

CAPITOLA
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Snag in plan to buy Pacific Cove Mobile Home Park

It seemed a fairly straight-forward issue last Thursday night: The Capitola City Council was scheduled to approve the final text of the option agreement for the purchase of the Pacific Cove Mobile Home Park.

When the special council meeting was over, the agreement had been approved, but there was a real question of whether the park will ever be purchased by the city and, if it is, under what conditions.

The city has an option to purchase the park for \$1.5 million, with a \$250,000 down payment. The option will cost the city \$5,000 for each of two three-month periods, with the option price deducted from the purchase price if the sale goes through.

The city will also pay rent during the option period on the six vacant mobile home park spaces now vacant and on any others that become vacant during the option period.

Pacific Cove Associates would accept a \$550,000 second deed of trust from the city, at 10 percent annual interest, with monthly payments of \$8,250 a month. The payments were figured on a seven year basis, but the note would be due and payable in five years — meaning the city would have to come up with a substantial balloon payment in five years.

The problem is one paragraph of the eight-page agreement that requires the park's sellers, Pacific Cove Associates, to provide the city with a written assurance that the city can assume a

\$700,000, 10 percent a year note now held by the park's former owner, Vern Barr.

Part of the financing package worked out with Pacific Cove Associates calls for the city to take over payments on that note. City officials said they had no problem with the arrangement and it would allow substantial savings in capital gains taxes for the owners.

City Manager Steve Burrell and City Attorney Richard Manning didn't think there would be any problem taking over the note — until Barr, who was in the audience, suggested otherwise.

Barr told the council that he'd been advised by his attorney to enforce the due-on-sale clause in the note. Manning said he's not sure if the note falls within the purview of the federal Garn bill

that the agreement needed thorough study. It also would have meant that the winners of Tuesday's city council election would have been voting on the issue.

The other councilmen rejected Beltram's arguments, saying they had had the opportunity to read the option agreement. And after some discussion, Beltram conceded that he had also had time to read the agreement during the council meeting.

The council seemed ready to approve the agreement until Barr's announcement that he would enforce the due-on-sale clause. Barr, sitting 10 feet away from the councilmembers, chided them for not contacting him a long time ago about the terms of the note.

That prompted a majority of the council to defeat, on a 1-4 vote, a motion by Councilman Robert Bucher and seconded by Jerry Clarke, to approve the option agreement. Clarke was the only one supporter.

Then Councilman Michael Routh moved to postpone the option's approval for a week while city officials sat down with Barr and discussed the issue. That motion passed.

But Barr, when reminded by Manning of the niceties of the negotiating process where it wasn't quite proper for a buyer to bypass the seller and deal directly with a mortgage holder, agreed that he really couldn't talk directly with the city and it would be up to Knopf, who is one of the Pacific

that nullified due-on-sale clauses during a certain period of time.

If so, then the city can take over payments on the note regardless of Barr's wishes.

If not, then Pacific Cove will have to pay off Barr and deliver clear title to the city before the sale can be completed.

The city council at first decided to not approve the option agreement at last Thursday's meeting, preferring to wait until this week to see if Kermit Knopf of Pacific Cove Associates could resolve the issue.

That decision came in a round-about, tortuous fashion: Councilman Dennis Beltram argued for a week's postponement on the option, contending

Cove Associate general partners, to contact Barr.

Finally, the council went back to its original idea and decided that the option agreement gives the city sufficient protections if Barr's due-on-sale clause is still valid.

That motion was approved on a 4-1 vote with Councilman Dennis Beltram voting against the motion.

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