**TOWN OF MORAGA**
**TOWN COUNCIL REGULAR MEETING**

**January 13, 2010**
**MINUTES**

**6:30 P.M. Regular Meeting**

Joaquin Moraga Intermediate School Auditorium
1010 Camino Pablo, Moraga, California 94556

## I. CALL TO ORDER

The special meeting was called to order at 6:32 P.M. by **Mayor Ken Chew.**

**ROLL CALL**

Councilmembers present: Mayor Ken Chew, Vice Mayor Karen Mendonca, and Councilmembers Howard Harpham, Michael Metcalf and Dave Trotter

Councilmembers absent: None

## II. PLEDGE OF ALLEGIANCE

**Mayor Chew** led the Pledge of Allegiance.

## III. ANNOUNCEMENTS AND PRESENTATIONS

**A.** Proclamation Thanking Moraga Hardware and Lumber and Across the Way for Sponsorship of the 2009 Holiday Home Decorating Contest

Parks and Recreation Director Jay Ingram reported that the 2009 Holiday Home Decorating Contest had been started by the Parks and Recreation Department with the idea of spreading additional holiday cheer in the Town. Bill Snider and Susan Marconi had been invited to sponsor the contest and Moraga Hardware and Lumber and Across the Way had agreed to sponsor the event, with gift certificates issued for the First, Second, and Third Place Winners.

Mr. Ingram expressed his appreciation to Mr. Snider for the generous donation. He also acknowledged Ms. Marconi who was not able to be present at the meeting.

Mr. Ingram identified the winners of the contest: First Place winner, the Ginley family on Hetfield Place; Second Place, the List Family on Lynwood Place; Third Place, the Schmitz Family on Larch Avenue; with an Honorable Mention plaque awarded to the Brady family on Merrill Circle Court North.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

**Mayor Chew** read the proclamation Thanking Moraga Hardware and Lumber and Across the Way for Sponsorship of the 2009 Holiday Home Decorating Contest, and presented the winners with their gift certificates and plaques. **Councilmember Trotter** expressed his appreciation to Mr. Snider for his willingness to sponsor the event.

**B.** Proclamation Recognizing the 30th Anniversary of the Moraga Police Department

**Mayor Chew** read the proclamation Recognizing the 30th Anniversary of the Moraga Police Department into the record.

Chief of Police Robert Priebe referenced the history of the Moraga Police Department for the past 30 years and commended and acknowledged the support and trust of the public. He personally thanked the Town Council for its personal and professional support since his tenure as the Chief of Police over the past year.

The entire Council expressed its appreciation to Chief Priebe and the entire Moraga Police Department for its service to the community.

PUBLIC COMMENTS OPENED

Connie Hayes, Moraga, stated that she had worked closely with the Moraga Police Department over the past ten years on traffic and safety issues at Los Perales School. She expressed her appreciation to Chief Priebe and the entire Department for their assistance.

Barbara Simpson, Moraga, also expressed her appreciation to Chief Priebe and the entire Moraga Police Department.

Edy Schwartz, Moraga, further expressed her appreciation to Chief Priebe for his service for the past 30 years. She thanked the Moraga Police Department for keeping the Town safe.

PUBLIC COMMENTS CLOSED

## IV. ADOPTION OF THE CONSENT AGENDA

**A.** Approval of the Consent Items

PUBLIC COMMENTS OPENED

Consent Agenda Items 2, 3 and 5 were pulled from the Consent Agenda.

PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Trotter/Mendonca) to approve Consent Agenda items 1, 4, 6, 7, and 8. Vote: 5-0.**

| | | |
|---|---|---|
| 1) | Accounts Payable Claims for 11/27/09 ($2,822.24); 12/01/09 ($12,729.41); 12/04/09 ($73,979.37); 12/04/09 ($2,687.00); 12/18/09 ($1,557.00); 12/18/09 ($745,345.89); 12/31/09 ($27,042.01) | Approved |
| 2) | *Approve Minutes from the Town Council Meeting December 2, 2009* | *Removed* |
| 3) | *Approve Minutes from the Town Council Meeting* | *Removed* |

| | | |
|---|---|---|
| 4) | Adopt Resolution 1-2010 Confirming the Town Election of Mayor and Vice Mayor | Approved |
| *5)* | *Adopt Resolution 2-2010 Authorizing the Town Manager to Enter into an Agreement with the Association of Bay Area Governments (ABAG) to Act as a Third Party for the Lease Financing of 329 Rheem for the Purpose of Purchasing 331 Rheem Blvd.* | *Removed* |
| 6) | Adopt Resolution 3-2010 Adopting a Resolution Accepting and Filing Approved the FY 2008-2009 Audit and Management Letter | |
| 7) | Adopt Resolution 4-2010 Ratifying the Award of a Construction Contract not to Exceed $5,800.00 to Siteworks Construction, Inc., of Lafayette, for Repairs to the Debris Fence along Bollinger Canyon Road, and Accept the Repairs | Approved |
| 8) | Accept the Construction of the Upper Commons Playground by Justin Bundy Construction and Authorize the Town Manager to file the Certificate of Completion with the Contra Costa County Clerk's Office | Approved |

**B.** Approval of the Consent Items Removed for Discussion

1. Approve Minutes from the Town Council Meeting of December 2, 2009

The following corrections were made to the minutes from the Town Council Meeting of December 2, 2009:

To Page 5, paragraph five, second sentence:

*Bob Reynolds, Vice President of the Hacienda Foundation, emphasized that the Hacienda was always intended to be used as a park and the presence of the Corporation Yard and Town staff had prevented the full utilization of the facility.*

To Page 11, Mayor's and Councilmembers' Reports, first and last sentences, Mayor Dave Trotter:

*Reported that he had represented the Town during the recent Circle of Hope Lighting Ceremony at the Commons.*

*In addition, the State of the Town Address has been scheduled for December 7 at 6:00 P.M. at the Holy Trinity Cultural Center.*

To Page 11, Mayor's and Councilmembers' Reports, Vice Mayor Ken Chew:

*Reported that he had attended the Moraga Rotary Luncheon when there had been a presentation from the County Librarian.*

**ACTION: It was M/S (Trotter/Mendonca) to approve the December 2, 2009 Town Council Meeting Minutes, as amended. Vote: 5-0.**

2. Approve Minutes from the Town Council Meeting of December 9, 2009

The following revisions were made to the December 9, 2009 Town Council meeting minutes:

To Page 5, first paragraph:

*Caroline Wood, Moraga, recommended the use of a community calendar to ensure no conflicts with Town, community, and school events.*

To Page 5, Councilmember Reports, Councilmember Dave Trotter:

*Reported that he had represented the Town at the Lighting of the Christmas Tree Ceremony in the Commons on December 5; solicited donations from the public for the Buy a Light Bulb Campaign on the same evening; and delivered the State of the Town Address at the Holy Trinity Cultural Center on December 7, which had been well attended.*

**ACTION: It was M/S (Harpham/Chew) to approve the December 9, 2009 Town Council Meeting Minutes, as amended. Vote: 5-0.**

3. Adopt Resolution 2-2010 Authorizing the Town Manager to Enter into an Agreement with the Association of Bay Area Governments (ABAG) to Act as a Third Party for the Lease Financing of 329 Rheem for the Purpose of Purchasing 331 Rheem Blvd.

Sam Sperry, Meyers Nave, Bond Counsel, clarified that Page 2, Sections C and D, of Resolution 2-2010, had been amended to reflect discussions with staff and a review of the earlier preliminary transaction.

**ACTION: It was M/S (Harpham/Chew) to adopt Resolution 2-2010 Authorizing the Town Manager to Enter into an Agreement with the Association of Bay Area Governments (ABAG) to Act as a Third Party for the Lease Financing of 329 Rheem for the Purpose of Purchasing 331 Rheem Boulevard. Vote: 5-0.**

## V. ADOPTION OF MEETING AGENDA

The Agenda was reordered to move Item VII, Special Orders - Public Hearings for consideration after Item IX. New Business, Item VIII. Unfinished Business and Item X. Ordinances.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Trotter/Harpham) to adopt the Meeting Agenda, as modified. Vote: 5-0.**

## VI. PUBLIC COMMENTS AND SUGGESTIONS

Edy Schwartz, Moraga, President of the Moraga Chamber of Commerce, encouraged the Town Council to contact Kimco Realty regarding the Rheem Center which was quite empty, and which had a detrimental effect on the existing tenants in the center itself and the Town as a whole.

Joan Bruzzone, Moraga, commented on the difficulties in obtaining permits to open a new restaurant business, which she described as confiscatory for any landlord, with no assurance

that the permits would be issued in a timely manner. She emphasized that the Town Council should seriously review that situation.

Barbara Simpson, Moraga, expressed concern regarding the Town's fiscal situation given that revenue was down with costs continuing to increase and the economy had still not improved. She expressed concern with the Town's plans to purchase additional properties, the possibilities of increased taxes, and concern with the potential for the Town of Moraga to become a Charter City. She urged the Town Council to reduce the size of its committees and commissions, many of which were unnecessary and should be consolidated.

## IX. NEW BUSINESS

**A.** Adopt Resolution 5-2010, Supporting the Local Taxpayer, Public Safety and Transportation Protection Act of 2010

Town Manager Michael Segrest reported that the request was from the League of California Cities to support the communities in the State to try and deal with the issues of the State takeaways and hopefully make that impossible through a ballot question before the voters. The item would lend support to that effort.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Trotter/Mendonca) to adopt Resolution 5-2010 Supporting the Local Taxpayer, Public Safety and Transportation Protection Act of 2010. Vote: 5-0.**

**B.** Appointment of Town Council Representatives to Commissions, Boards and Committees, and Discussion of Process for Appointment of Citizens to Town Boards and Commissions

**Mayor Chew** recommended the following Council Committee Appointments:

| | PRIMARY | ALTERNATE |
|---|---|---|
| Audit and Finance Committee | Ken Chew | Karen Mendonca |
| TSAC Liaison | Howard Harpham | |
| Ad Hoc Country Club Golf Course Negotiation Team | Ken Chew | Howard Harpham |
| Ad Hoc Open Space | Karen Mendonca | Howard Harpham - Alternate |
| Specific Plan Subcommittee | Michael Metcalf | Dave Trotter |
| Saint Mary's College Subcommittee | Karen Mendonca | Ken Chew |
| Moraga-Orinda Fire District Subcommittee | Ken Chew | Michael Metcalf |
| ABAG Liaison | Howard Harpham | |
| Acalanes Union High School District Liaison | Howard Harpham | Ken Chew - Alternate |
| Contra Costa County Mayors' Conference | Ken Chew | Karen Mendonca - Alternate |
| EBMUD Liaison | Ken Chew | Karen Mendonca - Alternate |
| Emergency Preparedness Committee | Dave Trotter | Howard Harpham - Alternate |
| League of CA Cities East Bay Division | Ken Chew | Karen Mendonca - Alternate |
| League of Cities Communication Commission | Ken Chew | |
| Transportation/Communication/Public Works Committee (TCPW) | | |
| Moraga Chamber of Commerce Liaison | Howard Harpham | Karen Mendonca - Alternate |
| Moraga - Orinda Fire District | Ken Chew | Michael Metcalf |
| Moraga School District Liaison | Karen Mendonca | Howard Harpham |
| Moraga Youth Involvement Committee | Karen Mendonca | Howard Harpham - Alternate |
| Voting Delegate CCC Solid Waste Board | Dave Trotter | Karen Mendonca |

| | | |
|---|---|---|
| League of Cities Delegate | Ken Chew | Karen Mendonca - Alternate |
| Lamorinda School Bus Transportation Agency | Michael Metcalf | |
| Southwest Area Transportation Committee (SWAT) | Michael Metcalf | |
| Specific Plan Implementation Subcommittee | Michael Metcalf | Dave Trotter |
| Revenue Enhancement Subcommittee | | |
| Infrastructure Subcommittee | Michael Metcalf | Howard Harpham |
| Charter City Subcommittee | Dave Trotter | Karen Mendonca |
| Tri-Agency Subcommittee | Ken Chew | Michael Metcalf |

PUBLIC COMMENTS OPENED

Fred Schroeder, Moraga, member of the Revenue Enhancement Committee, clarified with the Mayor the intent of the Revenue Enhancement Subcommittee. He recommended the consideration of an Economic Development Subcommittee along with the other committee appointments.

Lynda Deschambault, Moraga, pointed out that the Open Space Subcommittee was a goal of the General Plan. She asked that the subcommittee be combined with a Sustainability Task Force given the potential energy efficient funds that could be available to the Town. She agreed that the Town Council should consider an Economic Development Subcommittee as well.

PUBLIC COMMENTS CLOSED

By consensus, the Town Council accepted the Mayor's recommended appointments to commissions/committees.

As to the process for appointment of citizens to Town Boards and Commissions, Town Manager Segrest updated the Council on the number of vacancies on Town commissions/committees and the number of applications received thus far.

By consensus, the Town Council as a whole decided to interview all applicants for the Town's commissions/committees.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Town Council interviews for the Design Review Board (DRB) and Planning Commission were scheduled for February 3, 2010. Interviews for the Park and Recreation Commission were scheduled for February 9, 2010.

The status of TSAC was raised although since it was not an agenda item; it would have to be discussed when agendized properly given that those members of TSAC, whose term would expire, had indicated no interest in being reappointed. An interested applicant had submitted an application to the Town.

C. Council Goal Setting Session Schedule and Agenda

The Council Goal Setting Session was tentatively scheduled for February 20, 2010 starting at 8:00 A.M., which session would be open to the public.

PUBLIC COMMENTS OPENED

Dave Bruzzone, Moraga, expressed concern with some of the tentative goal policy setting topics he understood the Town Council may revisit during its goal setting session, some of which had been addressed at great length in the past and could restrict single-family development thereby affecting the number of residential units proposed in the Moraga Center Specific Plan (MCSP).

PUBLIC COMMENTS CLOSED

**D.** Approve Applications for California Energy Commission Energy Efficiency Loan and for an Energy Efficiency and Conservation Block Grant to Fund Energy Efficiency Improvement Projects and Authorize the Town Manager to File the Applications

Public Works Staff Engineer John Sherbert, explained that the Town had the opportunity through stimulus funds and the State Energy Commission to apply for substantial funds to conduct basic upgrades to Town facilities in order to reduce energy costs. Staff would be looking at a number of projects to conduct those upgrades in Town facilities including improving the efficiency of the boiler at the Library, and improvements to the heating system in the first floor of the Hacienda. The Town would be required to match funds for a portion of the funds that could be received through a low interest loan that would be repaid through the savings realized by the reduced energy costs. He identified the associated costs for the loan and repayment requirements. He acknowledged that the grant process application was competitive, although staff did not expect any issues in being awarded the funds since the Town had met all required targets. He acknowledged that the applications had already been submitted prior to Town Council consideration given the required deadline and since the Town Council had not met since December 9.

PUBLIC COMMENTS OPENED

Barbara Simpson, Moraga, suggested that there was the assumption that PG&E rates would remain the same in the future. She pointed out that PG&E Smart Meters, if not already installed, would actually increase the rates. She expressed concern that the Town had known of needed improvements to Town facilities for years.

Larry Beans, Moraga, supported the options for the consideration of energy efficiency reduction improvements.

PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Harpham/Mendonca) to adopt Resolution 6-2010, Authorizing the Town of Moraga's Application for a California Energy Commission 3 Percent Loan to Install Energy Efficient Measures in Town Buildings. Vote: 5-0.**

**ACTION: It was M/S (Trotter/Chew) to adopt Resolution 7-2010, Authorizing the Town of Moraga's Application for an Energy Efficiency and Conservation Block Grant to Fund Energy Efficiency Improvement Projects. Vote: 5-0.**

Speaking again to the issue of the status of the various boards and committees, **Mayor Chew** encouraged interested applicants to apply for appointment.

Town Manager Segrest advised that the deadline to apply had expired. If the Town Council so desired, the applications for TSAC could be reopened.

**ACTION: It was M/S (Trotter/Mendonca) to reopen the submittal of applications for TSAC, the DRB, and the Planning Commission with a deadline of Friday, January 29, 2010. Vote: 5-0.**

## VIII. UNFINISHED BUSINESS

**A.** Adopt Resolution Amending the Town's Design Guidelines to Incorporate the *Moraga Transportation Corridor Streetscape Plan* (aka the Gates Report) in Accordance with the Recommendation of the Design Review Board and Planning Commission

Senior Planner Richard Chamberlain reported that a subcommittee of the DRB had been appointed to review the Town's Design Guidelines to Incorporate the *Moraga Transportation Corridor Streetscape Plan* (aka the Gates Report). During previous discussions a plant list and plant palette had been added to Appendix B. In addition, the subcommittee recommended that the Floor Area Ratio (FAR) Guidelines be moved to Appendix D, with Appendix C to address the items in the Gates Report, and with drawing titles changed for any scenic corridor roadway. The Planning Commission had also reviewed the recommended changes and had made minor amendments and recommendations which had been presented to the Town Council for consideration, and which included an update of the Green Point Rated Checklist to include the most current checklist for 2010, as shown in Appendix A.

In response to the Council, Mr. Chamberlain acknowledged that State statutes and building code changes may require changes to the guidelines but would likely not occur for another six months or so. The Green Point Rated Checklist was updated every three years in response to State changes to Title 24. He also explained the rationale why specific text had been deleted and/or added in the attachments during the discussions of the DRB subcommittee, or which had come directly from the Gates Report.

PUBLIC COMMENTS OPENED

Lynda Deschambault, Moraga, complimented the design guidelines that had been proposed and commented on the history and background of the past discussions of the Gates Report. She asked the Town Council to include language that would make it clear that native species were important for many reasons and that the plant palette provided by Gates was almost 100 percent native with the exception of one invasive plant species she asked be removed. She also asked the Town Council to consider bringing back the tree planting program.

Mr. Chamberlain clarified that the invasive plant species which had been identified on the plant palette had previously been removed.

Dave Bruzzone, Moraga, suggested that the Town design guidelines would significantly impact the MCSP, an uncertainty being proposed at the last moment. He noted that the issue had started out with street beautification and that such enhancements would cost a lot of money, money that would likely not be spent by the Town since the Town did not have the funds. He also expressed concern with the narrowing of the roadways as reflected on Page 52 of 68 of the guidelines, where Moraga Road would be narrowed from four to two lanes, which would impact future development in that corridor. He asked staff to clarify that situation.

PUBLIC COMMENTS CLOSED

The Town Council discussed the Town's Design Guidelines and made the following recommended amendments:

- Page 52 of 68, Example of an Intersection with a Four to Two-Lane Transition, remove the references to Moraga Road and Donald Drive;
- Page 53 of 68, Example of a Two-Lane Road with Drivable Turn Lane/Median and Adjacent Trail, remove the reference to Moraga Road;
- Revise Design Guideline, Page 15 of 68, SC13 to read:

  *Existing overhead lines on both private and public property along scenic corridors should be converted to underground when substantial redevelopment is proposed.*

Staff was directed to bring the item back as a Consent Agenda Item at the next meeting of the Town Council, scheduled for January 27, 2010 for action, as amended.

**B.** Adopt Resolution 8-2010 Declaring the Property Located at 316 Calle La Montana a Nuisance and Ordering Abatement of the Conditions

Assistant to the Planning Director Kelly Clancy recommended that the Town Council adopt Resolution 8-2010 Declaring the Property Located at 316 Calle La Montana a Nuisance and Ordering Abatement of the Conditions, pursuant to the Moraga Municipal Code (MMC). The resolution required the property owner to abate the nuisance within 30 days. If the property owner failed to abate the nuisance within 30 days, the Town Council would authorize the Town Manager to proceed to abate the nuisance. She identified the background of the nuisance abatement process, as outlined in the staff report, leading to the current consideration.

Ms. Clancy reported that staff had spoken with the attorney representing the property owner who had been presented with all information sent to the property owner who currently resided in Kuwait. Two staff members had also visited the site this date and found that none of the required items had been abated. Responding to Council, Ms. Clancy confirmed that the property owner had been mailed and e-mailed all of the notices listing the items required to be abated within 30 days.

Mark McLaughlin, Attorney representing the property owner of 316 Calle La Montana, explained that he had appeared before the Town Council approximately five years ago regarding the condition of the property, at which time the property owner had cleared the property. He had visited the property in mid-December and found a vehicle in the rear of the property had been vandalized by others, not his client, and that the interior had rodent infestation. He advised that the building windows were intended to be boarded up, the car removed and interior cleaned up within 30 days.

Mr. McLaughlin commented on the difficulty for the property owner who resided out of the country to secure the services of someone to abate the property. The property owner intended to hire a contractor within 30 days, obtain permits, and renovate the interior of the home. The property owner also planned to return to the United States in June, complete the renovations and either sell or lease the property at that time. The home had been vacant for many years without any problems. He suggested it would be less expensive for the property owner to clean up the property rather than the Town, since the property owner would likely move faster, and avoid any litigation. He expressed a desire to work with the Town and acknowledged that if his client had been local it may have been easier to be prompt in responding to the Town. He emphasized that he had been in contact with his client and the Town to advise of his client's intent to take steps to abate the property. He suggested that the property owner could show that a contractor had been obtained within 30 days to start the process although the work would likely take three months or more to complete.

Mr. McLaughlin suggested that the nuisance was not a concern to the public since the items required to be abated were not visible from the street and were inside the home.

Responding to Council, Mr. Segrest clarified that the list of items required to be abated would not require a permit from the Town. Any renovations to the home would require a permit from the Town.

Mr. McLaughlin clarified that the property had been empty for 15 years. He suggested that the payment of property taxes was not an issue, the issues with dry grass could be addressed through securing someone within 30 days to conduct clean up, and the furniture, abandoned vehicle and rodents could be addressed within 30 days. The concerns with mold would take some time and that work could not be done within 30 days.

Planning Director Lori Salamack explained that five years ago, the Town had sent notices with dialogue with the property owner related to a similar situation with the condition of the property. At that time, promises had been made but not kept by the property owner until the last minute when the property at that time had been repaired. The conditions five years ago were similar to those that currently existed but were more serious in nature. Abatement of the mold in the interior of the home could be expensive with testing of air quality. The Town was more interested in the securing of the property. She acknowledged that if the Town had to abate the property it would not likely abate the mold.

Mr. Segrest expressed a desire to see the mold contained or removed and not represent a hazard to people outside. Staff realized the removal of the mold may require the removal of structural elements, necessitating the issuance of a building permit. Containment could be achieved through boarding up the property where the mold would not leave the building, which would be satisfactory. Mold experts could analyze that the containment was sufficient.

Mr. McLaughlin suggested that the home appeared okay from the outside. In the past, the property owner had expended a great deal of money to abate the property with the exception of the removal of a vehicle which was located behind a fence and not visible from anywhere else. He saw no harm in allowing the property owner 30 days before any action on the abatement which would allow the property owner the opportunity to secure someone to do the work. As to the issues with respect to mold, he did not know how involved that could become.

Ms. Clancy advised that the 30-day period would end on February 16, 2010.

Mr. Segrest clarified that the action before the Town Council would allow the property owner 30 days to abate the items required and no more. If those items, as listed, were not abated, he would be authorized to step in and have someone do the work.

Ms. Clancy explained that she had viewed the interior of the property through a broken window and had taken photographs depicting the extent of the mold, rodent feces, and debris.

Councilmember Mendonca asked for a two-week progress report showing in good faith that Abatement Items 1, 2, 4, 5 and 6 were being addressed, which the Town Attorney affirmed could be done.

Mr. McLaughlin reiterated that he had a long-term relationship with the property owner and would be willing to work with the Town to secure someone local to abate the property.

PUBLIC COMMENTS OPENED

Matt Harrington, Moraga, member of the Homeowner's Association (HOA) and a neighbor of the subject property, found it incomprehensible that the property had not been maintained for years. He noted that some neighbors had to conduct minor maintenance on the front landscaping. He appreciated the work of staff and the Town Council to bring a resolution to the issue. He also appreciated the possible sale of the property if the property owner so decided in the future. He characterized the property as derelict and a nuisance.

Marco Milosia, Moraga, did not support the boarding up of the windows since the property would appear even more abandoned.

Julia Harrington, Moraga, reported on the number of parties and teenagers who had entered the home with paraphernalia and debris littered around the property. She stated that the Police Department had been called when teenagers had accessed the home through the broken windows. She emphasized that the property owner had agreed to abate the property before although nothing had been done.

Mr. Segrest commented that he could not speak to the specific police reports to the property although he was aware that the Police Department had been called and responded to the calls relating to the property.

City Attorney James Atencio explained, when asked, that if the abatement measures listed in the staff report were completed to remedy the condition of the home, rather than make the home habitable for someone to live, the Town's interest was in the public health, welfare and safety, which went beyond what the Town's nuisance abatement code required. He suggested that the Town Council could add a specific abatement measure to make the property habitable, as an example. A requirement to remove the mold would make the property habitable.

Mr. McLaughlin commented that he had been to the property years ago but was unaware of teenage parties occurring on the property, was unaware of debris outside the property, the fact that neighbors had been cleaning up and the fact that someone was vandalizing the vehicle at the property for parts. He would inform the property owner of the Town Council's concerns.

As to the issue with the mold in the interior of the property, Mr. Segrest suggested that the Town Council may either require containment or removal of the mold within 30 days. An inspector could review the property. He recommended that the property owner provide evidence of that completion with inspection to certify that the removal or containment of the mold was done properly. If not, the Town may do the work and charge the property owner.

The Town Council discussed the proposed resolution, clarified the legal issues relating to the Town's ability to require abatement with nuisance findings, and offered the following direction:

- Adopt the resolution and start the nuisance abatement process;
- Agendize the item as a regular agenda item on future Town Council agendas with a regular progress report;
- Remove the reference to "contain the mold" from Item 3 of the list of abatement items with the mold to be removed "to the satisfaction of the Town's inspector;"
- Add a new abatement item, Item 8, to read: "Provide an executed document evidencing retention of a General Licensed Contractor and a sufficient security instrument in a form acceptable to the Town Manager with a detailed construction schedule for measures to render the property habitable within six months, by August 16, 2010."

As to a recommendation for the property owner or his/her representative to appear before the Town Council each month to provide a progress report, Mr. Atencio recommended that the Town Council continue with the remaining agenda items to allow him to review potential language that could be imposed for Council consideration.

**Mayor Chew** declared a recess at 9:57 P.M. The Town Council reconvened at 10:07 P.M. with all Councilmembers present.

## VII. SPECIAL ORDERS - PUBLIC HEARINGS

**A.** Public Hearing to Consider the Town of Moraga Housing Element Update and Moraga Center Specific Plan (MCSP) including the following actions:

1. Adopt Resolution __-2010 Certifying the EIR for the MCSP;

2. Adopt Resolution __-2010 Approving the Draft Mitigated Negative Declaration (MND) for the Housing Element Update with Conforming Changes in the General Plan and adopting the Housing Element Update with Conforming Changes in the General Plan;

3. Adopt Resolution __-2010 Making Findings of Fact Pursuant to CEQA and Adopting the Moraga Center Specific Plan;

4. Introduction and First Reading of a Draft Ordinance to Rezone 24 acres within the Moraga Center Specific Plan area to a new 20 Dwelling Units Per Acre Zone;

5. Introduction and First Reading of a Draft Ordinance to Establish the Zoning Requirements for the new 20 Dwelling Units Per Acre Zone

Ms. Salamack reported that the Town's Environmental Consultant was present to address any concerns or comments from the Town Council. She identified the Implementation Chapter and identified revisions to the chapter regarding the use of the Environmental Impact Report (EIR) and modification of language regarding the schedule. Specifically, Chapter, 8.34, Page 2 of 13, Attachment H, would read "Area A the 6.135 acre area of the R-20 District designated as Area A on the map attached to Ordinance XX," with the ordinance number to be filled in when assigned. The same language would follow in Area B, where the language in the blank, would be "the map attached to Ordinance XX." Also, Page 3, Section E. Implementation Tools that the Town May Consider, bullet number 7, language had been stricken by the Town Attorney. Copies of the revised Implementation Chapter were provided to the Town Council and the public.

Ms. Salamack responded to the issue of potential grant funding for energy related topics and stimulus funds for sustainable growth projects and noted that the Town was aware of the funds available through grant funding where applications were required to be submitted by April 22, 2010. There were grant funds available through Transportation for Livable Communities (TLC) funding. When the Town approved the MCSP, the Town received confirmation from ABAG that the Town would be moved from a Potential Priority Development Area to a Planned Priority Development Area, and with that change would be eligible to apply for TLC funding.

Ms. Salamack advised that the Planning Commission had reviewed and made recommendations to approve the documents, the Town Council had appointed a subcommittee of interested staff and stakeholders to review the documents, and there had been several public hearings on the documents. She suggested that now was the time to approve the documents subject to any modifications the Town Council may impose.

PUBLIC COMMENTS OPENED

Barbara Simpson, Moraga, suggested that final action should not be taken and another public hearing should be scheduled with appropriate publicity given the limited number of persons present, the late hour, and the fact that the items had been scheduled on a special, not a regular meeting.

Jim Townsend, representing the East Bay Regional Park District (EBRPD), spoke to the issue of the Lafayette-Moraga Trail within the MCSP. He commented that he had met with Mr. Loewke and Mr. Bruzzone to conduct background research after the last Town Council meeting when the issue had been discussed. He referenced Page 38 of the MCSP and recommended that the language regarding the Lafayette-Moraga Trail be modified since the notion that the trail should be extended was in error given the EBRPD's costly improvements expended on the trail, and the fact that the trail existed within the alignment as purchased by EBRPD from the Bruzzone family in the early 1980s. The trail had been designated as a primary pedestrian and bicycle boulevard which was misleading to the public and anyone reading the MCSP, and which was not consistent with the EBRPD standards, the use of equestrians in that corridor or the recorded right-of-way. He asked that the language on Page 38 be amended to read "The Lafayette-Moraga Regional Trail shall remain within its current alignment along the west side of the School Street right-of-way. However, the trail alignment may be moved to an alternate location subject to an appropriate agreement between the EBRPD and the property owner."

Richard Loewke, representing the Bruzzone family, affirmed that he had met with Mr. Townsend, had received a copy of the easement language, and affirmed that there had been an exchange of money and an easement acquired. He was uncertain of the exclusivity of the easement and was uncertain that the MCSP could not be implemented as designed. He suggested that the language previously recommended by Councilmember Trotter regarding this matter was appropriate, but he was more than willing to work with Mr. Townsend on this issue. He suggested that the language that had been proposed by the EBRPD was restrictive and had implications he was unsure of. He urged the Council not to amend the MCSP absent a thorough vetting of the issue.

Mr. Townsend opposed the language in the MCSP stating that the trail shall be extended along its current alignment and the fact that it had been designated as a primary pedestrian and bicycle boulevard, which was very different from a non-motorized trail for the passage of pedestrians, bicyclists and equestrians, which was what the EBRPD had purchased in the 1980s. The language of the land use for the easement was very clear and he would not want to see the language in the MCSP be inconsistent with the language in the easement. He reiterated his recommended language for consideration.

Jeffrey Farr, Moraga, commented that he had been made aware of the issues over the past year having sent two letters to staff and the Town Council, with no response. He questioned how the proposed 20-DUA ordinance would be applied since it would change how the community was currently zoned. He also questioned how the community had been involved in the process given the limited number of people present in the audience. He noted that he had not been noticed of the public hearing. He was surprised to see how few people were present to address the Town Council.

Connie Hayes, Moraga, understood the intent of the Housing Element and the proposed 20-DUA. She understood that the Town Council had initially supported higher density at the lowest levels required but had since learned that the high-density housing that had been proposed in the MCSP was at a much higher level where possibly 880 residential units could be built.

Ms. Salamack identified the level of public participation and the legal public hearing notice radius requirements which had been met by the Town, with a great deal of noticing and education of the public with hearings through Town Council and Planning Commission agendas, the Town's website and local newspapers. In her opinion, the MCSP had gone on for far too long and many had become fatigued by the process. She also explained how the Town Council had reached the current level of dwelling units and densities for the Housing Element, the Town's requirements under State law mandates for housing, and how the numbers in the MCSP had been reached through various and numerous public discussions. As part of previous discussions, the Town Council had discussed at length the number of units and had mandated a cap of 630 units in the MCSP, with the trip generation in the MCSP to be under the trip generation in the General Plan threshold.

Ms. Salamack also explained that the senior assisted units were considered in a different category and could be developed at a higher density. The intent was to simulate growth in the MCSP with more, rather than fewer, residences and which had led to the higher numbers of units being proposed in the MCSP. Student and workforce housing types in the MCSP were also clarified. She expressed the willingness to meet with any of the Town's residents who continued to have concerns or comments on the MCSP.

In further response to Ms. Hayes, Rob Brueck, Hauge Brueck Consulting, clarified that the MCSP included Table 4-2 on Page 37, which had shown the 630 maximum units and different minimum residential types, including 40 single-family homes, 100 units for compact residential/condo/townhomes, and 148 units for senior housing as the highest density. Ranges of residential type options had also been shown on Table 4-2 as to how to reach the total 630 units.

Mr. Loewke recognized the work that had been done thus far and the improvements made to the MCSP, although his clients, the Bruzzones, were the principal owners of property targeted for expansion in meeting ABAG's Regional Housing Needs Allocation (RHNA). He stated that his clients remained concerned with the overall feasibility of the MCSP and expressed concern with prescriptive and cost exactions that could affect the feasibility of the project. He noted that the Planning Commission had recommended a Build it Green standard in excess of the Build it Green Checklist requirements. He strongly supported the application of the standard that had been applied town-wide, particularly for housing designed for seniors and the workforce.

Mr. Loewke spoke to the 50-foot setback proposed from the edge of the riparian boundary and asked the Town Council not to impose that prescriptive and unnecessary control which was inconsistent with the findings in the EIR to protect all of the environmental systems, and which would preclude the use of some of the most valuable, usable and accessible least environmentally-constrained land in the MCSP for housing, and which would increase the cost of housing by reducing the site area available for the 20-DUA ministerial project creating a narrower site with additional cost implications. He also noted that the Findings of Fact and Overriding Considerations document, specifically Page 36, CD1.1 as shown, stated that housing shall be concentrated in the flat and gently sloping area outside of the flood plain of Laguna Creek.

Mr. Loewke added that the MCSP had language that had been carefully refined with a focus and emphasis on the economic revitalization of the Moraga Center and accommodation of housing meeting the RHNA and local needs, although language changes had been made to the document since it had last been seen publically. Specifically, Page 21 included language referring to the 20-DUA and elsewhere called for the preservation of orchard trees especially in connection with greenbelt or internal pathways, although the original language called for the preservation of orchard trees where possible and consistent with the development program

which in the area was largely housing, and which changed the focus of the plan to accommodate housing.

Mr. Loewke added that Page 35 of the MCSP had included new language calling for an increased emphasis on development of recreational uses with a continual reference to a gymnasium and community center use, although previous discussions with the Town Council in December had refined the language following a presentation from the Town Manager to accommodate a community center and gym use in the Community Commercial District with the language in the district changed to make it a permitted use. Site specific references as to where and whether a community center/gym should be made part of the MCSP had been removed.

Mr. Loewke further spoke to Pages 59 and 60 of the Implementation Element of the MCSP where the third bullet of the original document had been modified to now read to encourage the use of enhanced sales and property taxes that may come with the renovation and expansion of retail to pay for expanded business opportunities and community recreational opportunities. He expressed concern diverting revenues from the program to pay for a gym and community center which were not fixed components of the plan and which would not meet the needs of the residents of the center. He asked the Town Council to stay true to the original principles, to renovate the center expanding the local business opportunities to recapture sales taxes leakage and to accommodate housing.

Mr. Loewke commented on the CEQA [California Environmental Quality Act] Findings of Fact which he believed had included a series of errors which he had mentioned to staff and Legal Counsel this date. He pointed out that Page 6, as an example, Section 4.0, included numerous references to "a community center will be provided in the MCSP," which language should be changed to read "will be accommodated."

Mr. Loewke spoke to the change in the Implementation Chapter, Page 3, Section E., Implementation Tools that the Town May Consider, bullet number 7, which language had been stricken by the Town Attorney and which would allow the EIR to be used to pay for the cumulative effects of housing and retail projects consistent with the MCSP, a change he found to be egregious. Additionally, the time frame and energy devoted to the implementation of the MCSP was a concern and he asked that the Implementation Chapter guidelines include hard and fast language, such as streamlining the permit process.

Mr. Loewke lastly referred to Attachment J, Findings of Fact, Page 6, the last paragraph, and reference to senior housing which could be developed at 30-DUA with available density points, which was incorrect, and should be clarified since the MCSP allowed up to 30-DUA of senior housing as a matter of right in the R-20 District without density bonus points. He recommended that the language "with density bonus points" be stricken from that paragraph to ensure consistency with the MCSP.

Mr. Loewke asked that the Town Council consider his comments and allow him to work with Town staff to rectify the mistakes he had identified before the documents were approved by the Town Council. He reiterated the issue with the restrictions of the easement related to the Lafayette-Moraga Trail and the restrictions on the use of vehicles on the easement pertaining to the EBRPD rights, not the Town or the Bruzzones' rights. He noted that the Bruzzones' strongly respected the EBRPD's role in the process, wanted to work with them, but would not like to see the concept of bringing pedestrian and shoppers into the downtown to make it a vibrant place be abandoned.

PUBLIC COMMENTS CLOSED

Mr. Atencio clarified the reasoning behind striking the language on Page 3 of the Implementation Chapter which he found to be too simplistic regarding when the EIR would be relied upon. He stated that other documentation may be necessary and could be addressed later with development in the MCSP. On the discussion of Page 3, bullet point 7 of the Implementation Element, he affirmed that the following modification to the bullet point would be acceptable:

- *Use of MCSP-EIR - Consider requiring supplemental environmental documentation for new development projects within the MCSP where necessary to address site-specific issues of potential significance; the certified MCSP EIR may be relied upon to provide environmental clearance for all other area wide and cumulative issues.*

Mr. Brueck suggested that the tiering section in the CEQA guidelines could be referenced in that paragraph.

Mr. Loewke was comfortable with the proposed language since it retained the intent of the use of the EIR to the extent possible.

Ms. Salamack acknowledged that there had been some comprehensive reviews of the various documents as they had been completed which could not be done until the Planning Commission had completed its work, although the Town Attorney's Office had reviewed all of the CEQA findings again. Councilmember Trotter had offered to read the complete MCSP again and offered some minor language changes. Changes had also been called to the Council's attention in the green line document, with no effort not to disclose the proposed changes in the language. She added that the Planning Commission made a change to the 20-DUA during its last meeting on January 4, and over the last week or so the language was being finalized.

**Councilmember Trotter** clarified that he had reviewed the document in his capacity as a member of the MCSP Subcommittee, at which time he had noted a number of typographical errors. He emphasized that the references to the community center/gym in the document had predated his review of the document over the past week. Minor edits had also been recommended and which had been reflected in the green line version of the document.

Ms. Salamack acknowledged the concerns with respect to the Lafayette-Moraga Trail and the differences of opinion. She explained that in 2007 there had been specific identification of a community center as part of the project description with traffic impacts relative to a 30,000 square foot facility having been analyzed, and which had called for the facility to be scaled down to 20,000 square feet. Meetings had been held with the DRB and the PC as to the potential of such a facility with the idea of some day, some location of such a facility in the MCSP. Red and green line copies of the many changes had been made available to the public during the process. She noted that the Town Manager had offered specific language at a meeting a few months ago regarding how a community center/gym could be accommodated with no certainty that such a facility would be developed. If the Council were to direct staff to review the document and replace the term "will" with "can be accommodated" that could be done through a refinement of the document.

When asked, Mr. Loewke reiterated his concerns as previously outlined, particularly as it related to the Findings of Fact, where he had identified mistakes, and the green line changes in the MCSP. He again asked the Town Council to consider his comments and recommendations.

**ACTION: It was M/S (Mendonca/Trotter) to extend the Town Council meeting to 12:00 A.M. Vote: 5-0.**

Mr. Atencio commented that given the number of technical comments raised by Mr. Loewke, the document should be brought back for Council consideration.

**Mayor Chew** recommended that the MCSP Subcommittee meet with the landowners to discuss the issues. He affirmed with staff that Mr. Pickett, representing Mr. Chi, one of the other property owners in the MCSP, had expressed acceptance of the recommendations made by the Planning Commission regarding the 20-DUA ordinance.

Ms. Salamack spoke to the 70-Point Build it Green standard imposed by the Planning Commission. She reported that the Green Building Program was being incorporated into the State Building Code, which the Town would have to adopt later in the year. As of January 2011, Green Building would be required throughout the State.

Ms. Salamack commented that in terms of the MCSP, she would recommend that the Planning Commission recommendation on the Build it Green standard be supported for now and later in the year when the new Building Code must be adopted, if the Town were allowed, a more stringent standard than what the State allowed could be imposed. If not, the language in the ordinance would have to be amended with a reference to the Building Code which could be done at a later date. She described the lengthy discussions held by the Planning Commission which led to the recommended 70-Point Build it Green Rating.

The Town Council discussed the MCSP, Housing Element and 20-DUA Ordinance documents at length and made the following recommendations:

- Staff was directed to continue agenda Item VII. Special Orders - Public Hearings, as outlined, to allow staff to conduct clean-up of the documents and address concerns with some of the language contained in the Statement of Findings. Any changes made to the base documents would be presented to the Town Council in the redline strikeout format;
- Page 3, Section E., Implementation Tools that the Town May Consider, bullet point 7, of the Implementation Element, to be modified to read:

  *Use of MCSP-EIR - Consider requiring supplemental environmental documentation for new development projects within the MCSP where necessary to address site-specific issues of potential significance; the certified MCSP EIR may be relied upon to provide environmental clearance for all other area wide and cumulative issues.*

- The 50-foot setback edge of riparian boundary issue language as shown in the MCSP was appropriate with some grammatical changes;
- The language proposed by the EBRPD was determined to be acceptable;
- The 70-Point Build it Green standard imposed by the Planning Commission was acceptable for now acknowledging that changes in State law may preempt that requirement;
- Publicize the continuation of the public hearing items on the Town's website; and
- The MCSP Subcommittee shall meet for the last time to discuss the various documents, including the involved property owners and attorneys to address any concerns prior to the consideration of the Town Council for final action.

**ACTION: It was M/S (Trotter/Mendonca) to continue Agenda Item VII. Special Orders - Public Hearings, as shown, to the Town Council meeting of January 27, 2010. Vote: 5-0.**

The Town Council returned to Item VIII. Unfinished Business B, at this time.

Mr. Atencio recommended that Abatement Item 8 be added to the list of items to be abated, with language as follows:

8. *Provide the Town Manager a contract in a form acceptable to the Town Attorney evidencing an agreement between the property owner and a licensed contractor for work to remove the mold and render the property habitable and a detailed construction schedule related to such work. The property owner shall also provide the Town Manager progress reports on such work on a monthly basis for six months from the date of the Notice of Abatement.*

Mr. Atencio clarified, when asked, that the contract should be provided within 30 days.

Abatement Item 3 was also modified to strike the reference to "contain the mold," to be replaced with the language "removed to the satisfaction of the Town's inspector."

Abatement Item 8 was further refined to read:

8. *Provide the Town Manager a contract in a form acceptable to the Town Attorney evidencing an agreement between the property owner and a licensed contractor for work to remove the mold and render the property habitable and a detailed construction schedule related to such work. The property owner shall also provide the Town Manager progress reports on such work on a monthly basis for six months from the date of the Notice of Abatement.*

The second BE IT FURTHER RESOLVED clause on Page 2 of Resolution 8-2010 was also amended, to read:

*BE IT FURTHER RESOLVED, by the Town Council that the property owner shall provide a progress report to the Town regarding the nuisance abatement on January 27, 2010 and if the nuisance is not abated by February 16, 2010, the Town Council orders the Town Manager to take action to abate the nuisance and, in connection with such action, directs the Town Manager to obtain an estimate from a contractor and proceed with the abatement described above; and*

**ACTION: It was M/S (Trotter/Mendonca) to adopt Resolution 8-2010, Declaring the Property Located at 316 Calle La Montana a Nuisance and Ordering Abatement of the Conditions, as modified. Vote: 5-0.**

**ACTION: It was M/S (Trotter/Harpham) to extend the Town Council meeting to 12:10 A.M. Vote: 5-0.**

## X. ORDINANCES - None

## XI. REPORTS

**A.** Council Requests for Future Agenda Items

There were no Council requests for future agenda items.

**B.** Mayor's and Councilmembers' Reports

**Mayor Chew** – No report.

**Vice Mayor Mendonca** – Reported that she had attended the recent Mayors' Conference where Dave Trotter had been elected Vice Chair of the Conference.

She reported that she would also be attending the next MYIC and Solid Waste Authority meetings.

**Councilmember Harpham** – Reported that he had attended the latest TSAC meeting. He also reported that the Saint Mary's Road Alternatives would be presented to the Town Council at a future meeting in February.

**Councilmember Metcalf** – Reported that Fire and Infrastructure Renewal (FAIR), a group of Orinda citizens who had been self-appointed picking up from the Revenue Enhancement Task Force on the redistribution of Orinda property taxes, had proposed a plan to cede from the Moraga-Orinda Fire District (MOFD). The Orinda City Council had agreed to Tri-Agency discussions to discuss the topic which would have an impact on the Town of Moraga.

**Councilmember Trotter** - Thanked the Mayor and all of the Contra Costa Mayors for his election as the Vice Chair of the Mayors' Conference.

C. Town Manager Update – Mr. Segrest reported that staff had completed most of the due diligence on the acquisition of the property at 331 Rheem Boulevard, with the results of the analysis to be brought back to the Council at its next meeting.

**XII. COMMUNICATIONS - None**

**XIII. ADJOURNMENT**

**ACTION: It was M/S (Mendonca/Harpham) to adjourn the meeting at 12:07 A.M. Vote: 5-0.**

Respectfully submitted by:

Marty C. McInturf, Town Clerk

Approved by the Town Council:

Ken Chew, Mayor