing the two applicants, the Subcommittee recommended the appointment of Ms. Morton to the Sales Tax Citizens Oversight Committee and Mr. Blomgren to the Flood Control Board.

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

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

To appoint Deanne Morton to the Sales Tax Citizens Oversight Committee and Nathan Bromgren to the Flood Control Board to Fill Vacant Seats

7.V ~~Consideration and Possible Action to Adopt Proposed Resolution 37/2016 in Opposition to Proposition 53, Revenue Bonds, and Resolution 38/2016 in Support of Proposition 54, California Legislature Transparency Act of 2016 as Recommended by the League of California Cities~~
(Report from Rebecca Vaughn, Town Clerk)

Mayor Bailey stated there are two propositions which the Town has been asked to take a position on by the League of California Cities. As background, the League reviews legislation and determine whether it intrudes on municipalities' ability to control their own destiny. They consistently take a position that if an issue intrudes on local control, they are against it.

The League is asking the Town to take a stand on two propositions on the current ballot. This was discussed a bit at the Legislative Committee who would like him to submit the recommendation to the League and he wanted to bring this to the Town Council. He supported the recommendations of the League and asked for comments.

Mayor Bailey opened the public comment period.

PHYLLIS METCALFE stated Proposition 54 is even more important than local control. At the end of the legislative sessions, many bills get gutted at the last minute, take the number, assign it to a new topic and vote on it immediately. This problem has gone on in the legislature for a long time and it is very important that the Town do everything it can to put an end to this practice. She said Proposition 53 has to do with local control and she thinks it

is important for the Council to oppose Proposition 53, support Proposition 54 and vote that way at the ballot box.

Councilmembers voiced their support for the proposed recommendations to adopt Resolutions 37/2016 and 38/2016.

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

To Adopt Proposed Resolution 37/2016 in Opposition to Proposition 53, Revenue Bonds, and Resolution 38/2016 in Support of Proposition 54, California Legislature Transparency Act of 2016 as Recommended by the League of California Cities

7.V ~~Review of Draft October 4, 2016 Town Council Agenda~~

Mayor Bailey asked and confirmed that the fees relating to the filming ordinance were amended and the Council had no further comments.

Mayor Bailey opened the public comment period.

FRANK VILLAREAL repeated his previous request for an item to be agendized at the October 4th meeting regarding infrastructure and roads in the Marina Village neighborhood.

Ms. Vaughn stated the public hearing process allows for a prescribed amount of time for each pro and con side as well as noticing requirements, and the issue regarding the encroachments may also be brought back as a Business Item which could also take an hour. However, the Council could always add it to the agenda and then continue it.

Vice Mayor Furst suggested Mr. Villareal first discuss the matter with Town staff about whether the work is on the pavement index and/or CIP and determine an approximate time the matter will take at a Council meeting. Mayor Bailey concurred and suggested the matter not be agendized during a meeting where there are multiple public hearing and business items.

7.VI ~~Approval of Minutes of September 6, 2016 Town Council Meeting~~

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 Minutes of September 6, 2016 Town Council Meeting, as submitted

8. ADJOURNMENT

The meeting was adjourned at 11:05 p.m. to the next regular Town Council meeting on October 4, 2016 at Town Hall Council Chambers.