

MINUTE EXCERPT
CITY COUNCIL – REGULAR MEETING
THURSDAY, JANUARY 22, 2009 - 7:00 P.M.
CALISTOGA COMMUNITY CENTER

10. Consideration of a Resolution approving an amendment to the Professional Services Agreement with Calistoga Affordable Housing Inc.

Mayor Gingles stated that two letters were received regarding this item; (1) Citizens for Responsible Development (*Communication B*), and; (2) Calistoga Affordable Housing (*Communication C*). In addition he referenced correspondence that he received from James Hunter regarding this item.

City Manager McCann stated that this item is to correct an oversight in the 2007 Professional Services Agreement between the City and Calistoga Affordable Housing (CAH). He stated that there is a section in the agreement which states that CAH cannot own nor have an interest in properties in the City during the terms of this agreement, and in fact they do. He stated that under the agreement CAH is to provide a variety of affordable housing services; some are general services and others are specific services related to the City's Housing Element update. He complimented CAH on services provided to the City and he stated that they concur with the need to correct this matter. He suggested the following options:

- (1) Terminate the agreement; or
- (2) Modify the agreement to permit CAH to carry on with their assistance but freely acknowledge that they have ownership interests in land within Calistoga; or
- (3) Amend the scope of services in the agreement to delete those services which might be more prone to conflicts of interest; or
- (4) Determine that the nature of the work in question pursuant to the scope of services in the agreement does not present the potential or appearance for a conflict of interest given the ownership interests present.

Mayor Gingles and **Vice Mayor Dunsford** both recommended Options (2) and (3) listed and stated that CAH has provided high quality projects for the City's affordable housing needs.

Councilmember Slusser stated that CAH has provided a valuable service and she recommended staff to narrow the scope of service in the agreement.

Councilmember Kraus acknowledged CAH's good service and stated that there is clearly a conflict in the agreement. He suggested the City should terminate the current contract and start over with a new agreement and suitable scope of service to eliminate the existing conflict of interest and to avoid any future conflicts.

Jim Barnes, 1710 Michael Way, referenced *Communication B* and stated that there is a clear conflict of interest in continuing this agreement and urged its termination and the return of all funds paid to CAH under its term.

Bob Fiddamon, Calistoga Affordable Housing, stated once the scope of work in the CAH agreement is modified there would not be a conflict of interest. He stated that any appearance of conflicts of interest should be eliminated in that CAH is a non-profit organization that has assisted the City on various projects over the past five years.

Council discussion ensued regarding this matter

Assistant City Attorney Curry stated there is a provision in the CAH agreement that is being violated and must be addressed. In addition the Council may choose to amend the scope of services to address/avoid potential conflicts of interest.

Councilmember Slusser stated the City must recognize that the public perception of CAH and their role in assisting the City is very different now in that CAH is an active developer. She suggested that there is not a need to terminate the contract but there is a need to amend the scope of services to remove those tasks that may cause potential conflicts of interest; she prefers Option (3).

Vice Mayor Dunsford agreed and suggested that the staff Option (3) be pursued; he added that CAH has been very helpful and a significant benefit to the Community.

Mayor Gingles asked the Assistant City Attorney Curry how to proceed to address the present violation of the terms of the contract.

Assistant City Attorney Curry suggested that it might be best to suspend the operation of the CAH contract and direct staff to return with proposed amendments to address the concerns.

Councilmember Garcia stated the City's affordable housing projects are open for the public viewing and CAH's interest is in favor of the City and is in favor of modifying the scope of services.

Mayor Gingles suggested that CAH services provided to the City should be suspended until the amended agreement is executed.

Jim Barnes, 1710 Michael Way, stated that the agreement should be cancelled and rewritten; he added that the Citizens for Responsible Development are in favor of future affordable housing projects in the City.

There was Council consensus to suspend the CAH agreement; Council directed staff to re-write the agreement to eliminate any perception of conflict of interest, and bring back to Council for approval.