

FINAL Meeting Minutes

PARK ACQUISITION CORPORATION

Regular Meeting

7:00 PM

Wednesday, September 7, 2016

Fireside Room, 100 Marin Valley Drive, Novato, CA

ATTENDEES:

- Board Members: Larry Cohen, John Hansen, David King, Jay Shelfer. (Peggy Hill absent)
- 11 Non-Board Residents
- Park General Manager: Matt Greenberg
- Recording Secretary: Susan Windman

CALL TO ORDER: 7:04 PM

A. APPROVAL OF FINAL AGENDA

Larry mentioned that residents tell him they don't attend PAC Board meetings because the meetings go on too long. Larry would like everyone to keep comments as short and succinct as possible.

Motion made and seconded to approve the final agenda. Motion voted on and passed 4-0 (Peggy absent).

B. PUBLIC COMMENTS (for issues not on the agenda)

- Connie Marelich had the following comments/questions:
 - 2x2 meetings: Where are the minutes for the 2x2 meeting? Where are they displayed?
 - Speeding in the Park: When will something be done about speeding?
 - Park security: Several items have been taken from front yards. Security only checks the clubhouse, not the Park streets, and Connie doesn't feel residents feel secure by this.
 - Fire hazard: Connie noted several houses on Marin Valley have weeds growing very high and are dangerous to other neighbors. She wondered if the fire department should be notified.
 - Connie had emailed the PAC president, early, to be put on the agenda; but she's not on the agenda. She hopes she can be added to next month's agenda.

Jay asked Connie the topic she wanted to talk about for the agenda. Connie mentioned it will come. Larry mentioned there hasn't been a 2x2 meeting in 3-1/2 months. A 2x2 report will be made after each meeting and posted on the board and website.

- Carol-Joy Harris read the following statement from Bill Davis about the Lion's Club:

(handout from Bill Davis regarding the Lion's Club)

"You can't get very far in life until you start doing something for somebody else." This is the motto of the Lion's Club, both locally and internationally. All funds raised by the Lion's Club are used for charitable purposes and administrative costs are kept completely separate. If you or someone else hits hard time and cannot see or hear or cannot manage your diabetes, then this non profit, volunteer organization is there for you and has been for 100 years. The club's outreach is much larger of course and there is a long list of services they provide to those in need.

This park has multiple Lion's members living here. Historically, the Lion's Club has raised money through a monthly Bingo event in the Park. That was phased out due to a conflict about open public use and legal ramifications of other organizations demanding to use our facility. Was this absolutely necessary?

I ask you that question because I feel the Lion's Club needs to get honorable consideration for their history and the exceptional service they provide to our community. Their Bingo events were a "win/win" deal for the Park and the Lion's.

The Lion's made a little money and so did the Park. But much more importantly, we supported a very important charity organization in our community.

I request you put this issue on the agenda for the next meeting. This city and community needs the services the Lion's have provided for many unfortunate citizens in this area. To deny the Lions and the people they help, on this simple issue, is a disgrace and embarrassment. Please formally review this situation and as a newly elected body support the reinstatement of the Lion's Bingo.

Again: "You cannot get very far in life until you start doing something for someone else." The founder of the Lion's Club in 1917.

- John Feld would like the 2x2 PAC Board member term limits discussed further at the next meeting. The topic wasn't adequately addressed at the last PAC meeting,

particularly the following two items: membership in the 2x2 with 6 month terms and timing out with terms.

C. CONSENT CALENDAR

1. Receive approved minutes of July 6, 2016 meeting.

Motion made and seconded to receive the approved July 6, 2016 minutes. Motion voted on and passed 4-0 (Peggy absent).

2. Approve minutes of August 3, 2016.

Board members had the following comments/changes. The corrected draft will be reviewed again next meeting.

- (Larry) To agenda item D-5, second paragraph -- Change “Feld” to “Hansen” so the sentence now reads “Larry thanked MVEST and..., John Hansen...”
- (Jay) To agenda item D-7, bullet 6 (under Matt’s update) – Change “PG&E” to “MVMCC” so the passage now reads “MVMCC infrastructure.”
- (Jay) To agenda item D-7, bullet 1 (under Board member comments) – Change “PG&E report” to “BkF report.”
- (John) To agenda item D-7, bullet 3 (under Board member comments) – Change “cathotic” to “cathodic.”
- (David) To agenda item D-7, bullet 4 (under Board member comments) – Add the following to the end of the bullet 4 paragraph (which ends with “with these engineers”): “David requested that a financial person (himself) be present at the review meeting of the new infrastructure report with the City staff and consultants. Jay said that would mean that it would have to be at a PAC Board meeting and David agreed.”
- (David) To agenda item E-1, first paragraph – Add the following to the end of the first paragraph (which ends with “Brown Act”): “David responded to John’s comment that Veronica was not sure about six month terms for 2x2 PAC Board attendees. David recalled Veronica’s email in which she stated she was willing to do the six month term.”
- (John) To agenda item G-3 – Remove MVEST from appearing under agenda item “G.” MVEST is now a PAC Board committee and is not an “Other” board.

D. REPORTS

1. PAC Treasurer's Report (Larry Cohen)

Larry presented the following PAC Treasurer's report:

PAC Final Balance	\$6,340.28
PAC Actual Balance	\$2,372.78
Humanitarian Fund Starting and Final Balance	\$3,967.50
Total Spent Current Fiscal Year	\$ 503.28

2. MVMCC Administration and Finance, report of Finance Committee (David King)

David and Steven spoke with Brian Cochrane on August 24 about the following topics:

- Inconsistency in the report – Brian shared there is a separate quarterly report Al Frei prepares about rent control that he sends to the City of Novato. \$18,900 is for the City reviewing the report and also for any resident/owner requesting a rent control hearing. David will speak with Cheryl to ask her to send a copy of the report.
- Interest of approximately \$11,000 shown in June management report closing fiscal year 2015-2016 -- The interest shown as investment income is not from the Park's \$3.5 million but from the Bank of Marin operating account. The interest from the reserve accounts goes through an accrual directly into the long-term reserves at the City level (i.e., it is not delineated and not shown in the management report) and Cheryl never sees it. The City will provide to PAC what the investment income is for this year and for the last two years.
- Long term infrastructure – Dave put together a long-term financial plan (covering the next seven years). Brian had only one change, which Dave made. Dave then rolled up the plan figures into a one-page spreadsheet and Word document for the City Council. The documents are intended to address Council perceptions about Park rent increases and the ability to obtain a loan. The documents delineate the difference in Park reserves available for the long term infrastructure work at the end of seven years -- with and without a rent increase. Dave found the difference to be around \$770,000 (which Dave thinks takes away the argument that the rent increase would make a difference). Without rent increases, there would be around \$7 million at the end of seven years (with current trends). Brian confirmed the \$8-12 million infrastructure cost estimate is still current.
- During the third week in September, the City will make a presentation regarding the rent differential.

Jay indicated that Dave was supposed to ask the City about an inconsistency. Dave did look into it. Dave was correct, Brian was correct (Cheryl incorrect) and the budget correct. The account needs to be included in Net Operating Income. It was below the line, which is why Dave's DSCR calculation didn't match Brian's. Cheryl will make the correction.

Steven added he mentioned to Brian the Park keeps up with the infrastructure maintenance (fixes water leaks when occur) and is doing fine. Brian disagreed and wants to move ahead with a date for replacing the infrastructure, regardless of actual performance or condition of the pipes. Brian indicated concern about waiting until conditions get bad. Steven looked at Park financials for the last five years and how much was being spent. Steven didn't see an increasing trend that would cause fear.

Matt mentioned the expenditures were probably all repairs (for example, due to workmen breaking the pipe) or something failing. Matt continued that everything seems in good shape.

John commented he hasn't seen anything that indicates the infrastructure project needs to move forward now or in the near future. John would like to see the draft plan and feels the PAC Board should be given a copy, especially PAC's Capital Projects Planning Committee.

Dave noted that in this draft report the engineers didn't go into the ground, as had been done five years ago for the older report.

Jay indicated there will be a 2x2 meeting on September 19 and PAC members will bring up the issue.

Jay asked PAC Board members for a vote to accept the report. Members voted 4-0 (Peggy absent) to accept the report.

3. Rent Equalization/Differential Committee report (David King)

Dave indicated the presentation will occur the third week of September. Jay mentioned he spoke with Brian. Brian indicated that City staff (Brian, etc.) will review the report and then come up with several propositions for MVMCC and then the City Council. Dave will confirm with Brian the process and number of meetings.

4. Project Planning report (John Hansen)

John Hansen mentioned there are two projects being worked on:

- Outside shower – Will try to come up with a plan that is less than \$30,000. John feels it is important to have an outside shower, for several reasons including hygiene.
- Fire safe community – John is looking into the “fire safe community” designation and what the Park would need to do to achieve it. The Park is still a long ways away from achieving it.

Larry made a suggestion for a project: a cover for the hot tub. John will look into it.

Jay made the following suggestion: to review the infrastructure report.

5. MVEST report (John Hansen)

John Hansen provided the following MVEST report:

- John Feld just finished teaching an advanced CERT-like program
- Next class, to be held at the Park on September 17, will be “1st Aid for Disaster Response.” It is a four-hour class presented by eight medical reserve corps members. There will be room for a maximum of 30 attendees and 14 people have signed up so far. MVEST is covering the cost of the class.
- A radio training class will be held two times – one on Wednesday, September 28, and the other on Saturday, October 1.

6. City of Novato update (Jay Shelfer)

Jay presented the following City of Novato update:

- The new City Manager won’t be starting the job until October.
- There will be a meeting with Brian a week from Monday (September 19) to determine points to discuss at the 2x2 meeting.

7. Maintenance and Capital Projects: PG&E path update, swimming pool, management issues, etc. (Matt Greenberg)

Matt provided the following update regarding maintenance and capital projects:

- Fire abatement – Currently working on the second phase of the Fire Abatement project. Work has been focusing on lower Club View Drive into the open space, and to the top of Marin Valley Drive. There are a lot of poison oak and blackberries. The intention is to go down upper Marin Valley Drive between the homes, and then View Ridge and around the homes there.
- Gas valve replacement project – The project is finished.

- Retaining walls – This year, Matt has been trying to focus on the smaller walls and doing the worst ones first. Three replacement retaining walls have been completed, with four in progress.
- Ballroom air conditioning – Installation is finished.
- New home installation at 171 Marin Valley Drive – The home will be delivered this week and completed in one month.
- Park palm trees – The palm trees have been pruned of dry or dead fronds.
- Clubhouse electrical upgrade – The electrical upgrade to PAC/MVEST office has been finished. More outlets have been provided. The Clubhouse WiFi has also been completed.
- Matt is meeting tomorrow (September 8) with the landscaper for PG&E to look at replacement plants for along the PG&E path.

John Hansen mentioned the outside lockbox (discussed at last month's PAC meeting) is now installed.

E. OLD BUSINESS

1. Request for topics of discussion for the 2x2 meetings (Jay Shelfer)

Jay called out for requests for the 2x2 meeting. Submit requests through the PAC mailbox or by sending email to Jay or Larry.

Board members made the following suggestions:

- Dave suggested the 99 year lease topic.
 - Dave also would like discussed a topic previously covered at a previous PAC Board meeting – that when there's a significant financial issue on the 2x2 agenda, if Steven (a non-PAC Board member) could also attend. Jay responded that such questions about budget accounting issues should be differed to the Finance Committee.
 - John would like the topic discussed about the City requirement on MVEST that any expense over \$100 be cleared by the City.
- ##### 2. Audio recording of monthly PAC Board meetings to be made available to MVMCC residents (Jay Shelfer, Susan Windman)

The recording secretary suggested that PAC Board members discuss whether they would like to save/store the audio recordings made during each Board meeting: Jay mentioned that perhaps PAC could use some of its funds to purchase a flash drive for storing the audio files. Someone computer savvy could then transfer a copy somewhere easily accessible by residents.

John suggested putting together an archiving committee to look further into options and report next time with a plan. John Hansen and John Feld volunteered for the committee. John made a motion to establish an ad hoc committee for archiving. Committee members voted on the motion and the motion passed 4-0 (Peggy absent).

A resident commented he feels retaining the audio file is a good thing.

F. NEW BUSINESS

1. Security at MVMCC (Jay Shelfer)

There is security at the Clubhouse. Jay would like a camera near the Park entrance that captures automobile rear license plates and faces. Jay described options, further. Dave likes the idea. He would also feel safer if there were some mechanism to alert the Park, and Police, when people go up the entrance hill to the campsite.

John suggested a Security Committee be created to investigate the issue further. Jay and Dave volunteered. The topic will be placed on next month's agenda.

2. Switching pool filtration system sooner than later (Jay Shelfer)

Jay mentioned it will take around two weeks to change out the filtration system, including the plumbing. Jay thinks the work should be done when the weather starts to get cooler, such as in late October/early November.

3. Proposition 218 as it relates to MVMCC (Jay Shelfer and Lynn Carman)

Lynn Carman provided the following letter to the PAC Board.

To the Board of Directors of Park Acquisition Corporation (PAC)

I thank you for the opportunity to give my views.

I speak only for myself as an owner and resident of my unit in Marin Valley Mobile Country Club Park, and from training and more than 50 years practice as an attorney who has had some experience in the California law of trusts.

My view is that the City of Novato currently holds title to the Park in its capacity solely trustee of a trust, namely, to transfer the Park to the Marin Valley Senior Community, Inc. (MVSC); and that pending such transfer, the City must treat the

Park as the res of a trust, whose income and assets may not be transferred to the General Fund of the City or used for the profit of the City.

Second, even were that not the case, my view is that the Park is at least subject to the treatment required by Proposition 218, for public enterprises which furnish a real property-related public service to tenants of parcels who pay for the services. As such, Prop. 218 prohibits the City from using any of the assets of the Park except to furnish the public services of the Park, which is, to make available and furnish low cost housing to low and middle income members of the public.

The Trust

We believe that by the statements of the NFA in the March 1, 1997 public offering statement of the purpose of issuance of the bonds – namely, to enable NFA to acquire and transfer the Park to the yet-to-be-formed NVSC – that under California law of trusts, NVA became a trustee to hold the Park, in trust, for that singular purpose. And, that the City, with knowledge of these provisions of the NFA public offering statement, thereby knew of the trust and took title to the Park from NFA, subject to the trust, to transfer the Park to MVSC, without more.¹

Notably, the City paid nothing to acquire the Park, hence, was not any so-called “bona fide purchaser for value.”

We also believe that by the residents forming both the PAC and the MVSC, and taking on and performing with impressive results, at their sole expense, (without any monetary risk by the City), the operation and maintenance of the Park, and (in effect) repaying the loan, that the City has become stopped, in California law, from rescinding the trust, namely, the trust to transfer the Park to MVSC.

Prop. 218

Prop. 218 has two parts. One part does deal with property owners’ rights vis-à-vis taxation, as pointed out by Michael. The other part, in Art. XIID of Prop.218, deals, as per Sec. 2(e) with fees or charges upon a parcel or a person as “an incident of property ownership, including a user fee or charge for a property-related service” furnished by a local public entity such as City of Novato.

However, Sec. 2(g) of Art. XIID provides that “property ownership” shall be deemed to include “tenancies of real property where tenants are directly liable to pay” the fee or charge, (Hence this part of Prop. 218 is *not* limited only to land *owners*.)

In turn, Sec. 2(h) provides that a “property-related service” is a “public service having a direct relationship to property ownership” (i.e., a public service which has a direct relationship to tenants of real property who are directly liable to pay for the service, as per Sec. 2(g) of Art. XIID).

Thus a water company owned by a public entity, which furnishes water to the public including tenants of apartment who pay the water bill, is subject to Prop. 218. (See brochure attached.)

In the case of the Park, the City’s only authority to acquire and operate the Park, was to make low-moderate-income tenant spaces available to the public. In my view, the City is thereby providing a “public-related service” to “tenancies of real property” who are directly liable to pay, in the form of rents, for this public-related service, within the meaning of Prop. 218, so that Prop. 218 applies to the Park.

However, Sec. 6(b)(1) of Art. XIID (in Prop. 218) provides:

“(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property-related service[.]”

And Sec. 6(b)(5) provides:

“(5) No fee or charge can be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.”

Accordingly, if Prop. 218 applies to the City’s ownership and operation of the Park, then Prop. 218 prohibits the City from charging Park tenants more than it costs to operate the Park, and prohibits the City from diverting Park reserves to the City except for actual services performed by the City which are not governmental-related, at no more than the reasonable cost to do so.

¹ To create an enforceable trust in California, it is not necessary that the words “trust” or “in trust” be used, or that the putative trustee even understand, believe, or intend that a trust be created by the words used. I.e., *McGhee v. Bank of America*, 60 Cal.App.3d442 (‘1976) held:

“[N]o particular language is necessary to manifest intent to create a trust. [Citations]. . . . [A]n express trust may arise even though the parties in their own minds did not intend to create a trust. As in the case of the making of a contract, so in the case of a trust, an objective rather than a subjective test is applied. It is the manifestation of intention which controls and not the actual intention where

that differs from manifestation of intention.’ [Citations]. Where funds are . . . [received by] . . . a bank to be used for a specified purpose, rather than as a general deposit, the amount deposited ‘constitutes a fund which the bank is not authorized to use’ for its purposes. [Citations]; see also *Ennis-Brown Co. v. Richdale L. Co.* (1920) 47 Cal App. 508, 510-511 [190 P. 1064]; [acceptance by a broker of instructions to use funds received ‘to purchase Egyptian corn’ prevented the funds from becoming the property of the broker; and the funds could not be used for any other purpose; so that a trust was thereby created]. This question of fact concerning the intention of the parties to create a trust was recognized in our prior decision in *Abrams v. Crocker-Citizens Nat. Bank*, supra, 41 Cal. App. 3d at pages 59-60[.]”

Lynn spoke about trusts in California and mentioned Proposition 218 passed in 1979.

John Hansen commented about the \$250,000 paid by MVMCC -- that the City has not yet acknowledged MVMCC has any assets. Dave noted it isn’t on the balance sheet as an asset. Larry mentioned Lynn brought the topic up at a City Council meeting and Veronica disagreed with Lynn. Larry indicated caution in pushing forward.

Dave indicated a big concern is once the loan is paid off, the City is in no obligation to keep the Park and could sell it.

Bill Davis wondered how the title is being held. What would happen if the City Council decides they want to sell the Park off? This needs clarification. He indicated to proceed cautiously.

Another resident voiced concern about not having documentation that states the City won’t sell the Park.

Steve would like to look at the accountings to see if there was a mistake that needs correction. A resident mentioned the \$250,000 a year ago was labeled as “administrative fees.” The resident wants the security of a 99-year lease.

Dave indicated a committee should be set up to look further. Jay wants the Finance Committee to look further at the accountings and also talk with Lynn. Dave agreed.

4. The Novato General Plan 2035 guide (Jay Shelfer)

Jay mentioned the City has released the “Draft Novato General Plan 2035.” The City is holding meetings about the general plan. Jay wondered if someone should be sent to attend a meeting. Jay will place the topic on next month’s agenda for further discussion.

5. Review, clarify and document the “rules of the road” concerning all meetings, texts, phone calls, emails, etc., with any member of City Staff to the PAC Directors. Include this documentation in a packet with other pertinent documentation (e.g., By-Laws, Delegation and Management Agreements) for new PAC members (Dave King)

Dave indicated the need for resource information for new PAC Board members. He would like to make a motion to create a binder for holding the information. Jay to put on next month’s agenda. Dave will create a table of contents.

6. Review the PAC By-Laws (Article 4, Section 2,3,5,7; Article 5, Section 8b, Article 10) as it is possible actions of the PAC have not complied with various Articles/Sections of the By-Laws. Even though these may be continuation of actions of previous PAC Boards as well, they still need to be reviewed. These actions to amend By-Laws, to comply with previous followed policies are as follows:
(1) Holding the Annual Meeting without a quorum of residents/members as specified in the By-Laws,
(2) That Members did not get to vote in the election by ballot with each Member (of the corporation) getting one vote as specified in the By-Laws, OR,
(2) In white ballot elections (non-contested election of the directors of PAC), notice that Members of PAC/residents of MVMCC do not get to vote in what is effectively a non-contested election by ballot (that would allow for write-in candidates) as each member of the corporation in the By-Laws are entitled to vote (by ballot) in the election of directors (Jay Shelfer)

The topic relates to how elections should be run. Should they be run via the MVMCC election handbook? Larry mentioned the election handbook has been written and no complaints have been received about it. Dave indicated elections need to be via ballot, not by a white box.

Dave and other Board members discussed the topic further, including quorum requirements for the Board vs. member meetings and if the By-Laws need to be changed. Jay will put the topic on next month’s agenda.

7. Determination of next PAC meeting date

The next meeting will be: **Wednesday, October 5, 2016 at 7 pm.**

G. REPORTS FROM OTHER BOARDS

1. HOL

No report.

2. MAR VAL

No report.

H. ADJOURNMENT

The meeting adjourned at 9:09 pm.