

Capitola advised against civil suits in troubled bond deal

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CAPITOLA — It has been 10 years since the Capitola Redevelopment Agency issued \$10.2 million in investment bonds and subsequently mishandled them. This week an independent law firm hired by the city decided that no one, from the former city manager to the former mayor, should stand trial for the misdealings.

Two reasons motivated Ronald Malone of Shartsis, Friese and Ginsburg in San Francisco to recommend the city file no civil lawsuits against the people that were in charge of the city and the agency when millions of dollars were improperly spent.

First, if the city's refinancing plan continues as it should and all

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of the bondholder documents are reissued to reflect the properties that were actually purchased, the city will not have suffered any "compensable monetary damages."

While the city purchased properties and used funds that had strict and specific purposes under the bond agreement, the money, according to Malone, was not embezzled or misappropriated. It was simply used to purchase things not

provided for in bondholder documents.

Second, Malone said, the cost of a lawsuit against any past or present city employee or elected official would undoubtedly cost more than could be recovered if the city won. The city would not only have to fund its own case but pay for the defense of its former or present staff.

"In our judgment it would be a

waste of city funds to sue anyone at this point," Malone said in a letter to Mayor Margaret Fabrizio.

That decision might be prudent in terms of keeping the city focused on the current refinance agenda, but it angered at least one resident.

"Is nobody going to take any responsibility at all?" asked Barry Seidman, owner of H. Diggity's in Capitola at Thursday's council meeting. Seidman asked if there would be any performance review of the current elected officials and the city staff who may not have engaged in criminal activity but at least made a series of uninformed decisions.

Councilwoman Stephanie Harlan, who was mayor when many of

the financial decisions were made, said since that time checks and balances have been established to prevent the situation from happening again.

In the counsel and staff's defense, Malone explained that the details of the bond issue were extremely complicated. But he said the council and staff should have asked more questions.

"It was very very sloppy and could get them in big trouble," Malone said. "The fact is you are supposed to jump through certain hoops. They just didn't."

The county district attorney already has decided that there are no grounds for criminal prosecution of the officials connected with the bond deal.