

MARIN COUNTY COUNCIL OF MAYORS AND COUNCILMEMBERS

**DRAFT**  
MINUTES

Wednesday, November 16, 2016  
Hosted by the Town of Corte Madera  
The Corte Madera Community Center  
498 Tamalpais Drive, Corte Madera, CA

**Members Present**

Belvedere: Jim Campbell, Claire McCauliffe  
Corte Madera: Jim Andrews, Sloan Bailey, Carla Condon  
Fairfax: Barbara Coler, John Reed, David Weinsoff  
Larkspur: None  
Mill Valley: John McCauley, Sashi McEntee, Stephanie Moulton-Peters, Jim Wickham  
Novato: Denise Athas, Pam Drew, Pat Eklund  
Ross: Elizabeth Brekhus, P. Beach Kuhl, Elizabeth Robbins, R. Rupert Russell  
San Anselmo: Matt Brown, Kay Coleman, Ford Greene, Tom McInerney  
San Rafael: Kate Colin, Maribeth Bushey, Andrew McCullough, Gary Phillips  
Sausalito: Ray Withy  
Tiburon: None

**Ex Officio:** Belvedere City Manager Mary Neilan; Fairfax Town Manager Garret Toy; Mill Valley City Manager Jim McCann; Novato City Manager Reagan Candelario; San Anselmo Town Manager Debra Stutsman; San Rafael City Manager Jim Schutz and Corte Madera Town Clerk/MCCMC Secretary, Rebecca Vaughn.

**Guests were:** Honorable Judge Alex Kozinski; Clerk to Judge Connor Clark, Damon Connolly – Marin County Board of Supervisors District 1, David Yoshihara – Tam Union Superintendent, Keene Simonds – LAFCO Executive Director, Monty Stephens – General Manager, Town Center.

**Call to Order**

President Bailey called the meeting to order at 6:55 p.m.

**Welcome and Introduction of Guests**

President Bailey welcomed everyone to the Marin County Council of Mayors and Councilmembers for November 16, 2016, and introduced Corte Madera Town Council members present: James Andrews and Carla Condon and Town Staff: Town Manager Todd Cusimano, Director of Public Works David Bracken, Director of Administrative Services/Town Treasurer George Warman, Director of Planning and Building Adam Wolff, Director of Recreation and Leisure Services Mario Fiorentini, Interim Fire Chief Scott Shurtz, Interim Police Chief Michael Norton, Police Captain Jim Shirk, Town Attorney Randy Riddle, Town Clerk Rebecca Vaughn.

**Public Comment**

There was no public comment.

**MCCMC Committee Reports**

**ABAG.** Mayor Eklund of Novato referenced the written report distributed with the packet for the full report. She stated that she sent an email out to ABAG delegates and alternates inviting them to the December 12 briefing to hear about MTC's model. She also discussed her concern that Plan Bay Area is only looking at putting 10% of funding toward expansion of freeways, highways and improvements to our roadway system. There will be some discussion of this at the upcoming

MTC/ABAG Board Meeting. The consolidation continues, and she highlighted that the consolidation will end up costing MTC more money than if the two agencies stayed separate. It is projected to cost \$2.6 million more each year primarily because MTC staff are paid higher than ABAG staff, and also the pensions are higher at MTC. MTC is projecting a \$15 million deficit by 2022 with the consolidation, which will require a cut in staffing. This will be discussed at the general meeting that will take place on January 30, 2017. Please read her report for additional details.

**LAFCO:** Councilmember Condon, Corte Madera, acknowledged Executive Director Keene Simonds, thanks Gary Phillips for his service to LAFCO, and welcomed new committee member Sashi McEntee, Mill Valley. She explained that LAFCO oversees boundaries of special districts, safety services, sanitary districts, etc., and that LAFCO has been doing a stellar job of running more efficiently with a small staff. They got together and carried legislation that has been approved, whereby all JPA's will have to report to their local LAFCO, and this will help keep agencies accountable. This database will be a good go-to reference. LAFCO also did an incredible water study on water supply throughout Marin County, which won the top award at the statewide LAFCO convention. Go to [marinlafco.org](http://marinlafco.org) to get more information on any of their projects.

**Homeless Committee.** Vice Mayor Colin, San Rafael, reported that the first meeting will be Monday, Nov 28<sup>th</sup> from 7-8:30pm at San Rafael City Hall. Representatives will be receiving reminder information shortly. If you are not a representative but are interested in attending, you are more than welcome.

**Speaker:** Honorable Judge Alex Kozinski, United States Court of Appeals for the Ninth Circuit  
**Program:** Challenges Facing Our Court Systems: A View From the Bench

President Bailey introduced the Guest Speaker, Judge Alex Kozinski. Judge Kozinski was born in Romania, speaks German, French, Romanian, Spanish and English. He attended UCLA undergrad and Law School, where he was first in his class. He had a superb legal training, having clerked for Chief Justice of the Supreme Court Warren Berger, and later, Justice Anthony Kennedy. In addition to time in private practice, he also served in the Office of Counsel to President Ronald Reagan, and he was Chief Judge of the U.S. Claims Court. In 1985, he was appointed to the 9<sup>th</sup> Circuit Court of Appeals, where, at the age of 35, he was the youngest judge appointed in its history. He served as Chief Judge of the 9<sup>th</sup> Circuit from 2007-2014. His name has been repeatedly mentioned as a potential nominee for the U.S. Supreme Court.

Judge Kozinski is known as a theater judge, meaning that his clerks are sought after by sitting Supreme Court Justices. This demonstrates that he knows how to instill values of hard work and discipline. Secondly, his written opinions are acknowledged as brilliant legal work, and models of clarity and conciseness. President Bailey stated that he believes our own local ordinances and resolutions could be improved to be more easily understood.

President Bailey then led a guided conversation with Judge Kozinski.

1) Why did you first get involved in public service?

Judge Kozinski stated that when he graduated from law school, he was going to be a bankruptcy lawyer. Clerking wasn't as big of a deal as it is now. At the end of his third year, a classmate told him a new judge was appointed, Tony Kennedy, said that he thought that he was going to be someone someday, and that he should consider clerking for him. So he took that suggestion, applied, and was selected to clerk at the Supreme Court. He explained that he likes the process of judging and being an advocate. He knew that if he ever got the chance to be a judge, he would love to try it. When Ronald Reagan was elected, Judge Kozinski was in the right place at the right time to be appointed. He was only 32 years old when he was appointed for the first time.

He was actually not the youngest ever appointed, just the youngest judge appointed in the 20<sup>th</sup> century. Taft was younger, but that was in the 1890's.

2) In Marin County, we currently have a hotly contested election for Superior Court Judge where we had a large group of local lawyers all running for this position. What do you think about the relative difference in caliber of appointed judges versus elected judges. Do you think there is a place for elected judges or should they all be appointed?

Judge Kozinski stated that he thought appointed is good. It is difficult to be in a position where every four years you have to worry about raising money to run for re-election. In Los Angeles, for example, the worst thing you can have happen to you is to have a prosecutor running against you. They tend to field candidates against judges that they disapprove of.

President Bailey asked Judge Kozinski to elaborate on a statement that he made at one of his movie nights, "There's a value to a judge having a sense of the community about him or her, and not to be so isolated that there is an artificial siloing of the judges ability to be informed about the world around him or her". So how do you reconcile always selecting and appointing a judge with the consequence that sometimes they might be more removed from the world about them than if they had to go through the rough and tumble elections process that we have all had to go through? Judge Kozinski responded that you must work at being accessible. And President Bailey stated that he thought that was something that the Judge had been very successful at doing, especially with the movie nights that he regularly hosts.

Judge Kozinski started hosting movie nights 25 years ago. Now we get 200-300 people at a time, in San Francisco and in Pasadena. He show movies and then has special guests talk about the movie. The last movie he screened, A Town Without Pity, about a court martial in post war Germany, the defense lawyer was Kirk Douglas. Interestingly, the director was Gottfried Reinhardt, the father of his colleague, Stephen Reinhardt. The principal writer was Sylvia Reinhardt, his mother. The group talked about the movie, what it meant, how rape trials have changed over the years.

President Bailey explained that the reason why he appreciates these gatherings is because, in a cordial way, it brings to a broader consciousness some deeper issues. Serious issues are approached through the shared experience of watching a movie, and maybe our communities can benefit from an approach like this.

Judge Kozinski explained that the 9<sup>th</sup> Circuit territory extends from Montana to Guam, Alaska to Arizona, and includes 60 million plus people. Judges are appointed from every one of the nine states. They are appointed by the sitting President when the vacancy occurs. The group has very sharp disagreements on the law, but in cases where law is unclear and judicial philosophy plays a factor, we have very sharp disagreements but the disagreements end on the page. In the end, we wind up being quite cordial with each other.

3) One of the things that you have done very well over many years is train people. Can you give advice to us about what we can be doing in our municipalities to instill loyalty and hard work ethic that you have done with your own staff?

Judge Kozinski stated that he has a staff of 5 to 7 people. You have to lead by example, you can't ask people to work hard if you don't work hard yourself. He believes he should be able to do anything his staff does, so that he has an understanding and appreciation for what each job is and what the challenges are. He explained that he gets new law clerks every year and that you have to understand the shortcomings they have going straight from school into the workplace. Law school is great, but there are things you can only learn on the job.

The one thing that he teaches his law clerks when they begin to draft opinions is to put themselves in the shoes of the person who will be looking at your work. And if you're the boss, you have got to put yourself in the position of those who will be doing your work so that you can be clear in your expectations. This also allows you to anticipate the ways in which someone could misunderstand you or not carry out what you're saying. Sometimes we talk or communicate and we think that we are being clear, but it's only clear because we're talking to ourselves or someone who has the same assumptions that we do. So we sometimes give directions, or make arguments, that don't address the point of view of the people we are speaking to. Looking at the world from the perspective of the other person is very important.

All of us have a touch of seeing the world just from our own perspective and forgetting other people, other experiences, other points of view. This is why he appreciates diversity on the bench. You can't do your job as a judge if you don't have compassion and understand the point of view of others.

4) All of us in this room have to hire municipal attorneys to represent us to the courts. From a judge's perspective, what should we look for in effective advocates?

Judge Kozinski stated that he thought President Bailey asked the wrong question. We have gotten to the point where we think of lawyers as advocates. There was an earlier time where, as a lawyer, your first job was to be a counselor, because they were advisors. Justice Brandeis was an advisor; people would ask his view of a problem. You need people who are going to help you solve a problem, not just fight a fight. Not being able to solve the problem is what is getting in the way of you being able to do what is best for your community.

Getting someone who is going to fight a battle harder might not be the best solution. Sometimes you want someone who has a good track record of settling cases, resolving disputes and keeping their client out of court. Thinking of lawyers as counselors instead of advocates is a good idea. You should think of litigation as a problem that needs to be solved.

5) We, as bodies, always have to write or amend ordinances. How can we improve the laws that we pass or amend on a regular basis?

Judge Kozinski recommended getting professionals to draft the laws. The money you spend getting a profession to help draft or edit will pay for itself in the long run by helping your laws remain free of loopholes or potential lawsuits.

People want shortcuts, to get something passed quickly. And when problems arise, you may not even be in office any more. That's why it is important to have a professional look at your draft ordinances.

## QUESTIONS FROM THE AUDIENCE

Ford Greene, San Anselmo:

When you said the reason you became a judge was for power, what are some of the things that inform the way that you exercise power, some of the values that go into how you assess a particular situation?

Response: Most of the time, we have precedence, we have statutes that we apply. In 75-80% of cases, we always agree. There are a small number of cases where we disagree, either because the precedence isn't clear, the language is ambiguous or there is a gap in the law. When there's no firmer guidance, you fall back on your own experiences, your perception of what is just. There is no formula for that. That is why it's good for Senate to look at life experiences and record of judges before appointing.

Sashi McEntee, Mill Valley:

She stated that she appreciated when Justice Scalia passed and Justice Ginsburg commented that she could bounce ideas off of him and that his own perspective enriched hers and made her arguments stronger. You touched on having that kind of perspective of people that you disagree with. How can we cultivate more of an atmosphere of respect and civility?

Response: A lot of times it has to do with how compassionate, empathetic people are. It's a constellation of qualities, and he does not think that what his court does is any different from what city councils do. It's a same kind of political process, trying to achieve the goals of our organization in a way that's expedient, fair and efficient, and that we don't cause such a rift between ourselves that we can no longer work together. If you keep grudges, you're only going to hurt yourself. It poisons the entire situation. You win some, you lose some, and then you move on, keeping in mind the importance of long term relationships.

Pam Drew, Novato:

The practice of plea bargaining tends to cut off portion of population which does not have money to spend on litigation, jury trials and representation. This is undermining our judiciary because it cuts you off from the common people. What is your opinion of this?

Response: Alaska did away with plea bargaining many years ago and it has seemed to work out okay for them. In our current system, he doesn't think we could handle not having plea bargains. If every case went to trial, it would be a costly enterprise and really bog down our system. In the United States, we have 2.2 million prisoners, which is more than any other country on Earth. In the long run, we're better off with plea bargaining. All we would get is a lot more time in court and more people doing prison time.

#### **BUSINESS MEETING (continued) – 8:25 p.m.**

President Bailey continued to the Business Meeting portion of the meeting. He stated that representatives from the City of Larkspur and the Town of Tiburon could not attend this meeting due to the fact that the date selected coincided with their regularly scheduled Council meetings. As a result, a conflict has developed about whether voting on committee appointments should take place without this representation. A letter was received from Tiburon Mayor Erin Tollini, requesting consideration for the Town/Cities whose Council members could not be present due to the MCCMC meeting's conflict with their jurisdictions' regularly scheduled Council meetings. He stated that he conducted research and spoke with representatives from each of the affected jurisdictions and came up with the following compromise: for any committee appointments where there is more than one person nominated for consideration, that the vote be postponed until the January 25<sup>th</sup> meeting so that all members have the opportunity to cast a vote. Regarding all positions for which there is only one candidate, it does not make sense to delay the vote. Regarding the agenda item requesting a submission of a list of candidates to forward to the Board of Supervisors for appointment to the Metropolitan Transportation Commission, if no more than three candidates are nominated this evening, it would make sense to move forward with the recommendation to the Board of Supervisors. It makes sense to get that appointment made by the Board of Supervisors as quickly as possible our chosen representative would then have slightly more seniority on the Commission than any members that follow after from competitive jurisdictions.

5.a. MCCMC Representatives to League of California Cities, North Bay Division Executive Board – Three positions available.

2<sup>nd</sup> Representative: There was a motion and second (Athas/Coleman) to appoint Ray Withy, Sausalito to serve as the 2<sup>nd</sup> Representative to the League of California Cities, North Bay Division Executive Board. The motion was approved by acclamation.

Representative: There was a motion and second (Athas/Withy) to nominate Kay Coleman. No other nominations were received. There was a motion and second (Athas/Moulton-Peters) to appoint Kay Coleman, , to serve as the Representative to the League of California Cities, North Bay Division Executive Board. The motion was approved by acclamation.

Alternate Representative: There was a motion and second (Athas/Moulton-Peters) to nominate Sashi McEntee, Mill Valley. No other nominations were made. There was a motion and second (Athas/Colin) to appoint Sashi McEntee, Mill Valley, to serve as the Alternate Representative to the League of California Cities, North Bay Division Executive Board. The motion was approved by acclamation.

5.b. Local Agency Formation Commission (LAFCO) Alternate Representative

A single Letter of Interest was received from Matt Brown, San Anselmo. No nominations were received from the floor. There was a motion and second (Eklund/Condon) to appoint Matt Brown, San Anselmo, to serve as the Alternate Representative to LAFCO. The motion was approved by acclamation.

5.c. Marin Major Crimes Task Force Oversight Committee (Alternate)

Letters of Interest were received from Barbara Coler, Fairfax, and Catherine Way, Larkspur. No additional nominations were received from the floor. There was a motion and a second (Coler/Eklund) to postpone the vote until January 25, 2017 MCCMC meeting when representatives from the Towns of Larkspur and Tiburon can be present to participate in the vote. The motion was approved by acclamation.

5.d. Cal-ID Remote Access Network

A single Letter of Interest was received from Ann Morrison, Larkspur. No nominations were received from the floor. There was a motion and second (Eklund/McCullough) to appoint Ann Morrison, Larkspur, to serve as the representative to the Cal-ID Remote Access Network. The motion was approved by acclamation.

5.e. Marin Transit Board of Directors - Two seats available, Director and Alternate

Director: A single Letter of Interest was received from Kate Colin, San Rafael. Matt Brown, San Anselmo, nominated Ford Green, San Anselmo, from the floor. No additional nominations were received from the floor. There was a motion and a second (Moulton-Peters/Eklund) to postpone the vote until January 25, 2017 MCCMC meeting when representatives from the Towns of Larkspur and Tiburon can be present to participate in the vote. The motion was approved by acclamation.

Alternate: A single Letter of Interest was received from Eric Lucan, Novato. Matt Brown, San Anselmo, nominated Ford Green, San Anselmo, from the floor. No additional nominations were

received from the floor. There was a motion and a second (Andrews/Eklund) to postpone the vote until January 25, 2017 MCCMC meeting when representatives from the Towns of Larkspur and Tiburon can be present to participate in the vote. The motion was approved by acclamation.

5.f. Nomination of up to Three Candidates to the Board of Supervisors for Marin Commissioner to the Metropolitan Transportation Commission

No nominations were received from the floor.

There was a motion and a second (Condon/Athas) to provide the names of three candidates, Damon Connolly, Pat Eklund and Kevin Haroff, to the Marin County Board of Supervisors for determination of appointment. The motion was approved by acclamation.

6. Announcement of Upcoming Vacancy and Call for Letters of Interest

6.a. Marin County School Board Association

President Bailey announced the vacancy and requested that Letters of Interest be sent to him in advance of the January 25, 2017 MCCMC meeting.

7. Review and Discussion of Draft of January 25, 2017 MCCMC Meeting Hosted by the Town of Fairfax. Secretary Vaughn stated that she would update this agenda to include the votes on the appointments that were postponed.

8. Approval of Minutes of October 26, 2016 MCCMC Meeting hosted by the Town of Tiburon

There was a motion and a second (Weinsoff/Moulton-Peters) to approve the minutes of the the October 26, 2016 meeting. The motion was approved by acclamation.

### **Adjournment**

President Bailey thanked everyone for attending and adjourned the meeting at 8:45p.m. to the next regular meeting scheduled for January 25, 2017 hosted by the Town of Fairfax.