

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**December 14, 2011
MINUTES**

7:00 P.M. Regular Meeting

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

I. CALL TO ORDER

The regular meeting was called to order at 7:05 P.M. by **Mayor Karen Mendonca**.

ROLL CALL

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

Councilmembers absent: None

II. PLEDGE OF ALLEGIANCE

Mayor Mendonca led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

There were no special announcements.

IV. PROCLAMATIONS AND PRESENTATIONS

A. Swearing in of New Police Officers Krista Koppinger and Tyler Olson

Chief of Police Robert Priebe introduced and described the background and experience of new Moraga Police Officers Krista Koppinger and Tyler Olson.

Town Clerk Marty McInturf presented the Oath of Office to New Police Officers Krista Koppinger and Tyler Olson, and the Council welcomed and expressed its appreciation to its new officers.

PUBLIC COMMENTS OPENED

Officer Krista Koppinger expressed her appreciation to Chief Priebe, the Town Council, the Moraga Police Department and the community for welcoming her to the Town.

Officer Tyler Olson also expressed his appreciation to Chief Priebe and was looking forward to serving the Moraga community.

PUBLIC COMMENTS CLOSED

V. PUBLIC COMMENTS AND SUGGESTIONS

Mayor Mendonca explained for the record that the Town Council would continue a discussion already in progress for Agenda Item XI. Rancho Laguna Park, and would allow additional public comment on that issue. She welcomed any comments from the public on items that were not identified on the meeting agenda.

Dick Callahan, Moraga, active as a public address announcer in the community and for the Oakland A's, asked the Town Council to consider initiating some type of public recognition for all local athletes who had achieved success this year, including perhaps a parade or community event at Moraga Commons. He expressed the willingness to volunteer his time for any effort in recognition of the local sports community and suggested that local service clubs would likely provide assistance as well.

Barry Behr, Moraga, advised that the communities of Woodside, Hillsborough, and Portola Valley had joined together to form a cooperative partnership to negotiate solar panels for its residents and had standardized the process for applying for permits for solar panels on rooftops. He suggested there was an opportunity for the Lamorinda community to join the same cooperative system to negotiate discounts for solar acquisition for Lamorinda residents.

Seth Freeman, Moraga, announced that the Town Council meeting was streaming live on the internet and was available for viewing at livestream.com/moraga.ca. He commented on the State of the Town Address in November at Saint Mary's College, suggesting it had been misleading in terms of the Town's fiscal health, particularly given the financial impacts to repair Town roads and streets. He commented on the net cost to the Town for the maintenance and use of the Hacienda and the cost of sending the Mayor to the Mayors' Conference.

Karen Lewis, Moraga, was confident of the good work of local representatives, although she expressed hope that when the Town Council made its decision on Rancho Laguna Park it would do so with the knowledge that the decision would affect the quality of life of all residents.

VI. ADOPTION OF THE CONSENT AGENDA

A. Approval of the Consent Items

Consent Agenda Items 2 and 6 were removed from the agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Chew/Harpham) to approve Consent Agenda Items 1, 3, 4, and 5. Vote: 5-0.

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|---|----------------|
| 1) Accounts Payable Claims for 11/18/11 (\$103,108.61);
11/21/11 (\$88,974.78), and 12/02/11 (\$28,290.37) | Approved |
| 2) <i>Approve Minutes for Town Council Regular Meeting
November 9, 2011</i> | <i>Removed</i> |
| 3) Accept Improvements Constructed by Jensen Landscape &
Construction Company of San Jose for the Construction of
the Camino Pablo Elementary School Field Renovation | Approved |

Project, CIP Project No. 11-401

- | | | |
|----|---|----------------|
| 4) | Accept Improvements Constructed by International Surfacing Systems (ISS) of West Sacramento for the Construction of the Moraga Road Cape Seal Project CIP No. 09-105 | Approved |
| 5) | Review, Accept and File AB1600 Development Impact Fees Annual Report for the Fiscal Year Ended June 30, 2011 | Approved |
| 6) | <i>Adopt Resolution 45-2011 Authorizing Town Staff to Apply for Priority Development Area Designation under the FOCUS Program for the Rheem Planning Area in the Town of Moraga</i> | <i>Removed</i> |

B. Consideration of Consent Items Removed for Discussion

1. Approve Minutes for Town Council Regular Meeting November 9, 2011

The following revisions were requested for the Town Council Regular Meeting of November 9, 2011:

Add comments from Councilmember Chew to Page 4, on the discussion on the Library Commissioner Proposed Goals for 2012 and Suggestions for Library Lease and Service Agreement between the County of Contra Costa and the Town of Moraga.

To Page 6, revise the last paragraph to read:

Mayor Mendonca was encouraged by the fact that so few cities in Contra Costa County had signed the Library Lease and Service Agreement which opened the opportunity for a new agreement which would be more tailored to the needs of the Moraga community.

The minutes for the Town Council regular meeting of November 9, 2011 were to be returned in redline strikeout format.

2. Adopt Resolution 45-2011 Authorizing Town Staff to Apply for Priority Development Area Designation under the FOCUS Program for the Rheem Planning Area in the Town of Moraga

Councilmember Trotter referred to the map of the Rheem Planning Area and noted that it included the southeast side of the intersection of Moraga Road and Rheem Boulevard and the painted rock area, which was not intended to be part of the Priority Development Area (PDA). He requested that the resolution correspond to parcel boundary lines and exclude the steeply sloped area while including the actual roadway given the roadway improvements at the intersection as part of the PDA funding. Referencing the rear side of the Rheem Valley Shopping Center, he identified a line drawn up the side of the hill with a 65 to 70 percent slope, and questioned whether or not that corresponded to actual property lines. He urged extending the PDA farther up Rheem Boulevard to the north to encompass both sides of the street including 329 Rheem Boulevard.

Planning Director Shawna Brekke-Read explained that the guidelines for the PDA applications were general and were ultimately to specify a minimum of 100 acres. She explained that the PDA map was significantly larger than the Rheem Planning Area shown in the 2002 General Plan which encompassed approximately 50 acres and staff was looking for a way for the PDA to

meet the minimum requirements. She recognized the issue of the painted rock area and the slopes, although she explained that the sloped land behind the shopping center had been included and pushed to Campolindo Drive in part because it was a major activity center in Moraga and was also a location where the Town would be asking for funds from the Transportation for Livable Communities Grant. She noted that the map in the staff report, and a map staff prepared that afternoon, also included 329 Rheem Boulevard and encompassed the multifamily dwellings and offices on Rheem Boulevard. She acknowledged that the map could be re-drawn at Council direction but would be due on December 15.

As to the verbal description and goals to expand the PDA but not include the painted rock area, Town Manager Jill Keimach asked whether or not the Town Council was comfortable with that direction. She asked whether or not the area behind the Rheem Valley Shopping Center (Kimco Realty Owners) should be included in the PDA in that the 100 acres could be achieved by including Campolindo Drive, both sides of the road along the northwest side of Moraga Road excluding the painted rock, and the roadway improvements and property higher on Rheem Boulevard.

Ms. Brekke-Read explained that the Campolindo High School campus had been included and would total 100 acres. She noted that the area behind the Rheem Valley Shopping Center owned by Kimco Realty followed parcel lines. She noted that the PDA had been proposed down to the south side of Donald Drive. She acknowledged that the painted rock area could be excluded from the PDA since that site was currently zoned MOSO (Moraga Open Space ordinance) with strict density regulations. No changes had been proposed to the General Plan or to the zoning. The PDA had identified areas for potential employment centers and increased housing density.

By consensus, the Town Council made the following revisions to Attachment A:

- The painted rock area to be excluded from the PDA;
- The PDA to be extended on the northwest side as one heads to the north on Moraga Road to correspond to the edge of pavement along the southeast side of Moraga Road and up Moraga Road to encompass Campolindo High School and then return; and
- The PDA to be confined to the property line boundaries behind the Rheem Valley Shopping Center and include only the owners of the shopping center property.

ACTION: It was M/S (Trotter/Harpham) to adopt Resolution 45-2011 Authorizing Town Staff to Apply for Priority Development Area Designation under the FOCUS Program for the Rheem Planning Area in the Town of Moraga, with modifications to Attachment A, as noted. Vote: 5-0.

VII. ADOPTION OF MEETING AGENDA

ACTION: It was M/S (Trotter/Harpham) to adopt the meeting agenda, as shown. Vote: 5-0.

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Mendonca - Reported on the Tree Lighting Ceremony held on December 3 and commended Parks and Recreation Department staff and members of the MYIC for their work during the event. She had also attended a Gala-bration at Saint Mary's College in anticipation of the 2012-2013 Saint Mary's College Sesquicentennial on December 5; the Moraga Chamber of Commerce Annual

Holiday Party at the Moraga Royale on December 6; the Ribbon Cutting Ceremony for the completed Camino Pablo Fields Improvement project on December 8; the MYIC meeting on December 8; chaired the Central Contra Costa Solid Waste Authority Board meeting on December 8; and attended the Firehouse Liaison meeting on December 9.

Vice Mayor Metcalf - No report.

Councilmember Harpham - Reported that he had met with three representatives of Lamorinda Dogs, Inc., on December 3.

Councilmember Chew - No report.

Councilmember Trotter - Reported that he had presided over the Mayors' Conference in the City of Brentwood on December 1, when there had been a nice send-off for retiring Executive Director Don Blubaugh; and reported that Comcast Sportsnet Bay Area had featured his son Jack, a senior at Stanford University on the basketball team, who was also serving as Senior Class President.

B. Town Manager Update - No report.

IX. DISCUSSION ITEMS

There were no discussion items.

X. PUBLIC HEARINGS

There were no public hearings.

XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

A. Adopt Resolution 46-2011 Accepting the Park and Recreation Commission Recommendation to Provide Spatial Separation at Rancho Laguna Park
(Continued from the October 26, 2011 Town Council Meeting)

Parks and Recreation Director Jay Ingram reported that the Town Council heard public comments and deliberated on the issue at a regularly scheduled Town Council meeting on October 26, 2011. The Town Council had considered two options; approval of the recommendation from the Park and Recreation Commission identified as Attachment A, or to accept an alternative design concept as presented during the October 26 meeting and identified as Attachment B. During the October 26 meeting, the Council had directed staff to provide cost estimates for the additional design concept and the Town Council continued the item to this date. The financial details of the additional design concept had been based on the unit costs provided by Callander Associates. The additional design concept had essentially been a revision to a previous concept proposed by Callander Associates and identified as the additional design concept presented to the Town Council on October 26, as outlined in Attachment B.

Mr. Ingram explained that Callander Associates had not evaluated the design outline in Attachment B and could not provide estimates on a design that was not their own. The proposed modifications to Rancho Laguna Park would be categorically exempt from the requirements under the California Environmental Quality Act (CEQA) as outlined in the staff report and resolutions. As to potential funding sources yet to be identified, he commented that about \$142,000 remained in East Bay Regional Parks District (EBRPD) Measure WW Funds. Additional funding sources included community-based donations and the cost savings from

volunteer labor from local service clubs. There were also limited funds available from the Park Development Impact Fees that could be used for the project. The majority of the costs for either plan would be for playground equipment. He suggested that the Town Council could consider the relocation of the train to the south side which could serve as the age 2 to 5 play structure. The Town could purchase and install an age 5 to 12 play structure and leave a space for an additional future age 2 to 5 play structure.

Mr. Ingram advised that the recommendation from the Park and Recreation Commission for Phase I estimated anywhere from \$143,000 to \$155,000, with contingencies for design and construction estimated at \$174,000 to \$186,000, for a total with added alternatives between \$203,000 and \$215,000. The cost estimates for the additional design concept Phase I would be between \$180,000 and \$192,000, with the contingencies for design and construction resulting in total estimated construction costs between \$219,000 and \$231,000. The playground structure in both cost estimates represented the largest share of costs for both concepts.

Mr. Ingram identified the details for the two concepts. The concept recommended by the Park and Recreation Commission included the fence line from the property line coming in on the north side of the path all the way around to the east side, creating an area of approximately 1.1 acres. The cost estimates for the added alternatives for this concept, as outlined in the December 14, 2011 staff report, were identified. The additional design concept costs did not include trees or any landscape barrier. This design concept, identified as Attachment B, included fencing along the north side of the path following along the east side of the path, creation of a new asphalt path through a portion of the grass area, the fence line would continue and cut across at the corner of the amphitheater with the same fence line at the east side down to the property line fence, for a total area of 1.8 or 1.9 acres. This plan had also shown the removal of two trees on the site. He reported that staff was not advocating the removal of any trees in the park regardless of the size of the field.

Mr. Ingram reported that Lamorinda Dogs, Inc. had also provided two lengthy documents with two additional drawings, identified as Attachment F in the Council packets. He detailed Option A, Phase I, which would include fencing on the south side of the park from the entryway all the way along the south side of the path to the East Bay Municipal Utility District (EBMUD) trail access gate. Phase II of this plan would include fencing from the northwest corner of the property mirroring the parking lot all the way to the Phase I fence with gates along the way. Attachment F also included its own Option B, Phase I, with fencing from the north portion through the middle of the turf with a gate on the walkway near the amphitheater, with the fencing traveling south around and encompassing the amphitheater in the northeastern portion of the park connecting to the property line fence. Phase II involved the path work creating a loop around a multi-use turf area and a walking path (the Mickey Mouse ear design) on the northeast side.

Mr. Ingram asked the Town Council to adopt a resolution accepting a design concept, either Attachment A or Attachment B as outlined in the December 14 staff report, direct staff to bid only the spatial separation portion for Phase I, and direct staff to return to the Town Council no later than February 2012 to award a contract for the spatial separation portion of Phase I improvements to Rancho Laguna Park. In the event that the Town Council adopted the concept in Attachment A, staff asked for clarification on the temporal separation issue that had been discussed on October 26.

In response to the Council, Mr. Ingram reiterated the options proposed by Lamorinda Dogs which would provide a fenced enclosure around the play areas leaving the remainder of the existing park as off-leash. As to the potential use of Town Measure WW funds for roads rather than the Town's parks, he noted that Measure WW Funds could only be used for recreational facilities or land acquisitions and not roadway repairs. As to the CEQA exemption, pursuant to

evaluation from the Town Attorney and the Planning Director, the improvements at Rancho Laguna Park would be categorically exempt from CEQA requirements.

Ms. Brekke-Read explained that the project would be exempt from the CEQA requirements given that there would be no substantial change in use which would meet the threshold for exemption since there was no potential for environmental impact, and no trees would be removed or slopes graded. One of the keys that would trigger environmental review was if any work went to the top of the bank or into the streambed. As to whether or not clearing of underbrush near the existing fence line would trigger CEQA, she noted that she would have to walk the area, review it from that point of view, and meet with the Department of Fish and Game. For the project, she understood that there was the potential to remove underbrush that could be a fire hazard although that would not trigger environmental review.

PUBLIC COMMENTS OPENED

Barry Behr, Moraga, asked the Town Council to consider allowing some speakers to cede their three minutes of time to one individual representing Lamorinda Dogs.

Town Attorney Michelle Kenyon recommended that each speaker come to the podium, state their name, and indicate whether or not they would be ceding their time to one speaker and identify who that speaker would be.

The following individuals ceded their speaker's time; Barry Behr, Sue Behr, Michelle Dunleavy, Judy Ayers, Diane Renton, Dick Ayers, and Lois Greenman to Chris Gerding, representing Lamorinda Dogs.

Chris Gerding, representing Lamorinda Dogs, Inc., explained that Option A, proposed by Lamorinda Dogs was not intended to cede Rancho Laguna Park to the dogs. He suggested that there were approximately 57,000 unique visits to Rancho Laguna Park by Lamorinda citizens annually. Lamorinda Dogs was the primary group currently using Rancho Laguna Park and would like to retain its space allocation as people, not dogs. He questioned whether or not the Town Manager had cut short the debate during the October 26 Town Council meeting in that the two options outlined by the Parks and Recreation Director in the December 14 staff report for Council consideration had not included the options proposed by Lamorinda Dogs. He suggested that the plan proposed by Lamorinda Dogs was a better plan. He asked that consideration of the non-Callander Associates and the Park and Recreation Commission plans be resolved.

Mr. Gerding referenced the number of licensed versus non-licensed dogs in the Lamorinda area and he questioned the restriction of dogs and their owners to one end of the park area creating a dead zone to the east which could not be used unless there was an investment in that area. He suggested that none of the cost estimates provided included recurring expenses for maintenance. He understood that the half-acre Heather Farms Park dog park located in the City of Walnut Creek involved substantial recurring expenses and he questioned the Town taking on the maintenance and recurring expense of the dog park area once fenced.

Mr. Gerding suggested that the play structure replacement should be the first priority. He opposed any option that involved a substantial rearrangement of the park, removal of any trees or brush, suggested that concerns with brush removal would be covered by CEQA, suggested if the Town Council moved forward with a more contentious stage of resolution the changes would result in no negligible change in use since the current use was off-leash, suggested that the use of Measure WW funds would result in a substantial change in use and expansion of the facility due to the improvements proposed, and therefore questioned the categorical exemption from CEQA.

Mr. Gerding presented two diagrams from Lamorinda Dogs, Options A and B, and noted that for Option A the central lawn would remain available for everyone as a key feature of Rancho Laguna Park, the fence addition would be for parking and picnic areas, and the dogs would only use the turf during off-leash hours which would allow a U-10 or U-12 soccer field and allow people and their dogs 6.31 acres. Option B proposed an equitable split of the park meeting the substantial number of citizens with dogs using the park and permitted use of a good part of the turf by this group. This option would still accommodate a U-11 soccer field with the tot lot moved to the current sand volleyball court, clearing some areas but not the heavy brush areas, and providing walking paths. An off-shoot of Option B, (Option B1) would allow a quarter-mile loop.

Mr. Gerding asked for a procedural resolution of Lamorinda Dogs' Options A and B, to be treated as equal options in addition to the two options identified in the staff report. Lamorinda Dogs was of the opinion that leaving the main turf area alone was the best solution for the community and for the multi-use features and usability of the park today, and suggested that the desire to change had been sponsored over the years by various interests who had changed their focus to various other things. Acknowledging other users' right to use the park, he asked the Town Council to leave the park as it was, not crowd out the dog users, and not put those people in second class status. He emphasized that three years had been spent on this issue and emphasized the controversial nature of the discussions primarily because of the procedures, with the real issues still unresolved. He requested a complete analysis and a plan which represented the entire community.

In response to the Council, Mr. Gerding understood that the majority of the cost estimate for the fencing system proposed on the south side was due to the cost of replacing and relocating the playground equipment.

In response to the reference to a statement contained in late correspondence dated December 6, 2011, submitted by a member of Lamorinda Dogs, Stephanie Dodson, Moraga, commented that if there was no legal area for off-leash dogs in Moraga during a specific time, she understood, as in other communities, that normally law-abiding residents would be forced to use unsanctioned areas for off-leash dogs where dogs were not allowed.

Mr. Gerding also explained that his reference to 57,000 unique visits to Rancho Laguna Park had been based on estimates made by a member of Lamorinda Dogs (Bill Carman) who had spent time in Rancho Laguna Park over a three to four month period. He had personally visited Rancho Laguna Park twice a day, and while he acknowledged that estimate may be high, it had been conducted during the spring months and was not that far out of range.

Suellen Winegar, Moraga, stated that she had attended the October 26 Town Council meeting and had recently submitted an e-mail to the Town Council. She expressed concern that all of the plans included the relocation of the barbecue area and picnic tables which would eliminate a pleasant area, and the plans had not shown where those design elements would be relocated. She added that the most consistent users were the dog owners, who were happy to be legal and respectful of the time restrictions involved. If the Town Council was adamant in installing a fence, she sought a good and attractive fence around the tot lot which would keep dogs away from that area and keep children safe from the parking lot, which had been an issue. She emphasized that Rancho Laguna Park was a rural, rustic, open, beautiful, and unique gem.

Steve Smith, Moraga, also commented on the beauty of Rancho Laguna Park. He suggested that the potential removal of any brush would be significant given that it served as a root base for wildlife and if removed would likely stop the process. He urged the Town Council to listen to common sense, not follow the staff recommendation, and not touch the park.

Doug Home, Moraga, spoke to the potential risk which was the premise for the concept of spatial separation. He reported on the statistics for the number of people killed by dogs each year, with and without the inclusion of pit bulls. He commented that the Town Council had previously been provided with a letter from Frank Stevens, Stevens, Drummond and Gifford, and read into the record a brief section of that correspondence as it related to personal injury from a dog. He suggested that the Town would have no liability and what little liability the Town already had was covered by its government insurance policy. He asked that Rancho Laguna Park be allowed to remain as it was.

Bill Cosden, Orinda, thanked the Town Council for opening the discussion. He spoke to the unique experience of Rancho Laguna Park and emphasized the importance of allowing the park to remain as it was for all families and users. He presented the Town Council and staff with information the former Town Manager had stated in response to the information that Mr. Home had provided in terms of liability. Whether or not the park was fenced, he suggested there would be no liability for the Town.

Bob Reynolds, Moraga, also spoke to the liability issues and questioned waiting for an incident to occur in the park before the Town took any action. He pointed out that Mulholland Ridge included a dedicated all day every day off-leash dog area. He spoke to the use of Rancho Laguna Park for recreation, but suggested that many did not use the park with their families not only during the off-leash hours but otherwise because of the dog issue, which could not be eliminated or ignored in this process. He suggested that any plan which essentially would cage people for the benefit of the dog owners' recreation with their pets was an unacceptable way to design a park intended as a multi-use recreation facility. He sought a spatial separation to make all-day everyday use available to everyone in the community.

Stephanie Dodson, Moraga, expressed concern with the opinion that Mulholland Ridge was an appropriate location for off-leash dogs in that dogs were not allowed to be anywhere off-leash at Mulholland Ridge other than on the path. Mulholland Ridge was also not appropriate for the disabled and the elderly due to the topography. Lamorinda Dogs had presented three options for consideration and while most would like the park to be left as it was, with visible signage posted, she recognized that something must be done to address the tot lots pursuant to AB1144. She suggested that Lamorinda Dogs' Option A would be the best solution to comply with AB1144 with minimal fencing between the grass area and the parking lot area. If the Town must provide both a temporal and spatial separation, Option B would provide that and Lamorinda Dogs had presented a phased approach to achieve that option.

Karen Lewis, Moraga, spoke to the issue of safety of dog owners and suggested that the Park and Recreation Commission's recommendation was too narrow to allow the types of activities normally associated with a dog park, placing people and dogs on top of each other. As a result, she asked that the Park and Recreation Commission's recommended concept be eliminated from consideration. If a fence must be installed, Lamorinda Dogs' Option B allowed space and width in all directions allowing people and animals the ability to safely do what they must do. She added that dogs needed off-leash time to be socialized.

Seth Freeman, Moraga, commented on the two options outlined in the staff report and the options proposed by Lamorinda Dogs, suggested that it would be bad government to approve the expenditure of any funds given the Town's budget which had listed a variety of capital improvement goals and Town Council goals for 2011 and 2012. He questioned whether or not Parks and Recreation would be able to manage the maintenance of a dog park as evidenced by the deteriorating paths, lack of signage posting the off-leash dog hours in the park, failure to budget the replacement of the playground equipment, and failure to budget any improvements in Rancho Laguna Park. He presented the Town Council with samples of pieces of wood chips

located in the area around the tables and barbecue area. He questioned how people and their dogs would be safe with that kind of park management.

Tina Brier, Moraga, stated that in the 16 years she had resided in Moraga she had patronized Rancho Laguna Park many times with her family and dogs and had made incredible and lasting relationships. She suggested that she had made 30,000 unique visits to Rancho Laguna Park during that time if she attended the park twice a day, 300 times a year. She agreed that Mulholland Ridge was not appropriate for off-leash dogs and given the popularity of Rancho Laguna Park, she suggested that the Town capitalize on that popularity with a coffee cart as had been provided at Moraga Commons where the Town could make money. She added she was willing to work on that possibility.

David Shapiro, Moraga, commented that he had submitted an e-mail with two letters and a petition signed by 150 people requesting that no changes be made to Rancho Laguna Park. He asked the Town Council to not galvanize people with unnecessary changes that would be costly unless there was a large constituency that desired such change. He urged the Town Council to gather more information before a decision was made.

Mary Butler, Moraga, offered an anecdote about an orange that applied to the subject being discussed.

PUBLIC COMMENTS CLOSED

Councilmember Trotter advised he had already stated, on the record, that he liked the ambience of Rancho Laguna Park in its current configuration. He was fiscally conservative and respected the good work done by former Councils that set the park to function as it had for decades. Given that long use, he suggested it was not fair to the off-leash dog users to fence them off of the lawn. He wanted to find a way to avoid cutting the lawn in half to preserve the ambience, which would be also expensive, impacting the Town's limited resources. As to what could be done in Phase I to increase children's safety, using the tot lot and playground, he supported fencing on the south side for a new playground that would keep dogs completely out of that area. He stated the Town must comply with AB1144 and there was a basis for the Council to make the finding that the fence was necessary for children's safety. Children would also have a safe place to play with no interaction from the dogs, presumably without injury. He suggested that the costs for the improvement would be modest.

Councilmember Trotter noted the staff report indicated that the Town had sufficient funds for the project with Measure WW funds and with matching contributions from Lamorinda Dogs and other dog lovers in Town. He commented he walked Mulholland Ridge many times over the years and it would not meet the needs of the disabled with dogs and was not safe given the steep, narrow, and unlevel path. He commented that the Park and Recreation Commission recommendation would fence the dog owners off the lawn area and take people away from a flat walking path, which could be problematic to the disabled and elderly. The other options would be accommodating to those with disabilities and Option B proposed by Lamorinda Dogs would meet the needs of most disabled persons with dogs.

Vice Mayor Metcalf stated he was firmly of the opinion that Rancho Laguna Park should be configured and operated in such a way that it was a multi-use park serving the maximum number of Moraga residents. He opposed any segregation that denied some users, agreed with the need for the separation of people from dogs, and while the potential for risk may be minimal he did not want to take a chance, and therefore suggested there was a risk. He had no interest in the soccer fields as shown in the concept outlined in Attachment B of the December 14 staff report or Lamorinda Dogs' Option B, suggesting that the playing field should be used for informal recreational use and general enjoyment of the lawn area without having to worry about

dog waste. He opposed any change of the fundamental use of Rancho Laguna Park which would trigger CEQA, particularly any change in use which could affect the limited parking that would cost the Town substantial money the Town did not have. Making Rancho Laguna Park a dedicated dog park, as proposed by Lamorinda Dogs as Option A, would also be a mistake given that the use would likely increase the attraction of people from out of the area. He referenced the concept proposed by Lafayette resident Blair Newel, outlined in Attachment B, which he found to be a decent idea providing something for everyone. He acknowledged that Mr. Carman's Option B (described as the Mickey Mouse ear design) was basically the same concept. He had no problem cutting through the lawn area and he would like to see a grassy area provided for people and those who did not have dogs.

Vice Mayor Metcalf recognized that Lamorinda Dogs' Option A would keep children safe from the dogs in the park but given the public testimony acknowledged that many in Town would not like that option. As a compromise, he would support the concept outlined as Attachment B to the December 14 staff report. He suggested that staff could be directed to create a design to accommodate those two options and then the Town could fund the project through the use of Measure WW funds and identify funding sources for the replacement of the play equipment.

Councilmember Chew suggested that none of the proposals would prevent the disabled from using the park to walk their dogs. He opposed any idea that would cut Rancho Laguna Park in half, suggested that the Town Council had a unique opportunity to create a dog park, suggested it was incumbent of the Town Council to do what was right and best for the Town, and agreed with the need to have spatial separation of families and children from the dog users. While the dogs had been allowed to be off-leash for years, he emphasized that safety should be the paramount concern. He commented on the potential conflict between dogs and people which was a legitimate concern, such as with dog waste and potential safety hazards with the dogs.

Councilmember Chew disagreed with the statistics that had been referenced in terms of liability for the Town in that there was a safety problem in Rancho Laguna Park that had been known for the past three years and the Town must do something to address that concern. He suggested it would be irresponsible to make a decision that ignored potential liability to the Town.

Ms. Kenyon described, when asked, MPA as the Town's self insurance joint tort liability pool.

Councilmember Chew referenced a memorandum from the Town's liability insurance provider addressed to the Town advising against an open unfenced dog play area in Rancho Laguna Park.

Ms. Keimach stated for the record that the correspondence was dated November 9, 2011 and had been addressed to the Town Clerk of the Town of Moraga.

Councilmember Chew suggested that the advice from the MPA Town's liability insurance provider should be taken seriously. He remained in support of the recommendation from the Park and Recreation Commission.

Councilmember Harpham disagreed that times and attitudes of dogs had changed although he recognized that dogs were loyal, loving, companionable, and dependable and he understood the value people placed on the time they spent with their dogs. He emphasized there was no desire to suggest creation of a dog park like a monument which would be an abdication of any responsibility of decision making of the public trust for a public property. He understood and was willing to accept no legal liability whether or not the park was fenced, and although the Town may not be legally liable he suggested it would be immoral to ignore the potential risk.

Councilmember Harpham acknowledged Town funds were tight and the Town Council must prioritize the expenditure of funds, and if a large constituency indicated the need and there were resources to meet that need it would be good governance for the Council to use those funds to meet that need. He agreed that Mulholland Ridge would not meet the needs of the disabled, and he was tempted to suggest that off-leash dogs not be allowed at Mulholland Ridge at all given the potential for liability. He spoke to the history of the issue which had started as a ticket, suggested that everyone had the opportunity for legal due process to address the Town Council, and based on the submittal from Lamorinda Dogs suggested that Option A was not a viable solution given that it would fence in people leaving the dogs free. The design concept outlined in Attachment B to the December 14 staff report on October 26, and Option B from Lamorinda Dogs, was basically the same and while this solution would be elegant, symmetrical, and may meet the needs of all stakeholders it would not preserve the physical integrity of the park which the majority of the Lamorinda Dogs constituency had indicated was important. Based on all of the information provided, he supported the recommendation proposed by the Park and Recreation Commission identified as Attachment A to the December 14 staff report.

Councilmember Harpham responded to comments made that dog owners were the largest users of Rancho Laguna Park and their desires should be considered in the decision making process. He emphasized that there was an issue of safety which must be taken seriously.

Mayor Mendonca suggested that good public policy should always maximize access to a park facility and safety. She commented that the population communicating regularly with the Town Council also was of the opinion that they wanted access at different times, oftentimes the same time as when the dog users used the park, which she characterized as a viable request and essentially a sharing of scarce resources. She suggested the temporal solutions worked well for the dog users but not those using the park during off-leash dog hours, many of whom were citizens who also wanted to be heard. In a desire to accommodate a scarce resource in the community, she commented that many had recommended the application of the same rules for all Town parks with no off-leash hours. While that was supported by many, a large contingency enjoyed the off-leash time and did not have another location for off-leash dogs. She recognized the efforts to recommend a concept that allowed access for everyone all through the day. She commended the passion shown by the dog owners but in terms of shared resources, she preferred the recommendation from the Park and Recreation Commission, the concept outlined in Attachment A to the staff report which had gone through a 32-month decision process. Her second choice would be the concept prepared by Blair Newel during the October 26 meeting as outlined as Attachment B to the staff report, but her preference would be the Park and Recreation Commission recommendation.

Mayor Mendonca added that another group that had attended the October 26 meeting also included those who were off-leash dog owners, or those who wanted to be off-leash dog users but could not use the park either before 9:00 a.m. or after 4:00 or 6:00 p.m. due to the temporal separation regulations.

Councilmember Harpham stated that his first choice would be the approval of the concept identified as Attachment A to the December 14 staff report. His second choice would be the concept outlined as Attachment B to the staff report.

Councilmember Chew inquired about the estimates for Phase I, the south side fencing, and asked if that fence was necessary or whether or not it could be eliminated from the plans.

Mr. Ingram explained that the south side fence concept had originated around fencing the entire picnic area and playground area and then changed to be only around the play equipment area.

Councilmember Chew made a motion to adopt Resolution 46-2011, Accepting the Park and Recreation Commission recommendation to Provide Spatial Separation at Rancho Laguna Park with a revision to the first WHEREAS clause on Page 2 of the resolution to read:

***WHEREAS**, the proposed project options which replace playground equipment, install fencing along the north side and south sides of the park, relocate barbecues and picnic tables from the north side of the park to the south side, clear shrubbery from the north side to potentially install turf and irrigation, and add a pathway at an existing park are categorically exempt from the provisions of the California Environmental Quality Act (CEQA), Public Resources Code 21000, et seq.) pursuant to:*

Councilmember Harpham seconded the motion.

On the motion, **Councilmember Trotter** requested and received clarification that the motion would essentially prevent the dog owners from using the existing turf area.

Councilmember Chew explained that a dedicated dog park with close to 1.1 acres would be created but acknowledged it would prevent the dog owners from using the current lawn area with off-leash dogs.

Councilmember Trotter stated that he could not support the motion, as stated.

Vice Mayor Metcalf also clarified with the maker of the motion, that the motion was designed to include spatial separation creating a dedicated dog park for hours when the park was open for off-leash purposes and that the temporal separation in the current ordinance would remain in place for the turf area and the other areas of the non-fenced-in portions of the park.

Councilmember Chew understood that the existing temporal separation ordinance would be addressed when the dog park was ready for use.

Ms. Keimach explained the Park and Recreation Commission stated as part of its recommendation to the Town Council to have off-leash dogs in the fenced-in area with a decision for the time limits to be up to the Town Council. Staff's expectation was that the park area would be open only to on-leash dogs based on the discussions at the October 26 Council meeting.

Mr. Ingram advised that Resolution 46-2011 included as part of the Park and Recreation Commission recommendation, the language of the motion made by the Park and Recreation Commission for the Town Council to address the temporal separation issue. He explained that no recommendation on the temporal separation was part of the resolution, requiring Town Council action to include it in the motion and amend the resolution.

Councilmember Trotter explained that temporal separation was part of a Town ordinance which could not be changed through the subject resolution at this time, and the issue had not been properly agendized.

Mayor Mendonca understood that the issue of the temporal separation would come back for Council consideration at a later time and was not part of the Council decision making at this time.

Ms. Keimach asked for direction from the Town Council on the issue of temporal separation so that staff would know what should be brought back for discussion.

Vice Mayor Metcalf stated he would be voting against the motion, as stated, given he found it to be punitive, and ignoring the wishes of the many dog owners using Rancho Laguna Park. He did not like the idea of shutting down the potential enjoyment of many Moraga residents, was not opposed to cutting the park in half, but was opposed to placing the dog owners along the periphery when the park could just be cut in half.

Councilmember Trotter concurred with the Vice Mayor's comments. If he were to have to choose an option, he would prefer a phased approach to the design concept outlined in Option B. He acknowledged comments from the Mayor and Councilmember Harpham that the design concept outlined in Option B was their second choice, and he opposed the motion as discriminatory, not meeting the needs of the community, and unnecessary given there was a close second proposal that would not be discriminatory. He urged the Council to consider an approach that could provide near unanimity and a consensus vote.

Vice Mayor Metcalf supported Councilmember Trotter's suggestion.

As the maker of the motion, **Councilmember Chew** disagreed and restated the motion with staff directed to bring the temporal ordinance back to the Council for consideration.

Ms. Kenyon explained that staff had stated a preference for the issue of temporal separation to be addressed at this time although there was no requirement that the Council do so and that issue could return at a later date with direction to staff.

ACTION: It was M/S (Chew/Harpham) to adopt Resolution 46-2011, (Attachment A) Accepting the Park and Recreation Commission Recommendation to Provide Spatial Separation at Rancho Laguna Park, modified as shown. Vote: 3-2. Noes: Metcalf, Trotter.

Mayor Mendonca suggested that if there was a dedicated dog park which would be open at all times there should be no temporal separation given that there would be access at all times.

Councilmember Trotter suggested that it was premature to take up the issue of temporal separation pending the physical changes to be made at Rancho Laguna Park. Until that time, the current ordinance should remain in place.

Mayor Mendonca clarified her comments that once the improvements to Rancho Laguna Park were made the temporal separation issue should be discussed.

Councilmember Chew asked that staff bring back the temporal separation ordinance at a later date when appropriate.

B. Reorganization of the Town Council

1. Remarks by Outgoing Mayor

Mayor Mendonca stated that it had been a privilege to serve as the Mayor of the Town of Moraga. She thanked the Town Council and all members of Town staff and publicly thanked her husband, Clay Serrahn, who had attended almost as many Town events as she had. She commented on the many accomplishments of 2011 including a balanced budget; achievement of a 50-percent operating budget reserve; commended the efforts of the Revenue Enhancement Community Outreach to Neighborhoods (RECON); implementation of a new and expanded website; the successful and well received six-month pilot program of Ask the Town Manager & Mayor at Terzetto Cuisine Restaurant on the third Friday of each month; commended the goals, objectives and reports from the Economic Development Team and Economic Development

Action Committee (EDAC) for the Rheem Planning Area; identified new businesses which had opened in Moraga over the past year; commended the success of the new Rheem Theatre; the partnership efforts between the Town, Saint Mary's College, the Moraga School District (MSD) and the Moraga Chamber of Commerce in order to partner and support each other's efforts; the continuation of civility in the process of public discourse; and commended the work of community members who consistently provided volunteer efforts. She identified the numerous community events hosted by and held in the Town throughout the calendar year.

Mayor Mendonca thanked everyone again for the honor and privilege of serving as the Mayor of Moraga, expressed her appreciation to everyone who lived and worked in Moraga, and looked forward as former Mayor and current Councilmember to working with the new Mayor and her Council colleagues in meeting the challenges of 2012.

2. Nominations and Election of Mayor

Councilmember Chew nominated **Michael Metcalf** as the **Mayor** of the Town of Moraga. **Councilmember Trotter** seconded the nomination. There were no other nominations and the nominations were closed.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Chew/Trotter) to elect <i>Michael Metcalf</i> as the Mayor for the Town of Moraga. Vote: 5-0.
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C. Remarks by Newly Elected Mayor

Mayor Metcalf chaired the meeting at this time. He took the opportunity to present the outgoing Mayor with a plaque in recognition of her service as Mayor in 2011. He reported that the Town Council Goal Setting Session had been scheduled for Saturday, January 28, 2012, which would be open to the public. He identified six major categories of importance for 2012 including:

- Secure a revenue measure of some kind for Moraga streets, pothole repair and rehabilitation with an aim for the November 2012 ballot (objectives: RECON presentations to be made to the Town Council in January with a continuation of the RECON outreach efforts through March and continued work with the Town Engineer/Public Works Director on a potential rehabilitation program).
- Parks and sports fields improvements consistent with the 2007 Park and Recreation Master Plan (objectives: resolve the issues with Rancho Laguna Park; consider the fields behind the Joaquin Moraga complex including the pear orchard for sports fields on a comprehensive basis; consider operating agreements between the Town and the MSD as to the operation of the fields including the Camino Pablo fields; support the efforts of volunteers and the Hacienda Foundation for the Hacienda site design and planning work necessary for the Hacienda grounds; complete work in Moraga Commons for Americans with Disabilities Act (ADA) improvements and additional improvements anticipated for the pathways; support the Park Foundation for the bandshell; and consider funding for community event signs).
- Town offices and community meeting room (objectives: provision of consistent and accurate information to the community on Town plans; concentrated effort to get staff out of the Hacienda; and consider online video streaming of Town meetings with potential funding sources from Comcast).

- Finance and budgeting (objectives: consider strategic budgeting and multiple year planning for the operating budget; long range five-year capital improvement program; formalize architecture of the infrastructure preservation fund to be part of the budget process; and formalize the Asset Replacement Program).
- Economic development planning (objectives: hire an Economic Development Coordinator with the funding and definition of the position remaining to be finalized; advance planning of the Rheem Planning Area, commercial zoning for commercial centers pursuant to the EDAC recommendations, facilitate permitting activities with the County; and maintain Saint Mary's College as a high priority).
- Public safety (objectives: emergency operations planning; traffic safety with an re-introduction of the *Slow Down Lamorinda Campaign* with the cities of Lafayette and Orinda; Traffic Calming Guide to be completed by the Traffic Safety Advisory Committee (TSAC); and develop high potential small projects related to bicycle/pedestrian safety particularly around schools.

Mayor Metcalf spoke to the importance of each of the identified categories, and stated that his goals would be provided to the Town Council to be discussed during the Council Goal Setting Session in January 2012.

3. Nominations and Election of a Vice Mayor

Councilmember Mendonca nominated **Howard Harpham** as the **Vice Mayor** of the Town of Moraga. **Councilmember Chew** seconded the nomination. There were no other nominations and the nominations were closed.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Mendonca/Chew) to elect *Howard Harpham* as the Vice Mayor for the Town of Moraga. Vote: 5-0.

4. Remarks by Newly Elected Vice Mayor

Vice Mayor Harpham emphasized that he would take the position seriously. He looked forward to serving the Town of Moraga as the Vice Mayor and looked forward to working with the Town Council and staff. He suggested that the Mayor had done a good job in identifying necessary goals for the next year, and asked that everyone do what they could to consider what was best for the Town and make that happen.

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

There were no Council requests for future agenda items.

XIII. COMMUNICATIONS

- A. Planning Committee Staff Report from Contra Costa Transportation Authority (CCTA) Regarding *Applications Received through the CC-TLC and PBTF Call for Projects* dated December 7, 2011

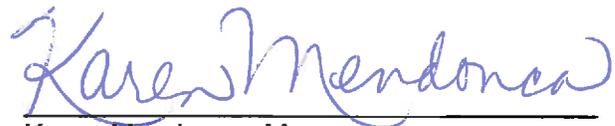
XIV. ADJOURNMENT

ACTION: It was M/S (Mendonca/Trotter) to adjourn the meeting at 10:47 P.M. Vote: 5-0.

Respectfully submitted by:


Marty C. McInturf, Town Clerk

Approved by the Town Council:


Karen Mendonca, Mayor