

FINAL MINUTES

**TOWN OF CORTE MADERA
ACCESSIBILITY ADVISORY COMMISSION
APRIL 19, 2010
CORTE MADERA TOWN HALL COUNCIL CHAMBERS**

Commissioners Chair Barbara Becker
Present: Robert Czeck
 Ted Meyer

Staff Present: Town Manager Dave Bracken
 Assistant Town Attorney John Abaci

1. Call Meeting to Order

Chair Becker called the meeting to order at 7:00 p.m.

2. Open Forum for Non Agenda Items

There were no comments.

3. Approval of Meeting Minutes of March 8, 2010

M/s, Meyer/Czeck, to approve the meeting minutes of March 8, 2010 as corrected.
Ayes: All

4. Old Business

A. ADA Litigation- discussion of status

Assistant Town Attorney Abaci discussed the tentative settlement agreement with Mr. Richard Skaff in his lawsuit against the Town. He stated there were four mediations sessions at the Federal Building in San Francisco. He noted it is important to understand that the agreement is tentative and subject to final approval by both parties and the court. Full disclosure is not possible since some of the details are being worked out. He gave a brief overview of some of the terms of the settlement and particularly those that have to do with the specific items of relief. Much of the time was spent talking about how to structure a settlement that would enable the Town to do disabled access improvements in an affordable, useful, and valuable way. They tried to structure the settlement in phases. The first phase is a project currently being designed for Fiscal Year 2010-11 involving the bus stop in front of Town Hall and work along Tamalpais to Corte Madera Square. There were seventy-one barriers identified initially in the litigation by Mr. Skaff and the Town agreed to address one-half of those barriers by June 30, 2011. Phase Two would begin July 1, 2011. The Town would create a fund to perform disable access improvements. The fund would consist of 50% of the Gas Tax Revenue received by the Town which has traditionally been approximately \$100,000 in total. A minimum of \$50,000 would be allocated to this fund. The fund would also consist of 10% of the Unrestricted Capital Improvements Expenditures excluding Grant Fund matches. The parties have agreed to a Barrier Removal Implementation Plan (BRIP) which would be a type of update to the Transition Plan. He noted this lawsuit was about public rights-of-way and the passageways and walkways in the exterior areas of Town properties and not internal areas such as the Town Hall building itself. The purpose of the BRIP is to come up with a feasible method of providing disabled access within those areas. This plan would be prepared by a consultant through the public process and would ultimately be adopted by the Town Council. It would include commercial but not residential driveways. It would be implemented, as much as possible, based on the general priorities of the Transition Plan and during the period of time prior to a revenue measure being placed on the ballot. This period of time would be no later than the end of

2015. The revenue measure would be for the purpose of implementing the BRIP and would be targeted to provide no less than \$3 million in revenue over a maximum period of 10-years. The revenue measure could include other transportation funding as well. If the measure were to pass then the agreement would terminate at the end of that 10-year period. If the measure does not pass then the plaintiff has the option of continuing the same level of funding (50% of Gas Tax) plus 10% for the next 15 years. The agreement would terminate at the end of 15 years. The plaintiff could choose to meet and confer with the Town on the issues of the level of funding for each year for the implementation of the BRIP and the time period of the funding based upon the Town's financial condition at that time. If the parties could not reach agreement on those matters then the matter would be submitted to binding arbitration. The arbitrator would decide on the level of funding and the time during which the work and funding would continue. The arbitrator would also decide on the duration of the agreement which would then determine its termination date. In addition to these terms, the Town would be submitting an annual review report which would indicate the funding and improvements that were made for each year and the Town would be agreeing to seek additional funding sources. A consultant would be retained to search for this additional funding. There would be a meet and confer session regarding the other items that the Town did not agree to address in the upcoming fiscal year. The final material term is that the Town would be able to petition the courts to terminate the agreement if it believes it has been adequately implemented. In summary the three phases would include: 1) the pending project; 2) preparation of the BRIP; 3) the revenue measure.

Town Manager Bracken referred to the issue regarding commercial driveways and stated he recognizes the importance of making these repairs. He referred to residential driveways and stated it is often difficult to fix these because typically the right-of-way is right behind the sidewalk and they have four feet to change a grade of five to six inches (or 2%). To achieve this 2% they need to drop the back of the sidewalk and go onto private property to change the grade of the driveway. The Town does not want to go through a lengthy and expensive condemnation process. Chair Becker asked for a clarification. Town Manager Bracken stated the Town typically receives \$110,000 in Gas Tax Revenue and most of this is used for street repairs. It should be recognized that giving up 50% of this revenue would result in fewer street repairs and perhaps more potholes, etc. He noted the Town is guaranteeing a minimum of \$50,000 whether it comes from Gas Tax Revenue or not. He referred to the seventy-one sites and stated they would not be able to meet the "letter of the law" on all these items. Commissioner Meyer asked if the "finish line" was a certain dollar amount or a certain number of barriers. Assistant Town Attorney Abaci stated the tentative terms were that they address all of the areas identified in the lawsuit with the priorities along the lines of the Transition Plan (curb ramps, curbs, on-street parking, etc.). There is only so much funding that the Town can dedicate during each year and expenditures over \$50,000 in one year could be credited to the next. On the other hand, the Town could save up for a \$200,000 project. The idea is to put the BRIP into effect as feasibly and practically as possible. Town Manager Bracken stated the BRIP would be created by the AAC. Chair Becker stated the Commission did not agree that all of the seventy-one issues were valid. She asked how this would be handled. Assistant Town Attorney Abaci stated specific barriers have been identified in the lawsuit and the Town has stated that half of those would be addressed. Some are technically infeasible. The Commissions' concerns would be forwarded to the consultant and there would be some resolution that could include a compromise. He noted this process has worked out well in the past with the path of travel feasibility study. This gives the Commission and the Council flexibility in the BRIP and enables the Town to implement it in a way that makes sense.

Town Manager Bracken stated the "project" that staff has been referring to includes all the right-of-way improvements from the Menke Park area down to the Eastman intersection. It would include a street overlay and all the concrete improvements (curb, gutter, sidewalks, etc.). He walked the area with the consultant and ascertained that it would be difficult to repair the ramps so they fully comply with all the State and Federal requirements. Commissioner Meyer stated many contractors are apprehensive about these types of project due to the tight grades, etc. Town Manager Bracken agreed.

Commissioner Meyer referred to the consultant fees and asked if the Town could instead have an expert on staff. Town Manager Bracken stated he had thought about hiring a part-time person but decided against it. This would not accomplish their goal. Initially the "cost per barrier removal" would be high but in the long run the cost would go down. The BRIP is very important since it allows the Town to decide what to do. Assistant Town Attorney Abaci noted there was nothing in the agreement that would limit the Town to the

\$50,000 and the Town could use grant funding for more projects. Town Manager Bracken stated he was thinking about hiring someone to process grant applications. Often times it is not worth pursuing grants of less than \$100,000 because it can cost more to go through the process. He noted that Gas Tax Revenue is restricted to right-of-way improvements. Assistant Town Attorney Abaci stated the lawsuit was almost entirely about the public rights-of-way

Commissioner Meyer asked if staff had any idea about the possibility of future actions by the plaintiff. Assistant Town Attorney Abaci stated the agreement would be a full and final release of all claims and include all of the public rights-of-way, exterior walkways, etc. in the Town. This agreement would be reduced to a court order to which the Town would be bound. This should provide a level of comfort to the disabled community.

Commissioner Meyer asked about the importance of the Town's Transition Plan and the fact that there is an active AAC. Assistant Town Attorney Abaci stated the plaintiff was contending that the Town had to do each and every item that was in the Transition Plan. It is an extremely comprehensive plan. The Town filed a motion to dismiss claims that called for penalties for items that were not addressed. The Town won on that motion. However, there does need to be a refinement of the Transition Plan and a way of addressing the items in the plan in a usable and achievable manner. This should be addressed in the BRIP. Commissioner Meyer asked if there was an existing template for a BRIP. Assistant Town Attorney Abaci stated the consultant has done other BRIP's. Town Manager Bracken stated he sees the BRIP as a revision to the Transition Plan. Chair Becker agreed.

B. Higgins Landing Boat Dock- letter of support

Chair Becker stated she received a call from Mr. Larry Chin indicating that the State Department of Boating and Waterways wants to know what kind of support the project is receiving. Mr. Chin asked her to write a letter. She thought it would be more powerful to include the April 2008 memorandum to the Town Council with the letter. She asked the Commissioners to email suggestions. Commissioner Czeck stated a letter from the Town Council would also be helpful. Chair Becker agreed.

C. AAC member search- meeting time

Town Manager Bracken stated staff received an application for the vacant position and the individual would be interviewed by the Town Council prior to tomorrow's Council meeting. Commissioner Czeck asked about the term of the new member. Town Manager Bracken stated he would ask the Town Clerk. Chair Becker stated she would attend the Council meeting.

D. Transition Plan review- next steps

Chair Becker stated this item would be on the next agenda.

5. New Business

Chair Becker stated she would like the following item added to the agenda: 1) Future agenda items.

6. Commissioner Reports

There were no reports.

7. Adjournment

The meeting was adjourned at 8:20 p.m.