MINUTES OF SPECIAL CITY COUNCIL MEETING
MARIN VALLEY MOBILE COUNTRY CLUB
COUNCIL CHAMBERS
901 SHERMAN AVENUE
SEPTEMBER 10, 2012 – 7:00 P.M.

A. CALL TO ORDER

<u>ROLL CALL</u>

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

Absent: None

Also Present: City Manager Michael Frank, Assistant City Manager Cathy Capriola, Finance Manager Brian Cochran, Assistant City Attorney Veronica Nebb and Deputy City Clerk Vickie Gerber.

B. APPROVAL OF FINAL AGENDA

Councilmember Eklund moved, Seconded by Councilmember MacLeamy, to approve the Final Agenda. ***The motion carried unanimously.***

C. PUBLIC COMMENTS

1. Michael Read referred to his handout dated 1997, *Notice of Transfer of Property and Notice of Assignment of Rents*, read a portion of the document into the record. Mr. Read stated that residents had increased their rents in order to fund the sale of the park to the NFA and that no taxpayer funds had gone into park operations. He stated that the City could transfer ownership of the Park to the residents similar to the downtown theater.

2. Owen Haxton said he has been trying to have his remarks included in the minutes, the draft minutes dated July 9, 2012 did not include them, and read the following language from a Trust Agreement dated 1997 into the record: "*The owner anticipates transferring all of its right, title and interest in the project to a yet to be incorporated 501(c)3 corporation, at which time all of the duties and obligations of the owner relating to the bonds and the project will be transferred to the corporation. Assuming the project has been purchased by the Authority with the intent to hold the project for redevelopment purposes with the intent to transfer said project to a 501(c)3 the project is exempt from property taxes. Whereas, the*

owner and the PAC expect to transfer and assign to all their respective rights, interests and obligations in the project and the various agreements entered into by the owner and the PAC with respect to the project to a nonprofit 501(c)3 corporation upon the terms and conditions set forth in the loan agreement and the insurance agreement. While any bonds are outstanding under the indenture, the owner and the PAC may assign their respective obligations under the agreement to a nonprofit corporation which has acquired the project from the owner without the consent of the City if the terms and conditions set forth in the loan agreement, the mortgage agreement and the insurance agreement are met." He said he had been told that people need to respect the opinion of those who were present in the beginning and read their names into the record: David Kenyon; legal counsel for the PAC; Philip Boon, financial advisor; Scott Beck, legal counsel for the City; Joe Coomes, legal counsel for the City; Chris MacFarlane, finance officer for the City; Steve Melikian, bond counsel; Sonia Seeman, former City employee; Emily Wagner, Novato Finance Authority financial counsel and Jeff Walter, City Attorney.

3. Rick Oltman said that in 1999, as a result of concern the residents of Marin Valley had over rent increases, the City offered to help by having bonds issued; for the past 15 years park residents have paid over $10M in principal and interest on the bonds and taxpayers residing outside the Park have paid nothing; the plan had been to eventually transfer ownership of the Park to resident control; he read from a prospectus, "The owner anticipates transferring all of its right, title and interest to a yet to be incorporated 501(c)3 corporation." Mr. Altman spoke about the past effort to create a Marin Valley Senior Community.

Ms. Nebb responded to Council that she recalled the PAC had entered into a Purchase Agreement and had approached the City to buy the property when they could not obtain financing. As a result, Novato Finance Authority was formed and the Purchase Agreement was assigned to the City. Ms. Nebb stated that she did not believe that title of the Park was ever held by the PAC.

D. CONSENT CALENDAR

No items were listed for this section.

E. GENERAL BUSINESS

1. DRAFT MINUTES OF JULY 9, 2012

Minutes were provided for informational purposes only and were formally approved at the September 11, 2012 regular meeting of the Council.

2. REFINANCING – PRESENTATION AND COUNCIL DIRECTION

Provide direction to City staff regarding the refinancing of the MVMCC bonds and whether to take actions as outlined in the Recommendation shown below.

Recommendation: To move forward with refinancing the 1997A MVMCC Senior Revenue Bonds by directing staff to take the following actions:

1. Conduct a Request for Proposal for a private placement with an effort to promote this opportunity to local and regional banks and financial institutions.

2. Direct the City Manager to hire professional assistance to initiate the refinancing process for the following tasks with funding to be taken from the refinance to compensate these firms.
   a. Enter into the next phase of a contract with PFM to manage this RFP process for a fixed fee of $37,500, contingent upon the successful closing of the refinancing transaction; plus reimbursement of actual expenses incurred, not to exceed $1,000.
   b. Engage legal counsels (Walter & Pistole and Jones Hall) as needed in the review of any financial and legal issues related to the proposed transaction.

3. Direct the City Attorney's office to update and prepare any changes to the MVMCC project documents as will be required with the refinancing.

Ms. Capriola made the staff presentation and introduced Consultant Sarah Hollenbeck, PFM; Finance Manager Brian Cochran; and City Attorney Veronica Nebb, who assisted with the PowerPoint presentation, *Marin Valley Mobile Country Club 1997 A Revenue Bond Financing*, which followed.

C. PUBLIC COMMENT

1. Jim Olson, speaking as a resident, not as President of the PAC Board, said he regretted refinancing was not being carried out as part of a transfer to Park ownership and understood why. He acknowledged staff for doing a good job preparing the private financing scenario and thanked Council for asking questions and doing all the right things. He questioned whether any requirement was anticipated with the new lender similar to what Assured Guaranty required and whether it would affect the in-lieu or property tax situation. He requested PAC Board members and residents be allowed to provide feedback into the process and, in particular, to the revision of current documents. He requested the new documents contain the same protections for residents that were contained in current documents and language should be included prohibiting the use of funds for anything other than capital work since major funds would be accumulating for infrastructure and ADA work on the clubhouse. He asked what they could do to ensure the transfer was simple and inexpensive.

2. Ray Schneider questioned several items including private financing, limited City staff time, whether the Park would continue to be charged $25,000 per year; the cost of engaging legal counsel; the cost to make changes to project documents; and where an additional $5,000,000 would come from if only $4M-5M was accumulated by 2015-16 and $10M was needed to make necessary repairs. He thought there were always strings attached to tax exemptions, even on private placement.

3. John Shelfer thanked those who prepared the documents for doing an admirable job. He said the project appeared to be on firm financial ground and asked whether it had to be tax-exempt to get the rates shown. He thought the new loan documents should contain a provision that the new owner could transfer the loan to a new entity that might be taking ownership of the park, if the ownership issue gets resolved, and that the lender should ensure the new owner could maintain the loan.

4. Larry Cohen requested a "best guess" estimate of what the net cost of refinancing would be to the residents.

5. Mike Read said Slide 5 of the presentation made it appear that the monthly payments were paid by the City when they were paid out of the Park budget. He reiterated concerns expressed by previous speakers regarding interest rates, borrowing scenarios and tax exempt status.

6. Rick Oltman asked if an appraisal had been done on the property since the 2008 subprime market debacle and, if so, what the value showed. He said $9.7M remained outstanding on the original issue of the long-term bonds and questioned how much was being attempted beyond $9.7M through a private placement or a bond issue.

Ms. Capriola said they did not anticipate that the new lender would require the same number of controls Assured Guaranty had required.

Ms. Nebb said there was a tax-in-lieu agreement because as a public agency owning the property the City took it off the tax rolls, but wanted to ensure that the general fund was reimbursed some amount associated with tax, so there would not be a net deficit associated with having the property off the tax rolls for the rest of the residents of Novato. Currently, the Park pays a tax-in-lieu payment to the general fund, in lieu of paying property taxes, and they did not anticipate making any changes. She also said Council could consider whether that amount bears a relationship to the tax on the property, but currently that amount was set at what the taxes were and has stayed fairly stagnant with a minor CPI increase.

After Council held a brief question-and-answer session, *Councilmember Kellner moved, Seconded by Mayor Pro Tem Eklund, to refinance now and to pursue a private placement based upon the analysis and the staff recommendation.* ***The motion carried unanimously.***

Mayor Pro Tem Eklund said she wanted to clarify that the motion meant there would be a private placement whether there was a bond or a loan.

Councilmember Lucan moved that a 10-year option or a loan shorter than 15 years be considered; and, although it looked as though the assumability was out of the picture, if there was going to be a traditional loan with a bank and there was an option to include an assumability clause at the bank's discretion, he would like to have the language included.

Councilmember MacLeamy seconded the motion for the purpose of discussion.

Mayor Pro Tem Eklund questioned whether interest rates could be higher with a 10-year versus a 15- year loan and how a tax exempt bond could be assumed. Ms. Hollenbeck responded that they looked preliminarily at a 10-year borrowing scenario and did make assumptions about what the deferential interest rate would be. The debt service would increase from where it currently was by approximately $55,000 to $56,000, depending on what the [insurance] coverage requirement would be, which could increase the overall required annual cash flow by up to $90,000, assuming the 1.6xs coverage that could potentially create upward pressure on rates paid by the residents of the Park. If there was not sufficient coverage, they would have to pay for it. She said it was a "back of the envelope" description of what a 10-year financing could look like. Regarding assumability, they did not believe there would be lenders willing to offer that option, but there would be no harm done by asking the question. She did not expect that a new lender would provide something that Assured Guarantee was unwilling to provide, which was why they required consent for any transfer in 1997.

Ms. Nebb added that regarding the 10-year situation and in addition to Ms. Hollenbeck's comment about it placing pressure on rents, which was something Council had included in its parameters for what it did not want to have done with the transaction, it did not give the opportunity to build replacement reserves at the rate that was currently being discussed, which was the reason for staff's positive recommendation. She thought staff's reasoning for going with a 15-year borrowing scenario could start to erode a bit when looking at less of an ability to build the reserves and the potential upward pressure toward rents.

Councilmember Lucan said he was not suggesting that only a 10-year be looked at and would be very interested in comparing a 15-year to a 10-year, or a 15-year to a lesser term.

Mayor Pro Tem Eklund questioned how staff would handle the mechanics of a Request for Proposal (RFP) and whether it could be created to include a 10-year and a 15-year scenario, whether it would be unmanageable, or whether it was something that could have been done in the past. She said she did not want this to result in a higher interest rate or hinder the chances of a RFP by going with a 10- to 15-year term.

Ms. Hollenbeck said that once the banks responded to the RFP or request for bids and understood the credit, she expected it would be relatively straight forward for them to price a 15-year and a 10-year or shorter option. She said it could become more challenging if there were "apples and oranges and watermelons" to compare to one another in terms of responses, then how to evaluate or select among the options could be less straightforward.

Mayor Athas commented that if there were no prepayment penalties, Council could always go for a lesser amount, but it would depend on whether it would be the right thing to do at the time.

By including a restriction and trying to put a limit on when it would absolutely have to be paid off by saying the term was going to be 10 years could cause undue stress because what a 10-year was going to look like was unknown. If there was a 15-year loan and in 10 years it was decided that everything was in play and the loan was called, then it could be paid off in 10 years. She emphasized that the 15-year option provided better flexibility by not limiting the City to a 10-year call.

Councilmember Lucan said that if we were building up our reserves and $4M was sitting in an account earning 4 percent to .8 percent interest when we could have been paying down at a 4.8 percent rate, or whatever the rate was going to be, it could be more advantageous to pay it down over 10 years.

Mayor Pro Tem Eklund said that the Park had over $10M of capital needs that would require attention in 10 years or less. She noted that when she was a member of the Novato Finance Authority the electricity went out at the Park, there was no backup generator, and she did not want anything to fail without having money in the bank to address capital needs. She said everyone wanted to pay off the loan, but there was no money in the bank to make the improvements that have been identified. She stated that City Engineer Skinner recently gave an excellent presentation on the needs of the Park and there was an understanding that if capital improvements could be delayed ten years, there could be time to build up reserves of at least $10M. She did not think that objective could be achieved if the loan was paid off sooner.

Councilmember Lucan said he was not suggesting that Council make a decision tonight and reiterated that he did want to review a breakdown of the two borrowing scenarios. He said he would split his motion for the purpose of clarification.

Councilmember Lucan moved, Seconded by Councilmember MacLeamy, to look at a shorter term than only a 15-year borrowing scenario. ***The motion failed 3-2, with Mayor Athas, Mayor Pro Tem Eklund and Councilmember Kellner dissenting.***

Councilmember Lucan moved, Seconded by Councilmember MacLeamy, to include an assumability clause subject to the bank's approval. After Ms. Hollenbeck responded to Mayor Athas that doing so would not limit the number of banks responding to a RFP, ***the motion carried unanimously.***

Mayor Pro Tem Eklund moved, Seconded by Councilmember Kellner, to direct the City Manager to hire professional assistance to initiate the refinancing process with funding to be taken from the refinance to compensate the firms and to enter into the next phase of a contract with PFM to manage the RFP process for a fixed fee of $37,000,contingent upon the successful closing of the refinancing transaction; plus reimbursement of actual expenses incurred, not to exceed $1,000. ***The motion carried unanimously.***

Councilmember MacLeamy moved, Seconded by Mayor Pro Tem Eklund, to direct the City Manager to engage the firms of Walter and Pistole and Jones Hall, as needed, in the review of any legal and financial issues related to the proposed transaction. ***The motion carried unanimously.***

F. BOARD/STAFF COMMENTS

1. Determine Next Quarterly Agenda Schedule

Assistant City Manager Capriola announced that the next quarterly meeting would be scheduled on October 29 or October 30, 2012, 6:30 p.m., in Council Chambers, and the agenda would include the ownership work plan and process. The date will be confirmed within the next week so the PAC can communicate the details to the residents.

G. ADJOURNMENT

The meeting was adjourned at 9:00 p.m.

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

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Sheri Hartz, City Clerk