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# The Carmel Pine Cone

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## Still no charges against McInchak

By MARY SCHLEY

Published: July 12, 2013

MORE THAN a month after Carmel police spent three hours searching city IT manager Steve McInchak's Carmel Valley home — seizing computers, an iPhone and thumb drives — the city has not asked the Monterey County District Attorney's Office to prosecute him.

McInchak, who may have illegally accessed computer files of city employees, council members and management, according to the warrant filed in Monterey County Superior Court June 13, remains on paid administrative leave, pending the outcome of the investigation.

Monterey County Chief Assistant District Attorney Terry Spitz said he hasn't been asked to file charges against McInchak, but he knows Carmel P.D. has employed a computer forensics expert to examine the equipment seized from his home.

"That's extremely time consuming," he said. "It can take days, if not longer."

"All I can offer at the moment is that we are diligently working on the case and want to make sure a thorough investigation is conducted," said Carmel P.D. detective Rachelle Lightfoot. "I wish I could give you a tighter timeline, but I don't even know myself. The DA's office has been given the same information. Rest assured, it is a top priority for our department."

According to the warrant prepared by Lightfoot and signed by Monterey County Superior Court Judge Robert O'Farrell before it was served the evening of June 5, city officials were suspicious of McInchak earlier this year and hired a computer investigator, Mark Alcock, to track his activities. City administrator Jason Stilwell signed a \$25,000 contract with Alcock Feb. 25, and Alcock began investigating McInchak while pretending to be auditing the city's computer systems, according to the warrant.

The Pine Cone asked for a copy of Alcock's contract, which is supposed to be a public document under the California Public Records Act. City officials responded by providing a copy with almost all of the meaningful portions deleted. It shows he is being paid \$200 per hour, plus expenses. Otherwise, the part of the six-page agreement provided to The Pine Cone contains only generic information common to most

contracts.

Even Alcock's work address was removed. Administrative services director Susan Paul said it "appears to be the home office contact for the contractor." She cited his personal safety as the reason, although no provision for keeping a government consultant's address secret exists in state law.

Also deleted was any information about what Alcock's qualifications are, what he is being paid to do, who owns the product of his work, and when it is supposed to be finished.

His first two invoices, dated April 22 and May 22, were similarly redacted. The invoices show that he billed taxpayers for his services in the amount of \$10,000 for April and \$8,800 for May, but information about what he did was withheld. He was also reimbursed \$465 for airfare, \$96 for hotel, \$137 for car rental, \$60 for airport parking and \$200 for two hard drives in April, and \$196 for hotel, \$120 for two days of food, \$140 for rental car, \$60 for airport parking, and \$1,000 for two airline tickets in May. The city refused to say where Alcock traveled or why.

His April invoice totaled \$10,958, and his May invoice totaled \$10,316. Stilwell said both have been paid, though no checks for those amounts, or any checks written to Alcock, appeared in the check registers for April 1 to June 15 provided to the city council for approval in its monthly meeting packets.

### **Some records are exempt**

California law and a series of unequivocal court decisions require city officials to disclose all official documents to the public, with a few specific exemptions, but city officials would not explain why so much information about Alcock is being withheld.

According to the California Public Records Act, "Personnel, medical and similar files are exempt only if disclosure would reveal intimate, private details." Employment contracts are not exempt.

Information can also be withheld if it disclosing it would interfere with a police investigation, but Stilwell refused to say how describing Alcock's qualifications or revealing where he traveled could compromise the investigation into McInchak's alleged misdeeds.

"Mr. Alcock's contract was approved in accordance with the city's municipal code, and his invoices have been paid to date," Stilwell said. "As you are aware, Mr. Alcock's services are in connection with an ongoing investigation. Therefore, while we have done our best to be forthcoming in responding to your questions, we cannot comment further at this time."

Pine Cone publisher Paul Miller said the secrecy surrounding the investigation of McInchak is "hard to fathom," and he called on city officials to be more forthcoming.

"Since Stilwell and his group came on board, a lot has changed, and it's not good," he said.



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## Expert to get \$103K for McInchak, audit of city computers

By MARY SCHLEY

Published: September 13, 2013

THE FORENSIC computer expert whose name became public in a search warrant served at IT manager Joe McInchak's Carmel Valley home in July will be paid \$103,500 for helping the City of Carmel with its computer network and the ongoing criminal investigation, the city council unanimously decided Tuesday. Council members approved the contracts without seeing them.

According to amendments to two existing contracts with computer consultant Mark Alcock, he will receive \$43,500 for assessing the city's computer network and \$60,000 for the criminal investigation.

The proposal by city administrator Jason Stilwell to increase the amounts of two existing contracts — when previously only a single \$25,000 contract with Alcock had been revealed — further muddies the issues surrounding the investigation of McInchak, whom city officials accuse of accessing city computer files while working as IT manager, a position he has held for 17 years. McInchak and his assistant, Rose Franzen, were placed on administrative leave months ago, and a warrant was served at his home June 5, when police seized computers, thumb drives and other electronics. They both continue to receive their full salaries.

At that time, The Pine Cone requested a copy of the contract with Alcock and received a heavily redacted agreement dated Feb. 25 that contained nothing more than generic language present in all city contracts. Even the “work product” he was to provide was redacted by public officials and attorneys.

But Stilwell said this week that contract was for Alcock's “risk assessment” of the city's system, not for his investigation into McInchak's alleged wrongdoing. For that forensic work, Stilwell said, a second \$25,000 contract was drawn.

“We originally brought Alcock on to survey our system, and we needed someone expert on technology to be able to do a risk assessment of our computer system and the network and applications, hardware, software and user support,” he said. “That was originally why he came in.”

According to Stilwell, a second contract was drafted later, after Alcock uncovered McInchak's alleged nefarious computer activity. "We also needed his forensic services to support the investigation," he said. "So we hired him to do that, too," because the district attorney's office did not have anyone available to do the work.

But in the search warrant served at McInchak's home, Carmel Police detective Rachelle Lightfoot said Alcock told her he was hired by the city on Feb. 27 "to do an examination of McInchak's work computer," and that his investigation began on March 6, when he went to McInchak's office to examine his desktop computer while administrative services director Susan Paul and Carmel Police Chief Mike Calhoun stood by.

"Alcock told me that he had been working with McInchak under the ruse that he was conducting an audit of the city's computer system and servers," she wrote in the warrant, which was served June 5 and returned to the court, with the list of confiscated items, June 13.

More than three months later, McInchak remains on paid leave, with no charges filed against him, and the district attorney's office has yet to receive any documents from Carmel P.D. pertaining to the investigation, according to Monterey County Chief Assistant District Attorney Terry Spitz.

"It's ongoing," Stilwell confirmed. "The one thing is there are a lot of files to go through — thousands of computer files to go through."

### Spending upped

At the Sept. 10 council meeting, the council OK'd increasing Alcock's two contracts — which were originally approved outside the public eye — to \$43,000 and \$63,000, respectively. He has already received three payments totaling \$43,984, though they did not appear in the city's check register until months later.

Stilwell could offer no explanation for their delay, nor could he explain why only one contract was provided to The Pine Cone when two had been signed.

While the contracts were not included in the council's packet for the Sept. 10 meeting, the first amendment council members approved was to "continue support services and IT consulting to continue the ongoing examination of the city's IT infrastructure and related technology needs." Alcock will be paid up to \$43,500 for "information technology consulting services," including "infrastructure, network security, documentation and meeting support; assistance as needed with the implementation of the strategic technology plan; and additional IT consulting as needed."

The second amendment refers to a contract for "ongoing IT professional examiner services" and simply notes Alcock will be paid up to \$60,000 for those services.

No members of the council or the public requested further information on the contracts or questioned the spending.

The Pine Cone has requested copies of all agreements with Alcock.



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## Editorial: The secret resume

Published: September 20, 2013

WHEN YOU apply for a job, you usually submit a summary of your education and experience that you believe make you qualified. Do you expect this document, which is called a "resume," to be secret from the people you hope to be working for?

The answer is so obvious that the question hardly bears asking. Yet, we must ask it, because Carmel's city manager, the Sphinx-like Jason Stilwell, and one of his personal army of secrecy-addicted lawyers, decided that the resume of Carmel's new planning director, Rob Mullane, could not be released to Pine Cone reporter Mary Schley, who asked for it several weeks ago to help her prepare a thorough profile of Mullane for the people of the city to read.

Mullane himself was very cooperative, and the profile was printed Aug. 30. But Schley still wanted the resume itself, to help her understand why the city decided to hire him, and also to check out the resume's truthfulness.

Why did she want do that?

Because planning director is one of Carmel's most important, and most public, positions. Indeed, it would be no exaggeration to say that the town's future hangs on the planning director's expertise, intellect and personality. Will he drive permit applicants crazy by nitpicking their plans for remodels and new construction, second-guessing their use permits and signage, and enforcing CEQA with the zealotry of diehard member of the Sierra Club? Or will he let the town become another Orange County by opening the door to well heeled property owners and politically connected developers? Will he see his job as helping applicants navigate the permit process, or making it harder for them? Like everybody on the seven continents, Mullane has surely heard of Clint Eastwood and the Hog's Breath, but does he have a clue about the importance of names such as Junipero Serra and Frank Devendorf? Will he be an adept and accessible spokesman for the town's planning commission, or someone who hides from questions and criticisms? Etc., etc.

These are not idle questions, but go to the very heart of Carmel's past, present and future, and here at The Pine Cone we take them quite seriously. And nobody is better at addressing them than our city hall reporter, Mary Schley, who not only regularly writes comprehensive, insightful and objective articles

about Carmel politics, she is also the source of 90 percent of the news from Carmel that's absorbed by 90 percent of the people who live in, care about or are just curious about the town and its goings on. She is also a vast source of knowledge about Carmel's recent history and current controversies, because she's attended, or viewed online, almost all of the town's city council and planning commission meetings for the last 15 years. If you read this newspaper regularly, you know the byline "By Mary Schley" (formerly, "By Mary Brownfield") is like an old friend, and indicates that the story that follows will be interesting and trustworthy. Need we also add that Ms. Schley's great-grandfather, S.F.B. Morse, founded the Pebble Beach Company, and that her family has been in the Monterey Peninsula for four generations?

Given the weight of her credentials and the importance of her reporting, you'd think it would be a very simple matter for her to be given Mullane's resume. Instead, she was given a flat, "No."

Jason Stilwell is responsible for this decision, but he hid behind a lawyer when he made it. The lawyer who provided him with cover works for a formidable Los Angeles law firm, and while she "only" bills \$210 an hour to decide what The Pine Cone can have, she presumably has some experience in the field and is aware of the laws giving the public access to government records so the public can understand what its government is up to.

Defying not only the law but all common sense, and displaying an astonishing ignorance of how things work in Carmel, however, this lawyer decided Mullane's resume could not be given to Schley because (a) it was not a "public record," and (b) because Mullane was entitled to privacy where his resume was concerned.

These conclusions are both utterly, totally, completely, absolutely, overwhelmingly and unmistakably wrong, not only as matters of law, but also of everyday expectations and experience. Only someone who is biased or stupid could reach them. The planning director works for the people, and therefore, they are entitled to know who he is and why he was hired. Secrecy in government leads to corruption and abuses of power, and it must not be tolerated (except for matters of foreign intelligence and national security; presumably, the Carmel planning director will not be involved in either of those). Numerous California laws and decisions of its Supreme Court are unequivocal on all these points. While Mayor Jason Burnett and other members of the city council are always helpful and accessible to the media and the public, other people at city hall definitely aren't.

We will not bother asking again for the resume to be released, because doing so would be futile. Instead, we will only sound a warning: The uncooperative and unfriendly attitude which has taken hold in the administration of Carmel City Hall will lead to something bad, if not disastrous, for this precious city. When it happens, we will cover it, if we're allowed to.



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## Contracts with IT investigator raise questions

By MARY SCHLEY

Published: September 27, 2013

CITY ADMINISTRATOR Jason Stilwell signed three separate work agreements with computer expert Mark Alcock over a period of less than four months, at a total cost of \$128,500 to taxpayers. Stilwell has said he hired the Southern California specialist to evaluate the city's vast computer network, as well as to investigate alleged hacking and misuse of computers by IT manager Steve McInchak, whose home was searched by police in June.

McInchak, who has overseen the city's information technology department for 17 years, has been on paid administrative leave for the past several months and has not yet been charged with committing any crime. The Monterey County District Attorney's Office is waiting for the police department to submit a file containing the criminal allegations, if any.

Meanwhile, the city has agreed to spend more than \$128,500 in taxpayers' funds for Alcock's services, according to the agreements provided to the Pine Cone by the city.

The first contract that Alcock and Stilwell signed Feb. 25 — and which was provided to The Pine Cone in June after a search warrant was served at McInchak's Carmel Valley home — is so heavily redacted that even the very basic declarations stating the city's needs and that Alcock is qualified to perform the services are whited out, as are the scope of work, the completion date, the ownership of work product and Alcock's address. The signatures of Alcock and Stilwell, however, are visible. This contract stipulates Alcock will receive \$200 per hour, up to \$25,000, "and reasonable expenses."

A second contract with Alcock, dated May 5, also for "an amount not to exceed \$25,000," received by The Pine Cone Friday states the city is "interested in information technology consulting and assessment services," and needs qualified consultants to "assist in the installation and configuration of network routers and security devices and other general information technology services." Its scope of work is described as, "installing and configuring network routers and security devices," "provide security guidance," and "additional information technology services as necessary." Alcock's address, as well as the signatures of the people who signed the contract, are redacted.



## Amounts increased

Finally, a third agreement, dated June 19 — two weeks after Alcock accompanied Carmel Police Chief Mike Calhoun, administrative services director Susan Paul and police officers to serve the search warrant — so in “an amount not to exceed \$25,000,” indicates the “city is interested in appointing a computer forensic examiner,” who will “assist in the coordination of the investigation related to information technology.” The first two items listed in the “scope of work” are hidden, and the signatures are redacted.

And while the city clerk used to be required to attest to contracts, none of the agreements with Alcock includes a space for her signature.

This month, council members decided to increase the amounts of the second and third contracts, though they didn't discuss how the money would be spent or their decision to approve the added expenses, which call for increasing the contract for consulting and assessment to \$43,500, and the contract covering the McInchak investigation to \$60,000.

Stilwell and his lawyer, Heather Coffman, have said the information in the contracts was removed in order to protect Alcock's privacy and because they involve an active criminal investigation. He said the existence of three separate contracts with the same consultant — which is very unusual — is due to the fact the projects Stilwell asked of Alcock are all different.

With the information redacted, the extent of those differences is difficult to determine.

It's legal, but is it right?

While the Carmel Municipal Code has strict rules about how contracts are approved, and the checks and balances designed to ensure public funds are being used reasonably, contracts for “professional services” — such as attorneys and consultants — are specifically exempted, according to attorney and former Carmel City Councilman Gerard Rose.

“All purchases of and contracts for supplies, services, with the exception of professional services, materials, or equipment by the city, or by an officer or employee thereof, shall be made only in accordance with and pursuant to the provisions of this chapter,” reads CMC section 3.12.030. The provision is a bit difficult to understand, due to the vagaries of its punctuation, but it basically exempts contracts for “professional services,” from the rules for purchasing.

“This is how they get around the requirements when hiring lawyers and other professional services,” Rose explained.

Therefore, not only did Stilwell not need to obtain council approval for the contracts with Alcock or put the work out to bid, they were not subject to the section that prohibits dividing contracts into amounts less than \$25,000 to avoid the higher scrutiny required by the code for more expensive agreements. That section explicitly states, “No undertaking involving amounts in excess of \$25,000 shall be split into parts to produce amounts of \$25,000 or less for the purpose of avoiding the provisions and restrictions of this article.”

Carmel attorney Stephen Beals reads the code differently, however, and said it applies to professional services, too, though the city administrator is authorized to enter agreements with contractors for amounts up to \$25,000 without council approval. As for whether Stilwell violated the code section regarding splitting contracts, he said, that distinction lies in the details.

“The issue hinges upon the following: Did they intentionally split them? They can't divide the contracts

to avoid city council approval, and if they did, it clearly violates that provision," he said. "Looking at the specifics of the contracts is what's going to tell you."

But with the crucial points redacted in the name of the ongoing investigation, it's difficult to know.

As far as Rose is concerned, regardless of whether the Alcock contracts are covered by the CMC, he said, "I don't think that's the end of the inquiry."

"The reason why we have a 3.12 chapter in the municipal code and a California Public Contract code is because we want accountability, we want fairness, and the public has a right to know," he said. "That's obviously the policy not only of the California Legislature, but of the Carmel City Council."

And this particular council, Rose noted, "was swept into office with a claim of transparency."

"So why are they inclined to hide the details of these contracts?" he asked. "Are they legally correct in keeping it from you? Yes. But is it wise? No. And is there a defense for keeping it from the public? If there's a reasonable defense, I'd like to hear it."

Keeping information about the approval and details of such contracts secret is "an affront to the people of the state and of the city," since it's their dollars being used to pay them, according to Rose.

"Frankly, I find this whole tenor where we try to keep things from the public very troubling," he said.

"You can argue that Steve McInchak, whatever the merits of the claims against him, he's entitled to know what's going on — and so is the public, especially when they're paying close to \$100,000 to investigate him."



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## Secrecy at city hall reaches new heights

**- CRA president exchanges hidden messages with mayor, city administrator**

**By MARY SCHLEY**

**Published: October 25, 2013**

A REQUEST from The Pine Cone for emails between Carmel Residents Association President Barbara Livingston, city administrator Jason Stilwell and Carmel Mayor Jason Burnett was refused last week because the city considers much of their correspondence too sensitive or inflammatory to allow the public to read it.

The Pine Cone asked for the emails in September, under the provisions of the California Public Records Act, which clearly requires that government officials release emails, letters, documents and other written records that are about official business.

But the city responded to The Pine Cone's requests by providing heavily redacted copies of approximately 75 emails dated between early July and the end of September. Many of them had their entire contents redacted. The coverups were made in white, so it's impossible to tell how much writing was hidden.

In her Oct. 15 cover letter explaining the city's refusal to provide the documents, San Francisco attorney Heather Coffman said the people who wrote and received the emails had a "privacy right" that outweighed the public's right to see them.

"Please note that personal identifying information contained in response to the PRA requests has been redacted in order to protect the privacy interests at issue. For example, correspondence of members of the public detailing their concerns as citizens have been redacted because the public interest in disclosure of this correspondence is clearly outweighed by the interest in nondisclosure to avoid a chilling effect on the public."

She cites several legal decisions that she believes authorize her redactions.

In other words, if a member of the public — even one who served as a city councilwoman for 12 years and is president of a well established and outspoken residents group — says anything to the mayor or city

administrator about a code violation, a neighbor problem, a businessman with whom she disagrees, a person she believes should be appointed to one of the decision-making bodies or practically any other matter, no member of the public is entitled to know about it. The citizen — even though she's acting as a lobbyist for a special interest group — could even make secret agreements with city officials.

An Aug. 27 email from Livingston to Stilwell, for instance, contains no subject heading and has all of its contents, except the salutation and sign-off, blocked out. In response, Stilwell wrote, "I'm familiar with the issues you raise."

A Sept. 6 email from Livingston to Burnett, entitled, "Meeting with you," has its entire contents blanked out.

On Sept. 12, Livingston wrote to Stilwell, "Someone forwarded this message to me about <redacted>." On Sept. 15, Stilwell wrote, "Also, to follow up on the subject of the original email <redacted>. He was provided a copy of our ordinance."

On July 29, Stilwell wrote to Livingston, "Thanks Barbara, this is very helpful. I'll let you know where we are on the code compliance <redacted>." The email to which he was responding had a blank subject head and all but "Hi Jason," and "Barbara," blanked out.

Partially redacted emails from Sept. 3 and Aug. 30 involve names and contact information for candidates for the historic resources board and forest and beach commission.

Some of the information taken out of the emails is cryptic. On Sept. 3, Burnett wrote to Livingston, "Barbara, I was not at the city council meeting when this was discussed, so I don't know exactly what was discussed (I'm reviewing the tape but haven't made it through yet.) It isn't clear what the mention of <redacted> in the opening means, but I'll look into it. Thanks, Jason." He was responding to a Sept. 2 email from Livingston in which all of the text is blocked, so it's impossible to know what is being referenced, but the statement she is asking about was made in an open meeting that was also broadcast on TV and online.

The city also redacted trivial items and information everybody already knows. For example, in an Aug. 21 email, Burnett asks Livingston if he can attend the CRA's Fiesta in the Forest along with two other people, whose names are blanked out. He refers to his mom, so evidently one of those names is Nancy, and the other is perhaps his wife, Mel.

"Do you know who I should contact regarding tickets to tomorrow's Fiesta in the Forest? I believe/hope that <redacted> and I have RSVP'd already, and I'd like to add my mom <redacted> to the list," he wrote. "We can bring cash or a check to the door."

Messages The Pine Cone was allowed to see involved Livingston's suggestion to add page numbers to the table of contents in the agenda packet, the CRA's offer to host an Oktoberfest party for city employees, and conversations about the Centennial 2016 committee, on which Livingston sits with former Mayor Sue McCloud and former Nielsen Bros. Market owner Merv Sutton.

Emails between Livingston and Burnett and her and Stilwell also focus on Covered California and a health reform call center, the city's decision to create a traffic committee comprising staff rather than citizens, the status of two lease proposals for Flanders Mansion, the possible existence of a time capsule to be opened in 2016 and a report about 2016 created when Jean Grace was mayor, and how the council would handle an event proposed by restaurateur and former mayoral candidate Rich Pepe.

But even within those emails are eliminations, including names and email addresses of senders and

recipients. In one, councilman Ken Talmage's name and email address are blocked out in the "to" field, but the email is signed by him.

When asked if she would provide the copies herself, Livingston said she deletes every email as soon as she is done reading it. When asked if she would give permission to the city to release full copies of the messages, she simply replied, "No, thanks."

The city's refusal to release the full emails came just five days after the council "reaffirmed" the city's policy "that the Public Records Act be construed in favor of public disclosure."

That agreement came after the city would not provide planning director Rob Mullane's resume. It has also refused to convey details of the investigation of IT manager Steve McInchak and his assistant, Rose Franzen; any information about why former deputy city clerk Molly Laughlin, former building official John Hanson and former children's library employee Linda MacDonald were fired (or whether they were fired); what McInchak and Franzen have been paid while they're on leave; and other matters.

"The people of Carmel and the whole Monterey Peninsula depend on us for news about what's happening at city hall," Pine Cone publisher Paul Miller said. "After all these years, it's extremely weird for the city to start hiding so many things."



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## Two more city hall employees placed on leave; assistant city admin resigns

- Quits over secrecy at city hall

By MARY SCHLEY

Published: Nov. 1, 2013

ASSISTANT CITY administrator Heidi Burch resigned and cleaned out her office in Carmel City Hall this week, and city administrator Jason Stilwell placed two more longtime employees on paid leave, apparently pending investigation into alleged misconduct.

Burch, who became city clerk in 2005 and took over assistant city administrator duties a few years later, told The Pine Cone Thursday she decided to leave the post after city officials redacted dozens of emails requested by the newspaper and said they were being provided under her authority.

"I have been informed that city officials are reporting that I left my position as a result of my recent marriage. That is categorically untrue," Burch said. "There are many reasons for my resignation. The final determination to leave was after I became aware that documents sent in response to a Public Records Act request had been redacted and sent out under my name, without my review, approval or my ability to send them to the city attorney for legal review, as is current city policy."

She was speaking of the more than 75 emails between former city councilwoman and Carmel Residents Association President Barbara Livingston and Stilwell, as well as emails between Livingston and Mayor Jason Burnett.

She declined to say more but urged The Pine Cone "to request a copy of my letter of resignation from the city." The request has been submitted but generated no response from city hall.

Burch, whose exit interview was conducted by Stilwell and Police Chief Mike Calhoun Oct. 29, is on vacation and will then be on call to assist with city business as needed.

Former city councilwoman Paula Hazdovac noted Burch was named the city's Employee of the Year a few years back and also observed that the City of Carmel won the Golden Pine Cone for the Best Place to

Work in 2010. Stilwell became city administrator the next year.

Since his arrival in September 2011, at least a dozen employees have either retired, quit, been fired or been placed on paid administrative leave. The latest to join that last group are administrative coordinators Leslie Fenton and Margi Perotti, both longtime city employees, who on Tuesday were placed on paid leave pending investigations into alleged misconduct. Other recently ousted workers quickly heard about and disseminated the news.

Neither Fenton nor Perotti is an at-will employee, and they can seek help from a lawyer via their union.

Their removal from city hall puts them in a growing group that includes former building official John Hanson, who was fired this summer for unknown reasons, and IT manager Steve McInchak and his assistant, Rose Franzen, who were placed on leave in June.

Police also searched McInchak's home in Carmel Valley on allegations of computer hacking, but so far no reports have been submitted to the Monterey County District Attorney's Office for possible filing of criminal charges.

Well known longtime builder Chris Tescher lamented the changes in a city hall with which he deals on almost a daily basis.

"Carmel used to be a small town where you knew the cop on the street, where when public servants left there was always a celebration at city hall, and there was a sense of familiarity between city government and the citizens," he said. "Now the long-term employees of an entire department have been removed without a word and have been replaced by a service from another town. This reflects the working of corporate America, not a quaint village by the sea as Barbara Livingston so often calls Carmel. If the 'bottom line' is the 'only line,' then life as we know it in Carmel will never be the same."



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## Little controversy in Livingston emails

By MARY SCHLEY

Published: Nov. 8, 2013

THE CONTENTS of dozens of emails which the City of Carmel fought to hide — but which were released to The Pine Cone Tuesday after the attorney who heavily redacted earlier versions was taken off the job — revealed the concerns of a woman heavily involved in the operation and preservation of her city but little else.

The correspondence between former councilwoman and Carmel Residents Association President Barbara Livingston and city administrator Jason Stilwell, as well as with Mayor Jason Burnett, focused on code enforcement, planning issues, recommendations of candidates to serve on city boards, and some of the chatter around town regarding recent hires and investigations into longtime employees, leaving wonder about why they had been hidden in the first place.

Livingston, who at first also refused to let The Pine Cone see her emails, changed her mind at the same time the city did.

"I am in agreement that the City of Carmel, in consultation with the city attorney and myself, will release the emails exchanged between me and city officials," Livingston said in an email to The Pine Cone this week. "Newspaper editors and readers will see that these messages are nothing more than the observations and thoughts of a private citizen who deeply loves her beloved village of Carmel-by-the-Sea. I will, of course, continue to communicate with the city and urge fellow citizens to do the same."

### Different attorney, different results

The change of heart came after Burnett said last week that attorney Heather Coffman, who works for the San Francisco law firm of Liebert Cassidy Whitmore, had failed to uphold the council's promise to interpret the California Public Records Act broadly, in favor of the public's right to observe the city's business. Stilwell began submitting all requests for public documents to Coffman several months ago, instead of running them past city attorney Don Freeman. The result was that much was hidden — including all sorts of things that shouldn't have been.



Released Tuesday, with very few redactions (such as private email addresses and the like), the emails between Stilwell and Livingston address issues such as sign regulations, fairy lights lit year-round, houses being used as illegal short-term rentals, right-of-way encroachments, negotiations about the future of Flanders Mansion, and the possibility of selling unused city art to help pay for renovation of the Forest Theater and the city's 2016 centennial celebration.

Her emails to Burnett were more personal and articulated her worries about the current state of the city. In early September, she encouraged him to introduce all the new directors to the community at a meeting that "should be very schmoozy, very fuzzy, very warm" — which was eventually done at Sunset Center in mid-October.

"Put a human face on these people. Tell everyone how to contact the city with concerns — everything through Jason Stilwell? Is that really a good idea? Looks very controlled," she wrote. "I'd invite [Pine Cone publisher] Paul Miller too. You might even address the commute of <redacted> and <redacted>. Explain why they don't move here, live here." (She was likely referring to administrative services director Sue Paul and public services director Sharon Friedrichsen, both of whom were hired this year by Stilwell and lived in Southern California.)

"I don't know how you will explain the employees on administrative leave, but that is a problem that needs addressing," she said, adding that he should also say that "you will be using local legal firms from now on."

In an email entitled, "Confidential," she began, "Hi Jason. This email is just for you. I'm deleting after sending." In it, she articulates some of the personality conflicts in the centennial committee that includes former Mayor Sue McCloud and retired businessman Merv Sutton, "rumors and disquiet about the <redacted>," chatter about the city paying for commute costs, employees living outside the area "not being vested in the village" and being friends of Stilwell's, and the lack of transparency in the monthly check register — an issue that has since been addressed by the addition of a very basic column indicating what the expenses are for. She also suggested the city hire a PR person "to anticipate controversial things, to meet with the press, to issue press releases about what is happening in the city." (Former longtime journalist Lewis Leader has been hired to fill this role.)

"I am maintaining a strong defense for the city but feel I am losing the battle," she concluded.

Other correspondence with Burnett included an inquiry whether he had considered joining a campaign called "Mayors Against Illegal Guns," and suggestions about candidates to serve on the city's boards and commissions, with the idea that they might eventually run for city council.

"For my part, I would like to congratulate Barbara for being quite a conscientious citizen," said Pine Cone publisher Paul Miller. "Her advice is certainly being taken seriously at city hall, but there isn't really anything in her emails to raise eyebrows, and they obviously should never have been hidden in the first place."

"Thank you to our staff for straightening out the situation, following city council policy, and releasing what our outside law firm should have released a month ago," Burnett told The Pine Cone Thursday. "It is pretty clear why this law firm will no longer work on our public record requests."



# The Carmel Pine Cone

TRUSTED BY LOCALS AND LOVED BY VISITORS SINCE 1915

January 2 - 8, 2015

*Dear Readers,*

The seemingly unstoppable and much hyped partnership behind Pebble Beach Food and Wine, Los Angeles Food and Wine, and restaurants in Monterey, Los Angeles and Las Vegas, has devolved into a series of nasty lawsuits packed with allegations of fraud, conspiracy and theft. Kelly Nix has our exclusive report.

After yet another closed session of the city council, two more municipal employees fired during the infamous tenure of city administrator Jason Stilwell have been rehired. Mary Schley has that one.

Homes in Carmel have become very popular as bait in online scams. Mary Schley tells how the scams are usually done -- but you'll be left wondering why anybody would fall for them.

Palo Corona park offers perhaps the most stunning scenery in Monterey County, and after just a few more years it may even offer a place to park your car. Chris Counts has the story.

The plan to make some of the water from Clint Eastwood's property at the Mouth of the Valley available for development, while also putting some of it back into the Carmel River, is starting its trek through the permit process. The new Monterey County sheriff has announced his top appointments while also undoing some of the personnel moves of his predecessor. The search is over for the source of the unending stream of water flowing beneath a home on Torres Street, but the result isn't very satisfactory to the homeowner. And, after saying "thank you" to the CIA in an editorial two weeks ago, this week I thank yet another much vilified group of public officials dedicated to keeping this country safe.

To get this week's [complete Pine Cone](#), please [click here](#). If you have an informed opinion about one of our stories and would like to submit a letter to the editor, please [click here](#). And please don't hesitate to contact me if you have questions, comments or concerns.

Paul Miller, Publisher  
[paul@carmelpinecone.com](mailto:paul@carmelpinecone.com)

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By Brittany Nielsen

## Carmel City Manager resigns

*City Council hoping to replace Jason Stilwell by Thursday*

Published 11:25 PM PDT Oct 01, 2014

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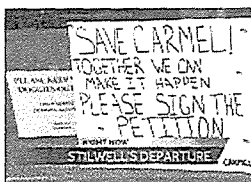


JASON STILWELL

8

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**JASON STILWELL OUT AS CARMEL CITY ADMINISTRATOR**

After months as a lightning rod of

CARMEL, Calif. — Carmel City Manager Jason Stilwell has resigned from his position, city officials announced Wednesday night.

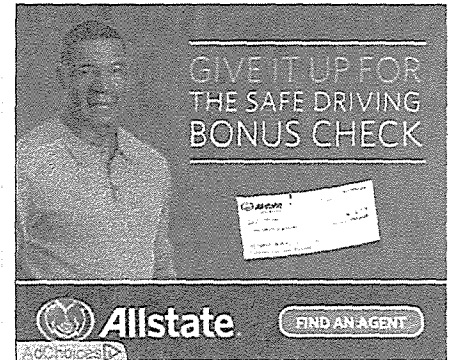
The decision is being called a mutual agreement, reached after five hours of behind-closed-doors negotiations.

Stilwell said he believes it will help Carmel move forward.

The announcement was scheduled for 7 p.m., but came an hour-and-a-half later.

Immediately following the announcement, Stilwell's nameplate was removed.

Mayor Jason Burnett said Stilwell will be compensated for 60 days as stipulated in his contract. Stilwell will also be compensated for unused vacation and compensation time, and for two months of on-call work to help the interim city manager.



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# The Carmel Pine Cone

Volume 102 No. 1

On the Internet: [www.carmelpinecone.com](http://www.carmelpinecone.com)

January 1-7, 2016

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## DALLAS

From page 1A

came about, change might have come a lot sooner than it did," Dallas remarked.

He decided to throw his hat in for the mayor's race after business owners, residents and former employees — none of whom he wished to name — urged him to run, he said, though residents Merv Sutton and Elinor Laiolo are co-treasurers of his campaign.

"People who know me know how passionately committed I am to Carmel. This is where I grew up, where I live full-time, and where my heart and soul belong," he said.

Often seen walking through town, frequenting local businesses and establishments, and attending numerous events inside and outside the city, Dallas is more visible to the public and his constituents than any other council member.

**'People who know me know how passionately committed I am to Carmel'**

"I spend a lot of time on the streets of our village, talking to residents and business owners, and they turn to me when they have problems," he said. "They know that I am open and attentive to their concerns and will get involved wherever I can to help them find solutions."

Dallas said he's in the best position to do that as mayor, and his priorities would include hiring more city employees to help decrease the workload and reduce burnout for those already on the payroll, repairing and upgrading city buildings that are long overdue for improvements, getting the city's boards and commissions to work more closely with the council and with staff, protecting public safety to ensure ongoing quick response times and top quality care, and continuing to work with the other Peninsula mayors toward a solution to the Peninsula's water-supply issues.

And, he said, he'd make sure the council meetings, which have run famously long during the past few years, would be shorter and move more quickly, though he wouldn't stifle people who want to speak.

"Long, lengthy meetings into the late hour of the night do not serve the public well and actually discourage public participation," he said.

Dallas pointed to his years building homes in town, as well as his time on the commission, as evidence he knows the

## Dallas says he's the one to move city past Stilwell era

By MARY SCHLEY

"I BELIEVE I am the best candidate running for mayor to move us beyond the past failures and continue healing and rebuilding our community and our government, because I will put Carmel first," city councilman Steve Dallas said this week, as he made official his bid for the mayor's seat in the April 2016 election.

Dallas, a lifelong city resident who served on the planning commission and was elected to the council in 2014, joined the council right in the middle of the tur-

moil wrought by former city administrator Jason Stilwell and his second-in-command, Susan Paul. He likened it to walk-

ing into a disaster and acknowledged that, while everyone would like to forget the whole thing and move on, voters should think back on that era at city hall when deciding whom to vote for.



Steve Dallas

## Burnett to return \$25K to contributors

By MARY SCHLEY

SINCE HE is not running for reelection next April, Mayor Jason Burnett is offering to give the roughly \$25,294 sitting in his campaign war chest back to the people who donated it to him.

And if they don't want it back, he said he'll find something else good to do with it.

The law doesn't require candidates to return unused campaign funds to the contributors, and Burnett said he conferred with a Sacramento law firm specializing in campaign finances, just to make sure he was following the rules.

"They said it was unusual to offer, but I thought it was the right thing to do," he said. "People contributed to my candidacy, and if I'm not going to be a candidate, I should give them the opportunity to take that back. And whatever is left, we'll

"When I think of the employees who were hurt, the costly investigations that went nowhere, the legal matters over wrongful terminations, the wasted taxpayer dollars on contracts, the citizens' march on city hall, I am still shocked at the weird, strange, dark time we went through as a community," he said. "I don't want to repeat that past."

Dallas' opponent, Ken Talmage, was a member of the council that hired Stilwell in September 2011 and was vice mayor for part of his tenure. But he was also there, alongside Dallas, when the council fired Paul, negotiated Stilwell's departure, and brought back former city administrator Doug Schmitz, who took over in October 2014 and began the process of smoothing things out before abruptly leaving the post a year later due to health concerns.

"If the council members had listened to the people expressing their concerns and to The Pine Cone raising serious questions for a full year before change

See BURNETT page 16A

See DALLAS page 17A

city rules well and is good at reaching compromises. He also said he's an independent thinker — proved by some of the split votes on the council over beach fires and other issues — and "can disagree without being disagreeable."

"I always bring an attitude of enthusiasm and commitment to my work. I come well prepared, know the issues, and exercise plain common sense," he said.

Finally, he said, people recognize his "youthful spirit, my energy and my honesty."

"They know when I commit to a job, I get it done, because I give it 110 percent effort," he said.

The city's election will take place April 12, and so far, Talmage and Dallas, with the latter running from a safe seat, have pledged to run for mayor, while planning commissioner Jan Reimers and resident Dave Mosley have announced they are running for council. With no incumbents seeking reelection, the filing period for the mayoral and council races is open until Jan. 20.



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## City pays Miller \$600K to drop suit

By MARY BROWNFIELD

Published: July 16, 2010

**H**UMAN RESOURCES manager Jane Miller and her attorney, Michael Stamp, received \$600,000 to drop her sexual-harassment lawsuit against Carmel and city administrator Rich Guillen, the city council announced after a special closed session Tuesday night. Without explicitly defending themselves, city officials approved a settlement that implied their belief Guillen and the city did nothing wrong.

The agreement also gives Miller four months' accrued leave, so she can earn more money for retirement, take advantage of medical insurance and enjoy some other employee benefits. She has not been at work since 2008 and received her last paycheck in December of that year, after exhausting her sick leave and vacation time. She will not return to work, according to Stamp.

Last June, Miller filed suit against the city in Monterey County Superior Court accusing Guillen of sexual harassment, age-based discrimination, retaliation and other malfeasance. She alleged he had inappropriate relationships with employees and bestowed unfair pay raises on them while discriminating against others, driving them to quit. Miller also said he acted inappropriately toward her, both affectionately and in wielding his power over her as her boss.

After mediation efforts failed, the case had been set to go to trial in September, but under the guidance of the city's insurance agency and attorneys from both sides, the council agreed to the settlement July 13.

"We are pleased," Stamp said the following day, adding that the settlement resulted from "months of discussions that were very protracted and very difficult," but "always professional."

Much of the discussion focused on benefits and retirement, and the amount of compensation, which is always a sticking point in negotiations.

Stamp said he and Miller have already been paid the \$600,000, though he declined to say how much of it he received.

The money was paid by the city's insurance agency, attorney Rick Harray explained later. The insurance agency, which the city pays almost \$228,000 per year, examines claims and recommends how they should be resolved, "and any city that doesn't follow its advice is nuts," he said. If the city council had decided to fight the allegations in court, it would have done so on its own dime.

"This settlement means all parties avoid the further burden and expense of litigation and the uncertainty of a jury trial. By resolving this matter and avoiding months of litigation and expenses, we can look forward to redirecting more energy and resources to the many challenges facing the city in these uncertain economic times," the city council said in a statement Tuesday night.

According to the agreement, Miller is barred from pursuing further legal action against the city, and she agreed to indemnify it from any demands "resulting from or relating to the claims raised in this complaint."

Each side is covering its own legal expenses — which are extensive — and as is typical when cases are settled, neither side admitted any wrongdoing or liability. They also agreed the settlement should not be construed as being "strictly for or against any party."

Nonetheless, Miller is the one who got paid.

"Everyone reading the agreement knows you don't pay \$600,000 on a whim," Stamp said. "You pay \$600,000 on a very serious case, and that's what happened here."

After receiving the money, Stamp said he and Miller provided documents to the city to file for the dismissal of the case in Monterey County Superior Court.

"There are no further court appearances," he said. "There's nothing left to do."

As for whether Guillen will keep his job as city administrator, neither Harray nor Mayor Sue McCloud would comment.

(Jane Miller's husband, Scott Miller, a candidate for county sheriff, sued the City of Pacific Grove in 2004 for unlawful termination after being removed as police chief. He received a cash settlement in that case.)



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## Jane Miller releases Guillen's emails, but not her replies

By MARY BROWNFIELD

Published: July 30, 2010

AFTER RECEIVING a \$600,000 settlement from the City of Carmel and apparently agreeing not to publicly discuss the case, former human resources manager Jane Miller went on a public relations offensive this week, supplying two Monterey County newspapers with emails she claims demonstrate that city administrator Rich Guillen had an inappropriate relationship with her.

But the messages supplied by Miller to Monterey County Weekly and the Monterey County Herald, in which Guillen compliments Miller and tells her he “adores” her, do not include any statements that go to the heart of Miller’s claim that she was harassed at work and retaliated against when she rebuffed Guillen’s advances. And they pointedly do not include any of Miller’s emails to Guillen.

Miller and her lawyer, Michael Stamp, ignored repeated requests from The Pine Cone for the complete email exchanges. Without them, there is no way to judge the propriety of Guillen’s behavior or the validity of her lawsuit.

“These emails seem inappropriate, but they could also be innocent, especially if she responded in kind,” said a source close to city hall who did not want to be identified. “Did she tell him to stop, or that she liked him, too?”

The absence of Miller’s statements to Guillen in extensive email conversations — reportedly carried on in the evenings and over weekends — apparently did not trouble either the Herald or the Weekly. The Herald, while acknowledging that the emails contained no “overt sexual overtures or direct sexual language,” gave them front-page exposure and said they “shed more light” on Miller’s suit.

And Monterey County Weekly, which earlier erroneously reported that Guillen had been suspended and the city “fined” as a result of Miller’s suit, quoted Miller’s attorney as claiming that the emails demonstrated Guillen sabotaged a city investigation of Miller’s complaints by “not telling the truth.”

The investigation Stamp referred to, undertaken by the city after Miller first made her complaints in 2008, and which concluded her complaints were baseless, was also kept secret until Miller apparently gave it to the Monterey County Weekly.

The settlement does not include any admission of guilt or liability by the city or any of its employees, and Guillen remains city administrator. Miller and Stamp have received the \$600,000; all but a \$10,000 deductible was paid by the city's insurance carrier, which recommended the settlement rather than a long court fight.

State law prohibits cities from releasing employment records or employee evaluations, and city officials responded to this week's controversy with silence, except to reiterate a statement confirming the city council agreed to the \$600,000 settlement and saying they "looked forward to redirecting more energy and resources" to the city's challenges in these "uncertain economic times."

But a lawyer for the city complained that Miller's media strategy was a betrayal of an agreement the case would no longer be discussed in public. "The settlement was concluded with the mutual understanding that all parties and counsel would not reveal the kind of information which has since been released," said Jon Giffen of Kennedy, Archer & Harray.

And while Stamp and Miller took their claim of inappropriate emails to the Herald and the Weekly, and Miller even posed for a MCW photographer, neither responded to numerous requests from The Pine Cone for comment.





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## City grapples with Miller suit aftermath

- Councilman calls for closed session to 'discuss Guillen's performance'

By MARY BROWNFIELD

Published: August 6, 2010

AS SOME residents pleaded with the Carmel City Council to publicly defend itself in the sexual-harassment case filed by former human resources manager Jane Miller — which was settled for \$600,000 last month — and others called for the firing of city administrator Rich Guillen, city attorney Don Freeman said the city has already hired a consultant to examine its policies on sexual harassment and other issues. The topic arose during the public comment period at Tuesday's council meeting.

"City hall, please defend yourself to your citizens," said resident Kathy Fredrickson. "Help us to understand why any former employee has received a settlement and how to solve the problem.... For the first time in my life, I'm embarrassed to tell people where I live."

Barbara Livingston asked the council whether it wants the status quo or change when it comes to Guillen's place as a manager.

"The people of Carmel have spoken loud and clear they want change," she said, adding praise for councilman Jason Burnett's call for a closed session to discuss Guillen's possibly firing. "I urge Mayor [Sue] McCloud to set a date certain for this meeting, so that this issue will not continue to fester."

"Our small town has experienced enough shame over this — it is time to make a change at city hall," resident Carolyn Hardy said. "It is time for Rich Guillen to leave, either by departure or removal. Without a clean start, this community and city hall cannot forget and cannot heal."

Allison Schilling said Guillen should be held responsible for the situations in city hall that led to the lawsuit and settlement. "The person in power is always the person incumbent upon to do the right thing," she said. "It doesn't matter if the person who works for the person in power walks into the office naked." Barbara Brooks asked, "Please, would this council do something — do something to repair the terrible damage that has happened to our city?"

Attorney Skip Lloyd urged the council not to ignore the allegations. "Insurance companies do not pay that kind of money if there is no merit to a claim," he said of the \$600,000 paid Miller by the city's insurance carrier as part of the settlement.

Their comments reflected the information vacuum that has existed since Miller first complained to the council via a letter from her attorney, Michael Stamp, in May 2008. Since then, Guillen and the city have remained silent, allowing Miller and her supporters to dominate the public debate. While the details of Miller's allegations are well known, the evidence supporting the city's conclusion that her charges were baseless has remained secret.

### **Employee privacy rights**

City attorney Don Freeman told those gathered at the standing-room-only meeting that the city can not violate employee privacy rights by discussing the details of Miller's allegations and Guillen's job in public.

But he said the city has already hired someone to review sexual harassment policies, as well as those relating to email communications by city employees. (Some of Miller's allegations of inappropriate conduct involve after-hours emails Guillen sent her, and last week she released a few excerpts from those emails.) Freeman also said all city employees undergo sexual-harassment training every year, and that training could be expanded.

After the meeting, Burnett reiterated his desire for a closed council meeting to "discuss Guillen's performance" on the job and an open session to review general employment policies. But he has not called for Guillen's resignation.

"Would I like to be able to say more? Yes. But do I ultimately believe I should play by the rules? Yes," he said. "I think action needs to be taken. We owe it to ourselves, we owe it to the employees, and we owe it to the community to take action in such a way that we can say we looked at what happened, we have learned from that, and we have put in place improved policies to the extent they need to be improved."

### **Hundreds of pages**

Burnett also posted on his website, [www.burnettforcarmel.com](http://www.burnettforcarmel.com), more than 500 pages of documents filed with Monterey County Superior Court in connection with Miller's suit. Many of the documents had not previously been widely available.

In one of the documents, dated May 20, 2008, Stamp advised the mayor and city council of Miller's complaints. He demanded Miller be placed on paid administrative leave with full benefits and that Guillen be "removed from his role as supervisor of city employees." He also told the mayor and council Guillen favored certain employees, had turned against Miller and was trying to eliminate her job, was a profligate spender of city funds, and had "unchecked power over the lives, salaries and personal lives of city employees." He said Guillen's actions constituted retaliation, gender-based discrimination and harassment, as well as age-based discrimination.

Three days later, in response, Guillen sent a letter to Miller's Pacific Grove residence saying he would not place her on paid leave. She had taken sick leave for what Stamp said was "work-related stress and depression," on May 21, but he demanded she return to work.

Two months later, Stamp sent a letter reiterating the allegations and the noting the city's apparent lack of response. He included a statement from Miller describing Guillen's alleged behavior, including his hugging her when she was on the phone in her office and tousling her hair, as well as calling her "beautiful" or "Hottie," and sending after-hours emails deriding the council and mayor, and soliciting personal information.

### **An 'intimidated' HR manager**

"I regret not directly confronting him about his inappropriate behavior, but I did not because I was intimidated, afraid to lose my job, and well aware of the absolute power in the work place and in city government," Miller wrote in her October 2008 statement. While the alleged discriminatory and abusive behavior was under way, she did not contact any other city officials about them, according to sources familiar with the case. Miller was human resources manager at the time.

She also declined to participate in an investigation the city launched into her complaints in 2008. Danville-based investigator Karen Kramer was hired by the Liebert, Cassidy, Whitmore law firm on behalf of the city, and after Stamp asked a litany of questions about the goals, mission, planned handling and confidentiality of the investigation, and did not receive the responses he wanted, Miller decided not to consent to Kramer's interview.

In February 2009, Kramer concluded her investigation, which involved interviewing a dozen city workers. While most of the five-page letter on Burnett's website is redacted, because it deals with private employee matters, it stated, "Based on Ms. Kramer's findings and conclusions, the city has determined that Ms. Miller's allegations are not substantiated. Accordingly, this investigation is now closed and deemed complete."

Four months later, she filed her lawsuit.

# The Carmel Pine Cone

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September 24-30, 2010

YOUR SOURCE FOR LOCAL NEWS, ARTS AND OPINION SINCE 1915

## High-powered brain trust lined up for authors fest

By MARY BROWNFIELD

A SECRETARY of State, musicians, comedians, actors, economists, historians and other accomplished writers and thinkers will speak during the fourth annual Carmel Authors and Ideas Festival Sept. 24-26 at Sunset Center.

And the event warmup has a record 3,000 students from all over Monterey County meeting authors and attending talks Thursday and Friday, organizer Jim McGillen said. Julia Bolz, a lawyer who sidelined her career to build schools for girls in Afghanistan and has so far completed 18, is their keynote speaker, but the kids will also hear from other literary stars, such as Eric Schlosser ("Fast Food Nation.")

McGillen and his wife, Cindy, always try to line up different award-winning authors and speakers, including New York Times best-selling writers, and Pulitzer and Nobel Prize winners, each year, and the fourth year of the festival is no exception.

"There will be book signings and opportunities to meet the well known speakers. Attendees can even expect casual conversations and informal exchanges with the speakers," the McGillens tell prospective attendees. "We promise the weekend will exceed your every expectation."

The biggest name in the lineup is Condoleezza Rice, the 66th United States Secretary of State under President George W. Bush and also the first woman to serve as National Security Adviser. Throughout the weekend, she will discuss "Extraordinary. Ordinary People: A Memoir



Condoleezza Rice and Eric Schlosser are two of the big names appearing at Sunset.



of Family," described as the story "of a little girl trying to find her place in a hostile world and of two remarkable parents, and an extended family and community, that made all the difference."

Schlosser, a Monterey Peninsula resident and investigative journalist who is author of the seminal "Fast Food Nation" and producer of the film, "Food, Inc.," agreed to take part this year and is speaking to students as well as adults, according to McGillen.

"You talk about something that's timely," he observed, considering the recent food contamination scare involving

See **AUTHORS** page 17A

## No decision on Guillen's future

PINE CONE STAFF REPORT

DESPITE WIDESPREAD expectations of an announcement Thursday afternoon from the Carmel City Council regarding the future of city administrator Rich Guillen — accused of sexual harassment and age discrimination in a lawsuit the city settled in July for \$600,000 — the latest of several closed-session meetings netted no decision late Thursday.

After two hours, Mayor Sue McCloud and city attorney Don Freeman reported the council took no action, and there was no mention of any future meeting when the issue might be taken up again.

The Sept. 23 closed session had been a continuation of a meeting Tuesday night that had media and community members waiting several hours in council chambers, and reporters and a handful of vocal residents again flocked to city hall Thursday, hoping to learn the fate of a man several of them have said should be fired.

But again, city officials had nothing to report about the Guillen, who was named in a suit against the city by former human resources manager Jane Miller in June of 2009 for allegedly making sexual advances, engaging in inappropriate behavior, favoring two particular employees and driving others to quit.

## Sparks fly over wildfire prevention plan

By PAUL MILLER

WHEN A major wildfire breaks out, it costs taxpayers plenty to put it out. And that's why federal and state agencies offer generous grants of taxpayer funds for fire prevention — money that Monterey County officials want to help avoid a repetition of 2008's disastrous Basin Complex Fire in Big Sur.

But when a fire prevention plan tailored to obtain grant money was presented to the Monterey County Board of Supervisors Tuesday, environmentalists from around the state

See **WILDFIRES** page 12A

## Sierra Club sues to stop Sand City resort

■ Cal Am, water district, developer listed as defendants

By KELLY NIX

THE SIERRA Club has filed a lawsuit against the Monterey Peninsula Water Management District and California American Water over a proposed \$300 million oceanfront resort in Sand City.

The suit, which also lists as a defendant National Security Guaranty — the developer behind the Monterey Bay Shores Ecoresort in Sand City — seeks to overturn a water permit for the resort approved by the water district in August.

The Sierra Club alleges the water district violated the California Environmental Quality Act by not examining the environmental impacts of the water permit on the Carmel River and its steelhead fish population before issuing the per-

mit, which allows Cal Am to deliver 90-acre feet of water per year to the resort.

"Our suit does not contend that SNG does not have water rights" for the resort, Sierra Club attorney Larry Silver told The Pine Cone Wednesday. "It just says that if the resort is going to get water, it shouldn't be at the expense of the Carmel River."

The 39-acre Monterey Bay Shores Ecoresort, proposed on a degraded site formerly used for sand mining, includes a 161-room hotel, 138 condominiums, and conference and spa facilities, and a dunes restoration habitat project. It would be located across Highway 1 from Seaside High School.

The project has the potential "through cumulative considerable impacts associated with the delivery of water to adversely affect the threatened steelhead and its designated habitat," according to the Sierra Club's 13-page lawsuit.

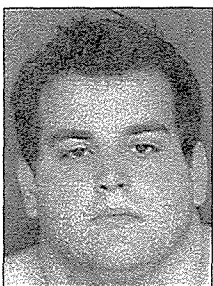
See **RESORT** page 23A

## DUO SUSPECTED OF PILFERING FROM GRANDMA

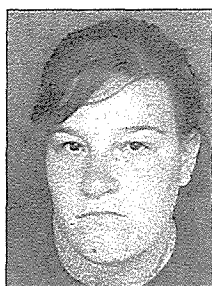
By MARY BROWNFIELD

OVER THE course of nearly a month, a Pebble Beach man and his female accomplice allegedly stole more than \$12,000 from his step-grandmother, who lives in Texas.

They used her personal information to obtain credit cards and access to her bank accounts, according to Monterey County Sheriff's Cmdr. Tracy Brown.



Theodore Lopez



Amanda Spears

Theodore Lopez and Pacific Grove resident Amanda Spears, both 22, were arrested Sunday on charges of elder abuse, identity theft, burglary, grand theft and conspiracy, and taken to Monterey County Jail.

The crimes came to light after Lopez' father and step-mother, with whom he lives on Forest Lodge Road, began receiving statements for credit cards in the name of the grandmother, 85-year-old Nita Fallis, Brown said. They also noticed numerous withdrawals from Fallis' checking and savings accounts.

But Fallis "is in an extended care home in Texas," Brown said, while Lopez and his parents live in the home she owns in Pebble Beach. After receiving the suspicious credit-card and bank statements, the suspect's parents notified authorities the afternoon of Sept. 13.

Lopez and Spears, who lives on 19th Street in Pacific Grove, are both unemployed, according to the sheriff's office, and Brown said they used Fallis' personal information to obtain three credit cards, with which they purchased telephones, videogame players and games, and laptop computers from local businesses.

He said they also used Fallis' stolen personal information to gain access to her checking and savings accounts.

See **GRANDMA** page 17A

## Dam removal to cost ratepayers \$49M

By KELLY NIX

CALIFORNIA AMERICAN Water has filed an application with the state so it can begin the extensive and costly process of removing the San Clemente Dam on the Carmel River to improve habitat for the river's

See **DAM** page 1A



PHOTO/PAUL MILLER

San Clemente Dam (lower left) will be removed because its reservoir is filled with sediment; it could collapse in an earthquake, and it's in the way of fish trying to spawn.

# The Carmel Pine Cone

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YOUR SOURCE FOR LOCAL NEWS, ARTS AND OPINION SINCE 1915

## Disputed Ansel Adams plates include Mission, Lone Cypress

By CHRIS COUNTS

A DEBATE is raging over the authenticity of 60 glass negatives purchased for \$45 by a Fresno man who believes they were created by the late photographer, longtime Carmel Highlands resident Ansel Adams.

Beverly Hills appraiser David Streets — who grabbed headlines this week when he valued the negatives at more than \$200 million — shared 17 of the controversial photographs with The Pine Cone. The photos will no doubt be of interest to many residents since they include striking images of the Carmel Mission and the Lone Cypress. Streets said the collection contains a total of eight Monterey Peninsula images.

But an Oakland woman threw cold water on the claim of authenticity — and the \$200 million valuation — Thursday when she told KTVU-TV one of the images supposedly taken by Adams in Yosemite National Park was actually taken in 1923 by her uncle, Earl Brooks.

"I thought, 'Oh my God, that's exactly the same picture,'" as one she knew well, said Mariam Walton.

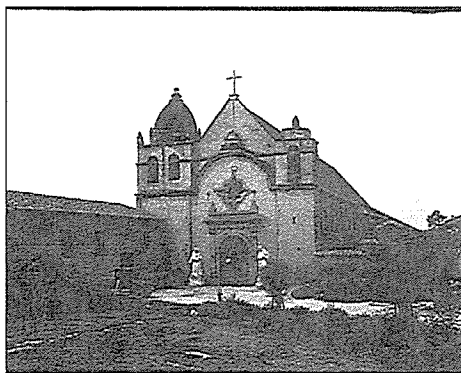
Streets raised more than a few eyebrows Tuesday when he suggested the "Ansel Adams" negatives were worth so much. But he told The Pine Cone his estimate was actually "very conservative."

### 'The real McCoy'

Matthew Adams, who runs the Ansel Adams Gallery in Yosemite, was widely quoted this week as saying the negatives could not possibly be worth as much as Streets claims, even if it could be proved that they belonged to his grandfather, which he said was unlikely.

Streets, though, said he's convinced the negatives did belong to Adams.

See ADAMS page 27A



These striking images of the Carmel Mission and the Lone Cypress are claimed to be by Ansel Adams and worth millions. But they could be by an Oakland man and worth a bit less.

## Jane Miller releases Guillen's emails, but not her replies

By PAUL MILLER

AFTER RECEIVING a \$600,000 settlement from the City of Carmel and apparently agreeing not to publicly discuss the case, former human resources manager Jane Miller went on a public relations offensive this week, supplying two Monterey County newspapers with emails she claims demonstrate that city administrator Rich Guillen had an inappropriate relationship with her.

But the messages supplied by Miller to Monterey County Weekly and the Monterey County Herald, in which Guillen compliments Miller and tells her he "adores" her, do not include any statements that go to the heart of Miller's claim that she was harassed at work and retaliated against when she rebuffed Guillen's advances. And they pointedly do not include any of Miller's emails to Guillen.

Miller and her lawyer, Michael Stamp, ignored repeated requests from The Pine Cone for the complete email exchanges. Without them, there is no way to judge the propriety of Guillen's behavior or the validity of her lawsuit.

"These emails seem inappropriate, but they could also be innocent, especially if she responded in kind," said a source close to city hall who did not want to be identified. "Did she tell him to stop, or that she liked him, too?"

See MILLER page 26A

Requests to see both ends of a conversation are repeatedly ignored

## COURT SIDES WITH CITY IN MANDURRAGO CASE

By MARY BROWNFIELD

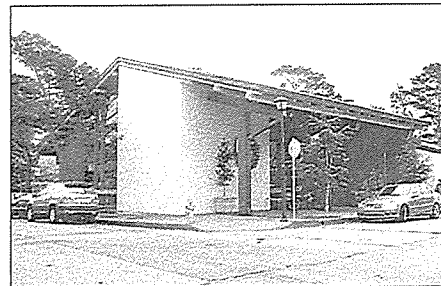
THE CITY of Carmel has won a round in court against developer John Mandurrigo, who for the past nine years has been trying to demolish an old downtown bank building at Dolores and Seventh and replace it with apartments, condos, shops and a garage.

In a decision released July 22, Monterey County Superior Court Judge Lidia Villareal concluded the city didn't break the law or violate Mandurrigo's rights during a convoluted decision-making process that ended in the project's denial late last year.

The decision came only a few weeks after an appeals court ruled that another Superior Court judge erroneously dismissed one of Mandurrigo's lawsuits over the project.

Mandurrigo told The Pine Cone Tuesday he's not sure

See MANDURRAGO page 12A



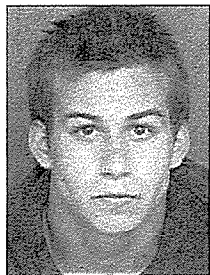
PHOTO/PINE CONE FILE

A plan to tear down this former bank building was dealt a serious blow by a Monterey County judge last week.

## Suspected DUI teen rolls car after Pasadera party

By MARY BROWNFIELD

A PEBBLE Beach teenager lost control of his speeding car while driving drunk, hit a boulder and flipped the 2007 Mercedes E350 into the front yard of a Pasadera home early Saturday morning, according to California Highway Patrol officer Bob Lehman. The



Edward O'Shea

vehicle over," at a home in the 400 block, Lehman said. "There were injuries to all three parties."

Schmidt suffered a head injury and was taken by AMR ambulance to Salinas Valley Memorial Hospital, while Sillano complained of bruising to his forehead and received treatment from medics but was not hospitalized.

O'Shea also went to SVMH via ambulance for care of

scrapes to his arms, legs, face and other areas of his body, according to Lehman. CHP investigators concluded O'Shea was drunk and driving at an excessive speed when he

See DUI page 26A

## Stargazer makes pitch to save Big Sur tracking station

By CHRIS COUNTS

SINCE THE late 1970s, the U.S. Air Force has operated a missile tracking facility near the top of Anderson Peak, a 4,000-foot mountain that looms above the Big Sur coast just north of the Esalen Institute.

But according to Patrick Barthelow of Auburn, the U.S. Dept. of Defense has plans to remove the facility and its 36-inch telescope — and he's not happy about it.

Barthelow said he believes the facility has provided a great benefit to the public and will continue to do so, if it is permitted to remain in place. In an effort to gain

See PEAK page 12A



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## Guillen affair ends

**- City council unanimously approves retirement agreement**

**By PAUL MILLER**

**Published: February 18, 2011**

**A**FTER MONTHS of wrangling and controversy, the end came rather quietly.

At the conclusion of a brief closed session of the Carmel City Council Tuesday night, and with no more than 25 people in attendance, city attorney Don Freeman announced that city administrator Rich Guillen — whose tenure was marred by allegations of sexual harassment and workplace discrimination — would retire.

According to the agreement, Guillen will stay in office until March 31, or until a successor is named, whichever is earlier, and he'll receive six months' severance and health benefits from the date of his departure.

Guillen and the city also promised not to sue each other. And they agreed not to make any statements to the news media beyond the few words released Tuesday night.

The settlement, negotiated between city officials and Guillen over a period of several months, was approved unanimously after a motion by council members Ken Talmage and Paula Hazdovac, Freeman said. Both steps were seen as clear signs that even council members who had been on opposite sides of the Guillen controversy wanted to stand together to see it ended and start working on more pressing issues.

"I think a lot of people are looking forward to moving on," said councilman Jason Burnett. "And I think we have an opportunity now to bring the community together — a community that has been somewhat divided."

"We needed to get this over with so we can deal with important things that are right in front of us — things like the fire merger, the budget shortfall and the water shortage," said Talmage.

Former councilmember Barbara Livingston, who unsuccessfully challenged Sue McCloud for mayor in 2004, was also conciliatory. "It's time to put this whole sordid episode behind us and move on," she told The Pine Cone.

Carolyn Hardy, a member of the board of directors of the Carmel Residents Association and a longtime political opponent of McCloud, said in a TV interview that "we all feel relieved" that the Guillen controversy is over. "It's been hard to see this happening to our community."

Former Mayor Charlotte Townsend also said she was "pleased that there's finally been closure." But she was one of the few who also took the opportunity to criticize the city's handling of the Guillen controversy, calling it "incomprehensible that it had gone on so long."

McCloud said she couldn't comment on Guillen's retirement beyond what was in the agreement with him and in the official press release announcing his departure. But she praised Guillen for his acumen in handling the city's budget during tough economic times. "He's kept us in an enviable position while he's been here," McCloud said. "Not only by managing things such as the refinancing of the Sunset Center bond, but by conservatively handling the taxpayers' money."

Hazdovac also said she couldn't comment on the settlement or how it was reached. But she thanked Guillen for having an "open door" policy as city administrator and for "always being available to councilmembers as well as the public" and for being "quite visible at public events around town." And she said he "saved the city hundreds of thousands of dollars annually through thoughtful reorganization within our city government, which has been instrumental in getting our city through the recent tough economic times."

### **Choosing a successor**

Almost as soon as Guillen's retirement was announced, city officials began discussing the best way to pick the city's next administrator — a process which takes on some urgency, since a new budget has to be approved by the end of June.

According to McCloud, a special council session to get things moving will probably be held Tuesday or Wednesday.

"We want to make sure everything is done as quickly and smoothly as possible," McCloud said. "We're right in the middle of the budget process, which makes it urgent that we have a team that works together."

"There are many important issues facing our city at this time, and I feel confident that the city council and staff will work diligently to move forward during this time of transition," Hazdovac said. Carmel Chamber of Commerce CEO Monta Potter said she was "looking forward to working with whoever is selected as the new city administrator."

And Livingston said she wanted the council to "begin the search for the right person, man or woman, who can bring our village back to the golden age it achieved under [former] city administrator Doug Schmitz and assistant administrator Greg D'Ambrosio."

But Burnett said that could take awhile.

"My preference is that we find someone on a temporary or interim basis," he said. "A search for a city administrator could take four or even six months," he said, including soliciting public input, hiring a



consulting firm to identify candidates, having them meet with various interested groups within the city, and then having the council make the final selection.

“The city needs to make decisions on things that have long-term consequences,” Talmage offered, explaining the urgency of having a city administrator who isn’t distracted by controversy.

In addition to the future of the fire department, the ongoing water shortage and various other issues, “the ‘new normal’ shows that we’re running a deficit of \$1 million to \$1.5 million when you include the money we should be spending on capital projects, and we need to deal with that,” Talmage said.

### **Long career in public sector**

Guillen began his government career as a land development supervisor with Placer County, where he worked nine years. Later, he was public works director for Auburn, and then public works director and interim city administrator for Seaside.

After the departure of Jere Kersnar, Carmel hired Guillen as city administrator on an interim basis in October 2000 and then gave the job permanently in December 2000 amid glowing reviews of his job performance and easy-going style.

But in early 2008, Pine Cone reporter Mary Brownfield began to hear rumblings that Guillen was about to be the subject of a sexual harassment complaint by someone who worked at city hall. Later, a source identified the complainant as Jane Miller — a surprise since, as human resources manager, she would be the official in charge of preventing sexual harassment and making sure anyone who was victimized by it had a readily available path for getting the harassment to stop.

But Miller didn’t say a word publicly or even raise the issue of Guillen’s behavior with other city officials before hiring Monterey attorney Michael Stamp and filing a formal complaint with the city in May 2008, claiming that Guillen had flirted with her for years and tried to eliminate her job when she didn’t return the attention. Meanwhile, he promoted employees he was attracted to and got rid of those he didn’t like, Miller claimed. The alleged harassment and hostile workplace environment caused her so much “work-related stress and depression” she was forced to go on medical leave, she alleged.

Soon after it received her complaint, the city hired the law firm Liebert Cassidy Whitmore to investigate it — an investigation Miller refused to cooperate with. In February 2009, after interviewing numerous city employees, the law firm concluded Miller’s allegations were “not substantiated.”

Four months later, Miller sued the city (but not Guillen), asking for compensation for lost wages, physical and emotional injuries and attorney’s fees.

“Guillen intimidated the plaintiff at work, and she believed she had no adequate or effective remedy to address Guillen’s conduct,” the suit said. “The plaintiff reasonably believed that if she challenged Guillen for his conduct and statements, her position and professional status would be injured, her career would be jeopardized, and she would lose all or part of her salary and benefits.”

The city was barred from discussing the case, due to state laws protecting the privacy of municipal employees. But behind the scenes, what Stamp called “months of discussions that were very protracted and very difficult” were under way, resulting in the city and Miller settling her suit in July 2010. Without admitting any wrongdoing, Carmel and its insurance company paid Miller \$600,000 in exchange for her dropping all further legal action against the city.



But the city, apparently satisfied with the results of the law firm's investigation clearing him of any wrongdoing, let Guillen keep his job. Perhaps wanting to see him fired, just a few weeks after receiving her \$600,000 settlement, Miller went on a public relations offensive, releasing numerous emails to the Monterey County Herald and Monterey County Weekly that Guillen had sent her while she worked at city hall, including ones in which he told her he adored her and complimented her appearance.

"I know it embarrasses you to know this, but I liked you from the day I met you, always have and always will," Guillen emailed Miller in July 2006. "I think about you all the time and I'm always hopeful that you're happy every waking moment."

Guillen said nothing about the release of the embarrassing emails, and the city continued to maintain its legally required silence about the entire situation. That left Miller and Stamp alone to comment to the public. Based on their version of the events, the news media began to refer to Carmel as "Peyton Place."

In August 2010, citing the distraction which the city administrator's problems posed for the city, but also raising serious questions about Miller's credibility, The Carmel Pine Cone printed an editorial calling for Guillen's resignation.

In September 2010, the city council held a closed session to discuss terminating him, but that idea reportedly failed on a 3-2 vote.

In November 2010, Burnett and Talmage published a commentary in the Herald calling on Guillen to resign. But still he stayed in his job.

Then, at a city council meeting Feb. 1, Burnett pressured Freeman to release the results of the September 2010 closed session. And he asked for another closed session to try to resolve the Guillen controversy once and for all.

That closed session was scheduled for Feb. 15 in a downstairs conference room at city hall. When it happened, it concluded with the announcement that Guillen would soon be gone.

Businessman Chris Tescher said he would miss Guillen. "He was always amiable and sincere, and being from the area, he understood the culture of Carmel, which is important for any city manager."

Tescher said. "I had a lot of dealings with him, and he was always accessible and attentive, and he liked to solve problems. Even when we disagreed, he was never disagreeable."