

MINUTES OF SPECIAL CITY COUNCIL MEETING
MARCH 12, 2012, 6:30 PM
MARIN VALLEY MOBILE COUNTRY CLUB
100 MARIN VALLEY DRIVE

A. CALL TO ORDER

Present: Mayor Athas
Mayor Pro Tem Eklund
Councilmember Lucan
Councilmember Kellner
Councilmember MacLeamy

Also present: Assistant City Manager Cathy Capriola, Finance Manager Brian Cochran, City Attorney Veronica Nebb, and Deputy City Clerk Vickie Gerber

B. APPROVAL OF FINAL AGENDA

*Councilmember Kellner moved, Seconded by Mayor Pro Tem Eklund, to approve the Final Agenda. **The motion was approved unanimously.***

C. PUBLIC COMMENT

1. Mike Read said that in the beginning residents agreed to raise their rents through the years and therefore the residents have spent an extra \$2.2 million in order to own the Park. He stated that no taxpayer dollars have been expended on the Park and he urged the Council to transfer the park to the residents.
2. Jack Brandon made a variety of comments and wanted to know why the Council had not discussed the issue of park ownership on the agenda. Mayor Athas clarified that Mr. Brandon was referring to the City Council's Second Tier List that would be reviewed at the City Council's April 10, 2012 Quarterly Agenda Planning Session when agenda items would be identified for placement on future agendas. Mayor Athas explained the Council process for adding work plan items to the City's initiatives.

D. CONSENT CALENDAR

None

E. GENERAL BUSINESS

1. COUNCIL REVIEW AND TAKE ACTION ON DRAFT RENEGOTIATED DELEGATION AGREEMENT AND MANAGEMENT AGREEMENT

Consider reviewing and approving the draft renegotiated Delegation Agreement and Management Agreement with minor additional edits shown on Exhibit #1 of the staff report.

Assistant City Manager Capriola presented the staff report. She stated that this process started over 18 months ago and due to other priorities was put on hold a number of times. In the past four months, the negotiations process had started again with staff meeting with Mike Holland and Jim Olson on several occasions to review and finalize the two documents. Ms. Capriola expressed appreciation to Mr. Holland and Mr. Olson for their time and dedication to this process.

Ms. Capriola stated that on February 27, 2012, the City Council held a meeting at the park where a comprehensive overview had been provided to give residents better clarity of what the agreements meant. She stated that residents requested additional time and information on the agreements before Council took action. She reported that staff held a workshop on March 8th where the Delegation Agreement and Management Agreement were reviewed in detail with the 25 residents who attended the meeting. Ms. Capriola outlined the comments and feedback from the workshop and one area of clarification.

- o Workload of PAC -- There were several questions raised regarding additional workload on volunteer PAC Board Members based on changes to the Agreements. Staff responded by stating that though there are additional requirements (such as maintaining the website, complying with the Brown Act, new purchasing procedures for Frei, ensuring personal property be inventoried, etc.), some of the items are required by State law while others are “best practices.” Staff will be providing training and assistance to the PAC. Frei Real Estate’s staff can also assist in some of these efforts.

Ms. Capriola reminded Council and residents that there will be a mini-review of the Delegation Agreement and Management Agreement in December of 2012 to see if anything was not working operationally and needed modification. Staff would also be meeting with a PAC sub-committee on a quarterly basis to enhance communication and touch base on operational issues.

- o Budget Questions -- There were other questions surrounding the budget process and what role each party plays in approving or denying rent increases.

- Role of Assured Guaranty -- There were also questions regarding the role of Assured Guaranty, communication with Assured Guaranty, and the Consent Fee that Assured Guaranty charged to transfer the Park last March.
- Elections -- There was one clarification point that arose in the workshop discussion regarding filling vacancies on the PAC Board. Staff thought that the language in the Delegation Agreement had been aligned with the PAC's current practice. However, this was not the case. Though the elections were discussed in depth, there was a misunderstanding. Ms. Capriola stated that staff continued to believe that the language in the Delegation Agreement was appropriate though it did not align with the PAC's current policy. Ms. Capriola stated that staff was not recommending any changes to Section 5.01(i) of the Delegation Agreement.
 - PAC's Policy -- The PAC's current policy was that if a member resigns within 6 months of the annual elections, the PAC will not fill their spot and will wait for the election. If a member resigns with more than 6 months left in their term, the PAC board will appoint someone to fill out the remainder of their term.
 - Delegation Agreement Language and Staff Recommendation (Section 5.01 (i) – highlighted in red below) – Staff's recommendation was that if there is a Board vacancy and more than 6 months left on the term, then the PAC Board cannot appoint, but must hold an election. Staff's interest was to have greater democracy with an election if a longer vacant term arose. The key difference between the two perspectives is the use of an election versus an appointment if a term has more than six months left.

PUBLIC COMMENTS:

3. Owen Haxton said the resolution and motion should not be approved because he thought there was a problem with the definition of ownership. He stated it would be prudent to obtain second legal opinions.
4. Jack Brandon said he thought the Delegation Agreement lacked tact and diplomacy. As an example, he stated that it was difficult for the resident volunteers responsible for the park website to send the owner minutes and other information within the required 48 hours after every meeting and indicated the workload was too much for them to handle.

5. Judy Bucci said the previous speaker should have been present at prior meetings where things had proceeded in a very civil and helpful manner. She asked for staff to define the difference between title holder and owner.
6. Mike Read referred to documents, and read the language into the record to provide clarification for Park residents, “No Expenditures of Project funds shall be made unless provided for in the Budget and Capital Plan or approved in advance by Owner and Assured Guaranty; or as outlined more specifically in the Management Agreement” He also expressed his disagreement with the Delegation Agreement language that outlines the election parameters for the PAC which is a separate non-profit.
7. Peggy Hill said it bothered her that the City was the owner of all the property at the Park, including items such as lighting and fixtures. She thought the residents should be called co-owners. She asked for clarification regarding items donated by residents to HOL or MARVAL.

Assistant City Manager Capriola responded to comments made by the residents and said although there were additional requirements, including maintaining the website, complying with the Brown Act, new purchasing procedures for Frei Real Estate, ensuring personal property had been inventoried, etc., some of the items were required by State law while others were “best practices.” She said that City staff and Frei Real Estate staff would be providing training and assistance to the PAC. In terms of the timeline to post on the website within 48 hours, this time frame is based on when the minutes are ready, not 48 hours from the time of the meeting. Further, she said it was important to remember that a mini-review of the Delegation Agreement and Management Agreement would be done at the end of the year (December 2012) to see if anything needed to be modified. Staff would also be meeting with a PAC subcommittee quarterly to enhance communication and discuss operational issues.

Assistant City Attorney Nebb also replied to a number of questions made during the public comment period.

COUNCIL DISCUSSION

Councilmember Lucan discussed the differences of opinion regarding the elections. He expressed concerns about the amount of work that PAC elections require of the volunteers and noted that staff’s recommendation would require another election. He suggested following PAC’s current practice but to have anyone who is appointed by the PAC Board run for election in the next cycle.

PUBLIC COMMENTS:

8. Owen Haxton stated that he believed that the documents anticipate transferring the park to residents.

9. Ellen Schultz said she was questioning what the residents said about there being no change to the Novato Finance Authority and the City of Novato and that it would not affect a transfer. Assistant City Attorney Nebb clarified that the owner was the City of Novato, which used to be the Novato Finance Authority.
10. Valerie Barker commented further on Owen Haxton's comments.
11. Mike Read said that it was the PAC's current policy that if a board member resigns within six months of an annual election, the PAC would not fill the spot and would wait for an election. If a member resigned with more than six months left in their term, the PAC board would appoint someone to fill the remainder of the term.

Assistant City Attorney Nebb said it was staff's recommendation that if a Board vacancy had more than six months remaining on the term, then the PAC Board could not appoint, but must hold an election, with the difference being the use of an election versus an appointment.

Councilmember Kellner moved, Seconded by Mayor Pro Tem Eklund, to approve the final Delegation Agreement and Management Agreement, including the changes shown in Exhibit #1 of the staff report.

After Council held a question-and-answer session with staff regarding the process for filling vacancies on the PAC Board, *Councilmember Lucan moved, Seconded by Councilmember Kellner, to amend the main motion to change Section 5.01 (i) of the Delegation Agreement to read as follows with the intent to follow the PAC's current practice yet add a requirement for someone who is appointed to run for election at the next election cycle. The revised language is below.*

- Section 5.01(i) Delegation Agreement -- Notwithstanding any provisions of its By-Laws to the contrary, during the Term of this Agreement, PAC shall not act to appoint any individual to fill a vacancy for an unexpired term on the PAC Board of Directors in any instance where the unexpired term of the vacant seat is less than six (6) months at the time of the vacancy. In the event of an appointment, the appointed seat shall stand for election at the next regular election for the remainder of the original term. In no instance shall a majority of the members of the PAC Board be appointed. During the Term of this Agreement, PAC shall hold all elections to the PAC board in accordance with the elections guidelines approved by PAC and Owner as the same may be amended and approved by each from time to time.

The main motion was approved unanimously.

In addition, the Council voted unanimously to direct staff to execute the agreements.

*Mayor Pro Tem Eklund moved, seconded by Councilmember Kellner, to direct staff to provide any necessary training or administrative assistance to ensure any new provisions could be implemented by the PAC or Frei Real Estate Services. **The motion was approved unanimously.***

F. REGULAR REPORTS

None

G. BOARD/STAFF COMMENTS

None

H. ADJOURNMENT

The meeting was adjourned at 7:50 p.m.

I HEREBY CERTIFY that the foregoing minutes were duly and regularly adopted at a regular meeting of the Novato City Council.

Sheri Hartz, City Clerk