

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**February 27, 2013
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 7:01 P.M. by **Mayor Dave Trotter**.

ROLL CALL

Councilmembers present: Mayor Dave Trotter, Vice Mayor Ken Chew, and Councilmembers Phil Arth, Michael Metcalf, and Roger Wykle

Councilmembers absent: None

II. PLEDGE OF ALLEGIANCE

Councilmember Metcalf led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

There were no special announcements.

IV. PROCLAMATIONS AND PRESENTATIONS

There were no proclamations or presentations.

V. PUBLIC COMMENTS AND SUGGESTIONS

Barry Behr, Moraga, referring to parking along St. Mary's Road in front of Saint Mary's College (SMC), noted that during major SMC events, parking impacted the bicycle lane with jaywalking causing safety hazards, particularly during the winter months given the lack of lighting. He asked the Town to enforce the existing No Parking signage in cooperation with SMC, and added that during the summer months the grass was allowed to grow tall in that same area which could be a potential safety and fire hazard.

VI. ADOPTION OF THE CONSENT AGENDA

A. Approval of the Consent Items

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Arth) to approve the Consent Agenda, as shown. Vote: 5-0.

- 1) Accounts Payable Claims for 02/08/13 (\$174,620.11);
2/14/13 (\$400.00) Approved
- 2) Approve Minutes for Town Council Regular Meeting on
January 23, 2013 Approved
- 3) Adopt Resolution 10-2013 Awarding a Consultant Services
Agreement for Assessment District Engineering Services
Related to the Fiscal Year 2013/14 Town of Moraga Street
Lighting District 1979-1 to Leptien, Cronin, Cooper, Morris
& Poore, Inc. for an Amount Not to Exceed \$10,400 Approved

B. Consideration of Consent Items Removed for Discussion

No items were removed from the Consent Agenda.

VII. ADOPTION OF MEETING AGENDA

ACTION: It was M/S (Wykle/Arth) to adopt the Meeting Agenda, as shown. Vote: 5-0.

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Trotter - Reported that he had attended the Mayor and Chairs' Breakfast meeting on February 15; as a member of the Executive Committee of the Contra Costa County Mayors' Conference he attended a meeting on the same date at Senator DeSaulnier's office; he and Councilmember Metcalf had hosted Supervisor Candace Andersen at the Kiwanis Crab Feed on February 16; he participated in a meeting of the Ad Hoc Committee of the Central Contra Costa Solid Waste Authority on February 22; attended the Valentine's Day event honoring Town staff on February 14; met with City Ventures on the same date regarding the project on Moraga Way; met with representatives from SummerHill Homes to discuss the Rancho Laguna II project; participated in presenting a proclamation on behalf of the Town Council recognizing Bill Snider as the Moraga Business Person of the Year during the Moraga Chamber of Commerce Business Person of the Year Award Dinner on February 26; and participated in the Tri-City meeting of the Lamorinda City Councils on February 21.

Vice Mayor Chew - No report.

Councilmember Arth - Reported that he had met with City Ventures on February 14 regarding the project on Moraga Way near the fire station; participated in the Valentine's Day event for Town staff on the same day; and attended the Moraga Chamber of Commerce Business Person of the Year Award Dinner on February 26.

Councilmember Metcalf - Reported that he had attended a meeting of the Citizen Corps Council with a discussion on the design of the Neighborhood Disaster Radio Loan Program to be in place in the next six months, with a presentation planned for the Town Council in the upcoming months; and had been reintroduced as one of the Southwest Area Transportation Committee (SWAT) representatives and

appointed to the Administration and Projects Committee during the Contra Costa Transportation Authority (CCTA) meeting of February 20.

Councilmember Wykle - No report.

- B. Town Manager Update – Town Manager Jill Keimach reported that she had met with the Moraga-Orinda Fire District (MOFD) and the cities of Lafayette and Orinda to discuss sharing a fire station between MOFD and ConFire and that MOFD was asked to make a presentation to the Town Council to receive input from Moraga. She added that the Oversight Committee was still accepting candidates, and the Park and Recreation Commission and SummerHill Homes would be hosting a presentation on February 28 to discuss the proposal for a park as part of the SummerHill Homes project. She cautioned that only two Councilmembers may attend the presentation pursuant to the regulations of the Brown Act.

Mayor Trotter reported that Town Manager Keimach and her husband Ron had been awarded the best dressed prize at the Oscar Night Party on February 24.

IX. DISCUSSION ITEMS

- A. Presentation and Discussion of Two White Papers: *Launching the 2014 CTP Update* and *Incorporating Sustainability Into the 2014 Countywide Transportation Plan* by Martin Engelmann, Deputy Executive Director, Planning, Contra Costa Transportation Authority (CCTA)

For the record and as the Council liaison to SWAT, **Councilmember Metcalf** advised that the same presentation had been made to SWAT and every jurisdiction in the County had been asked to provide comment.

Martin Engelmann, CCTA, explained that to begin the process of preparing the 2014 update of the Countywide Comprehensive Transportation Plan (CTP), CCTA staff had prepared the two white papers. The first, *Launching the 2014 CTP Update*, outlined how the CCTA would use the CTP and the Action Plans to address the challenges faced in creating a balanced transportation system within the County and addressing the impacts of forecast growth; and the second, *Incorporating Sustainability into the 2014 Countywide Transportation Plan*, addressed how the CCTA would incorporate the concept of sustainability into the CTP and its other planning and project development activities.

Mr. Engelmann outlined the background, purpose, and details of both white papers, with more plans to be prepared into 2014, and with the CCTA to update its Strategic Plan for the expenditure of Measure J funds and new state funding through significant public outreach. He hoped to make another presentation in 2013/2014 on the Countywide Plan and other projects under development with the CCTA, adding that the Metropolitan Transportation Commission (MTC) would be adopting the first Sustainable Communities Strategy for the Bay Area, tentatively scheduled for June 2013. He noted that the CCTA already practiced sustainability through its current objectives and missions to deliver a comprehensive transportation system to enhance accessibility and mobility while promoting a healthy environment and a strong economy.

In response to the Council, Mr. Engelmann commented that the Countywide Plan would be reviewed by the local jurisdictions pursuant to a one-year cycle with a draft plan to be in place by December 2013, to be released in January 2014.

Councilmember Metcalf advised that the Town Council would be receiving more materials on the two subjects over the next few months, which would impact planning and how the Town received monies to repair streets.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

X. PUBLIC HEARINGS

- A. Consideration of Saint Mary's College Appeal of Planning Director's Decision Requiring Saint Mary's College to Turn Off Intramural Field Lights at 9:00 p.m.

Planning Director Shawna Brekke-Read reported that SMC had appealed the Planning Director's decision requiring SMC to turn off the intramural lights at 9:00 p.m. rather than at 10:00 p.m. as allowed as part of the March 28, 2011 DRB Condition of Approval, which stated that if residents adjacent to SMC filed complaints with regard to noise from players on the field at night and problems continued after investigation, the hours of operation of the lights could be reduced to 9:00 p.m. by the planning staff.

Ms. Brekke-Read described the background of the original DRB approval of the intramural lights as outlined in the staff report, with the lights first becoming operational in the 2011/12 school year. In October 2011, planning staff began to receive complaints about the lights shining into neighbors' homes, and noise associated with the field use, and planning staff had commenced to investigate the complaints, encouraging both SMC and the residents to work together. The noise complaints continued in the spring of 2012, when another project at SMC had been considered by the Town. Staff continued to investigate complaints, with SMC indicating it would look into the noise issues and attempt to address them. In October 2012, the problems with the noise associated with the operation of the lights continued. As the Planning Director, she had contacted SMC by telephone, e-mail, and letter and advised that the intramural field lights must be turned off by 9:00 p.m. She had also notified SMC of the appeal process.

Ms. Brekke-Read reported that SMC had started to turn the intramural field lights off by 9:00 p.m. per the direction of her letter, utilizing the authority of the DRB condition of approval. SMC had appealed that decision leading to the hearing before the Town Council. She emphasized the issue was the noise associated with the lights and the operation of the lights until 9:00 p.m. versus 10:00 p.m. and acknowledged that some of the correspondence that had been received had raised other issues. She asked that the Town Council uphold the decision of the Planning Director, deny the appeal, and direct planning staff to prepare a resolution affirming that decision for the Town Council at its next meeting.

Assistant Town Attorney Karen Murphy advised that the staff report had not included a draft resolution; any action would be to direct staff to prepare a resolution with the final action to be taken upon the adoption of that resolution.

Responding to the Council, Ms. Brekke-Read advised that the lights had been approved in March 2011 and had become operational in August/September of the 2011/2012 school year. She reiterated that, upon staff's investigation, a correlation between the hours of operation of the lights and the noise on the field had been found, and that she had communication with SMC at that time about this correlation, and at several points SMC had indicated the noise issues would be investigated. She added that a complaint received in October 2011 had been made during public comment testimony during a DRB meeting related to another SMC application for

the expansion of the size of the scoreboard for the new baseball field facility and a concern with noise generation. There had been other complaints from the Bluffs neighborhood which were primarily verbal in nature.

Ms. Brekke-Read reiterated that her investigation had included a great deal of communication with SMC, contact with SMC advising of the noise complaints, communication with the complainants, encouragement of complaints directly to SMC, and request that the two parties work together to resolve the situation. She advised that her decision had been based on testimony received from people and asking people to communicate with each other. She had personally visited the site and complainants' properties.

Ms. Murphy advised of the process for the public hearing for the appeal with a presentation first from the appellant.

APPELLANT:

Michael Beseda, Vice President for College Communications, SMC, speaking on behalf of Brother Ron who was unable to attend the public hearing, advised that Brother Ron had previously submitted correspondence on the appeal. He spoke to the relationship between the Town of Moraga and SMC, noting that, as Brother Ron had stated, SMC had not been informed of the neighbors' concerns from the opening of the intramural lights until May 2012. He commented that SMC had become aware of the concerns when meeting with Town staff on the SMC Recreation Center. He noted that when SMC considered the project, it had intended to have the field available until midnight. When SMC had approached planning staff, staff had advised that a midnight time period to turn off the lights would not work for Moraga and a 10:00 p.m. time period was the best the Town could agree to. SMC had agreed to work with that requirement. He noted that SMC had gone out of its way to be a good neighbor and work within the confines of the community and would continue to do so. He emphasized the intramural field was integral to the vitality and experience desired by SMC students and members of the Town.

Harold Freiman, Attorney representing SMC, noted that SMC had built the field, placed the lights in reliance on the approvals received by the Town, spent considerable funds to do so, and used the field lights as designed, approved, and planned. The noise emanating from the fields was from practice taking place on a practice field, a foreseeable event when the Town had issued its approvals. He noted that the referenced DRB condition included an exception to allow for re-opening of this issue whether the lights remained on until 9:00 p.m. or 10:00 p.m.

Mr. Freiman read into the record the DRB condition of approval related to the intramural field lights, and based on his interpretation of the condition, an investigation had not occurred such as evidenced in the Town record, to allow the time to be rolled back to 9:00 p.m. He questioned whether or not complaints received were specifically noise complaints or about the lights themselves; were the complaints related to noise between 9:00 and 10:00 or at other times; and were the complaints related to the noise from the intramural field. He noted there was evidence in the staff report of people commenting on noise collectively from the fields at SMC and not necessarily from the subject field or at night. He questioned the staff visit to the field when there were no activities on the field; asked whether the Town had retained the services of an acoustical engineer with recordings taken of the decibel level of the field when in use; inquired of the acceptable decibel level in the Town on a practice field that was being used as intended; asked whether any sound monitoring equipment had been used and where it was located when used; had the noise from the field exceeded any Town thresholds and was it continuous or a sudden and infrequent noise taking place on the field; what notice was given to SMC regarding the issues and had the Town consulted with SMC regarding what steps had been taken. He suggested the discussions that had followed were not about noise but about lighting, and asked when and how the noise had been monitored later to determine there was a continuing problem

after discussions took place between the various parties and how SMC had been notified that the purported problems still needed to be corrected.

Mr. Freiman stated from a technical standpoint that none of the issues he had raised were in the record and, absent any evidence to back up the DRB condition, the Town did not have the right to change the time from 10:00 to 9:00 p.m.

PUBLIC HEARING OPENED

Edy Schwartz, Moraga, representing the Moraga Chamber of Commerce, read into the record written comments from the Moraga Chamber of Commerce Board of Directors which emphasized that SMC was an important member of the Moraga business community and asked for a timely and quantitative review. Having read the staff report and all communications and having spoken with members of the Chamber and the Bluffs neighborhood, she agreed a quantitative review was needed.

Brandon Bjerke, Moraga, a senior at SMC, commented that he was not a personal participant in the intramural leagues at SMC, but supported the flexibility the intramural field offered for busy SMC students and having the ability during that time for safe and responsible activities.

Joey Van Loon, Moraga, SMC Association Student President, emphasized the importance of the intramural field lights, the programming on campus, and the fact that SMC students were also members of the community. As an off-campus resident of Moraga, he supported the flexibility of the extracurricular activities on the campus with the intramural field.

David Gow, Moraga, commented that some of the neighbors he had spoken with actually liked the lights and the noise and had moved to the neighborhood for that reason, although there were others who did not. He asked SMC to be a better neighbor and, while he recognized and acknowledged SMC's contributions to the community, stated that was not relative to noise and solving that issue was the only thing that should be discussed. He commented that he had walked SMC campus, taken readings on and off the campus, and the campus was quiet even with simultaneous activities on campus, although near his front door, likely because of the topography, the campus noise could clearly be heard.

Gerri Joyce, Moraga, commented that she had no concerns with noise during the day although the nighttime noise had been an issue. She had submitted correspondence in 2011 and 2013, and had conducted research on the issue when the concerns had been raised. Based on her experience with the Acalanes Unified High School District (AUHSD), all field lights had been turned off by 9:00 p.m. She noted that the intramural field was like an amphitheater, and the noise was audible from her front and rear yards. She commented that many of the residents were professionals and had school-age children and 10:00 p.m. was too late for noise in the neighborhood. She requested that the intramural field lights be turned off at 9:00 p.m.

Zhan Li, Moraga, commented that he worked with SMC as an Administrator for the School of Business and had worked on Town committees. He emphasized that SMC valued its relationship with the Town and that SMC had been a good citizen providing the use of the intramural field for many sports teams. Reducing the hours of the operation of the lights at the intramural field could impact those sports teams. He asked the Town Council to address the concerns with a scientific study and investigation.

Gary Howard, Moraga, advised that his family had been a long-time supporter of SMC, and while SMC was a jewel in the Town of Moraga, he suggested that jewel had been tarnished by SMC staff as a result of the noise and light problems because of the intramural field, impacting the residential neighborhoods adjacent to SMC. He suggested that SMC had been provided

special dispensation during the application process and from completing an Environmental Impact Report (EIR), suggesting that the multi-sports field with column type lights would not have been approved if placed within several hundred yards of two upscale neighborhoods. He added that the sound emanating from the field occurred 24/7, he was able to hear normal conversations from the intramural field from his rear yard during the evening hours, and he did not like his family to be subjected to some of the profanity that regularly emanated from the field.

Barry Behr, Moraga, explained that he was aware of the presence of SMC when he moved to his home and he offered an analogy of someone moving near an airport and then complaining about the planes. While the noise and lights did not bother him much, the use of the Public Address (PA) System during frequent events was audible from his patio and from inside his home. He suggested the volume of the PA system could be reduced and still be audible on all the fields. He expressed his hope that SMC and the Town could work towards a compromise.

Leslie Anne Salvador, Moraga, Vice President for Administration, Intramural Coordinator for SMC Sports, identified the fees paid by SMC students for intramural sports, and emphasized most of the students had classes during the day and used the intramural field during the evening. She suggested that the use of the intramural field enhanced the student experience and expressed her hope that the Town Council would allow the intramural field lights to operate until 10:00 p.m.

Therese Kubilos, Moraga, a student of SMC, echoed the comments from the previous speaker, emphasized her participation in recreational sports through the intramural leagues which had enhanced her student experience, and expressed concern if the lights were not allowed to remain on until 10:00 p.m. that many students would be unable to participate in some of the sports leagues. She added that she had qualified for work study and her income came from recreational sports, and a reduction in the lights would impact her income. She asked that the residents complaining about the noise consider the needs of the many SMC students.

Samuel Hutchinson, Danville, a junior at SMC who lived on campus and who also worked in the SMC recreational programs, emphasized the opportunities to meet people and make friends. If the intramural field lights were turned off at 9:00 p.m. that would reduce the ability for many students to benefit from the use of the intramural field and recreational programs. He suggested that 10:00 p.m. was not unreasonable.

Teasara Thompson, a senior at SMC, spoke to her background in Sports Management, with the use of the intramural field allowing her the experience to enter into that field after graduation. She too spoke to the benefits to the students using the intramural field and the associated activities, commented that she also worked in the SMC Recreation Sports Department and held another job in the City of Orinda, and given her job hours the intramural field allowed her the flexibility for recreational use after hours. She asked that the Town Council allow the lights to remain on until 10:00 p.m. to allow SMC students that time to use the fields.

Erik Thomas, a student at SMC, commented that he was from a small town in the Central Valley which was very close to a park which also involved noise and lights with no complaints in his neighborhood. He suggested that SMC had been very respectful, asked the Town to realize that it was a college town and allow the lights to remain on until 10:00 p.m.

Tom Marnane, Moraga, stated that SMC had solutions for the noise and lights from engineers and all it had to do was follow the recommended solutions and the meeting would have been unnecessary.

Diego Rios, Moraga, Freshman Class Senate President at SMC, and the Club Soccer Representative, commented that he was a student athlete and the intramural field allowed

students the flexibility to use the field in the evening. A 9:00 p.m. deadline for the lights would impact practice times for the various sports activities. He apologized for the concern with respect to profanity, and emphasized that such language was discouraged by club sports.

Steve Smith, Moraga, emphasized the importance for SMC students to have the ability to use the intramural field until 10:00 p.m. He also commented on the fact that SMC allowed many local sports organizations to utilize the field; noted the Town did not have the resources to fight the issue legally; and questioned the use of attorney fees to fight a neighborhood problem.

Marty Kinsey, Moraga, suggested it would be unfair if the lights were required to be turned off by 9:00 p.m. at SMC but allowed to remain on later at Campolindo High School.

Alan McCauley, Moraga, explained that he had lived across from SMC for the past 24 years. He expressed concern with the fact that it was difficult to get up early for work when his sleep was disrupted by the noise and lights from SMC. While it was not an issue for the entire Town, the issues were disruptive to the lives of many of his neighbors.

Marty Storti, a SMC Administrator, commented that it was his responsibility to schedule the use of the intramural field. He spoke to the difficult task of meeting the schedule even when the lights were on until 10:00 p.m. He supported approval of the lights to remain on until midnight. Reducing the time to 9:00 p.m. would negatively impact the intramural leagues which involved restrictions for many of the game times due to student class schedules. He advised that he was not aware of an issue with profanity on the fields, but would speak with the Recreational Sports Leadership Group and the Club Sports coaches to possibly monitor that situation which he agreed was unacceptable.

Responding to the Council, Mr. Storti stated that the intramural field was scheduled as early as 2:30 p.m. with some practices occurring prior to that time. He noted that SMC did not have a football team and SMC Stadium was not used in the winter for recreational activities due to drainage issues. In addition, because of the spatial constraints on the intramural field, SMC was unable to provide for multiple sports activities at one time, as had been enjoyed in the past for the intramural field at the front. He clarified that he did not schedule the use of the other fields (softball and baseball fields) for SMC for intramural use, which fields were used daily with no space or time available to the intramural league.

Danielle Ginestro, Moraga, stated she had submitted correspondence in the past which had not been included in the attachments. She commented that her family had purchased their home in Moraga, and although she was aware of the presence of SMC, as a parent of small children, she had an issue with the fact the noise was audible from inside her home. She described it as an amphitheater effect where the noise traveled. She asked that the intramural lights be turned off at 9:00 p.m. and that the Town consider a more useful study showing the decibel level and the actual noise impacts to the community.

Shanette Westphal, Moraga, stated she had purchased her home when SMC had a football team, liked the concerts in the grove, the chimes and architecture, and the activities within the college. She recognized that one person's noise may be another's music and reported that conversations were audible from her rear yard but that she had not heard any profanity. She suggested if SMC were allowed to have the intramural lights remain on until 10:00 p.m. it was unfair to argue that point now. She expressed concern with a few residents trying to represent the whole neighborhood of the Bluffs. She provided copies of correspondence from other residents who shared her opinion and supported the activities of the SMC students as healthy and productive. She also expressed disappointment the issue had created such an antagonistic environment and hoped it would be repaired as quickly as possible.

Lynda Snell, Moraga, commented that she liked the SMC football games in the past which had occurred six to seven times a year; however, the relocation of the athletic field had an impact on her residence with the lights flooding her home and with significant noise. She reported that representatives from SMC had visited her home in October 2012 and noted that lighting was an issue for her and, although SMC had agreed to do something about it, nothing had been done. She commented that the neighborhood had not been alerted to the fact the field would be relocated and no story poles had been erected. She emphasized the current efforts to conserve energy, pointed out they were in a green environment, and noted the lights were oftentimes operating during inclement weather. She looked forward to a resolution with SMC.

Scott Hardy, a student and employee at SMC, applauded the students present and suggested the youth could be doing other things in the evening and all they wanted to do was play sports until 10:00 p.m.

Lisa Vogeley, SMC Lacrosse Coach, stated that having the intramural field lights had brought a benefit to the community and to SMC's recruitment efforts, with Lacrosse the number one growing sport. The intramural field lights allowed for night games after dinner and rush hour. In response to the concerns with noise, she commented that as a student of SMC when football and other events were held the noise was louder although the volume of the PA had been reduced and the visiting and home teams could not hear their own line-up. She added there had been no profanity from the athletes in her program and she would ensure that did not occur. She suggested that some of the noise could be coming from other individuals using the field absent permission.

Tim Farley, SMC Community and Government Relations Director, reported that in March 2011 when the DRB had approved the intramural lights, he had heard from a member of the Bluffs community who had offered to host a meeting. That meeting had been attended by three neighbors with the discussion having been summarized in writing and provided to the Bluffs neighbors with contact information for SMC. He acknowledged that once the intramural field had commenced installing the lights there had been some concerns that the lights were too bright, with SMC having received no complaints until a meeting in the spring when it had been formally brought to SMC's attention. Representatives from SMC had visited some of the neighbors' homes although noise had not been raised as an issue.

Alex Dulwick, former SMC Freshman Year Resident Advisor and Director of Resident Halls, suggested that absent the intramural field many students would not have made friends and would have stayed in their rooms, and added that many students worked in the recreation sports programs for their income which gave back to the community.

Marisol Luna, sophomore at SMC, Recreation Sports & Women's Club Soccer, commented that she came from a small town and acknowledged that the same problem occurred in her community when a high school had been built. She pointed out that residents lived near a college campus with associated noise and emphasized students were involved in healthy recreation, meeting friends, exercising, and becoming involved in the college experience.

Amir Behnoud, SMC Vice President of Finance, Association of Students, spoke to the amount of money spent on recreational sports within SMC. He emphasized the importance of the intramural leagues, adding to a sense of community. Given students' schedules, access to the intramural field after 9:00 p.m. had been beneficial for many. He urged the Town Council to consider further investigation and consider a scientific study to allow the intramural field lights to remain on until 10:00 p.m.

Sarena Granados, President of the Women's Club Soccer Team, echoed the comments and read into the record a letter from her coach who was also the Chair of the Mathematics and

Computer Science Department who resided on campus and was able to view the lights from the intramural field from his room. He and his family had experienced no disturbances.

Luis Hernandez, SMC Junior Class President, and a student athlete on the soccer team, spoke on behalf of many of his fellow student athletes who were unable to attend the meeting due to their studies. He suggested the issue was one of public health, with many students wishing to have the flexibility at night to use the intramural field, to work out, and to relieve stress.

Graig Crossley, Moraga, recommended the Town Council offer SMC the same method of acoustical study that had been offered to the neighbors who had complained about the noise from the Moraga Commons Park.

Jazo Moises, SMC Senior and Residential Advisor, emphasized the importance and benefits of the SMC intramural playing field for the students on campus which had been a good resource for the students to learn teamwork and remain active. He requested the Town Council allow the lights to remain on until 10:00 p.m.

Cady Cadiz, SMC student, spoke to the Surgeon General's recommendation for daily physical activity which was important for people of all ages. She noted the intramural playing field provided the ability for many students to develop good exercise habits.

Renee Zeimer, Moraga, stated that SMC had been committed to working with the neighbors in the Bluffs to address the noise challenges. She commented that when the lights had first been installed at Campolindo High School there had been similar issues, as Campolindo also had stands where spectators could cheer while watching sporting events. In that case, the experience of the lights and sound was loud, very apparent, with the neighbors later adapting. Also, the football games at Campolindo High School were played until the games ended and the community had grown to understand that. She suggested that SMC had done a lot and would continue to work with the community to address the situation.

Frank Comprelli, Moraga, acknowledged that the Mayor had allowed him more time to speak and noted that he had cards from other speakers who had ceded their time to him, including Clair Hotten, Mary Hotten and Nancy Comprelli. He disputed Mr. Farley's statement that SMC had no record of complaints in that he had personally called SMC twice during the referenced time period, noting he had learned that SMC had no protocol for recording conversations. He was also aware of the period before the July 2012 Planning Commission meeting when there had been 10 to 15 written letters received by staff and he understood staff had an extensive file of complaints about the lights and the noise. He described the background of the issue, stated he had moved to the location on purpose, and was fully aware and enjoyed SMC, but did not feel that SMC had acted responsibly in terms of the intramural playing field.

Mr. Comprelli noted that the neighbors had been frustrated with delays after neighbors' concerns had been referred to the SMC Community Relations Department. He emphasized his appreciation for Town staff and the recommendation to the Town Council. He asked the Town Council to consider the issues as presented by staff and the subsequent recommendation by staff that future public hearings be held on corollary issues. He explained that the problems with noise exceeded the problem with the lights. He suggested the noise levels exceeded the Town's Noise Ordinance regardless of the time of day and that the lights on the field were operational all of the time.

Zachary Magallanez, speaking on behalf of the SMC Lacrosse Team, acknowledged that the lights were operating on the field regardless of the weather conditions. He noted the turf field had no mud and if they were to play on the adjacent soccer/football field, mud would be an issue. As to concerns with profanity, he commented that the coach of the Lacrosse team

prohibited such language and it rarely occurred. He also spoke to the students' schedules where the later evening period allowed the flexibility for student participation. He pointed out that SMC did not have fraternities or parties and the intramural leagues allowed an outlet for students to play with their friends and an extra hour of time would be a great benefit.

Kathleen Worsdale, senior at SMC, commented on the relationship between SMC and the Town which created a division between the students of SMC and the residents of Moraga. She echoed the comments made on the benefits of the additional hour for the use of the lights on the intramural field, suggested that residents could address the noise issue with ear plugs or head phones, and questioned whether the lights were really the issue. She noted that the previous field had been unsafe and the new field was safer and allowed for play on grass, not mud.

Adam Kennedy, SMC Director of Athletic Camps and Club Sports, explained that SMC's Basketball Team involved many residents, and the games generally ended after 10:00 p.m. with no effort to shut down the basketball team which had put SMC on the map, helping to grow the college. He suggested there were approximately 50 people maximum on the intramural playing field at one time and they would be done at 10:00 p.m. versus 2,500 people at a basketball game at the same time.

Judie Howard, Moraga, stated that the original plan was for the lights to remain on until 10:00 p.m. but turned off during the weekend. The residents had asked for the lights to be turned off at 9:00 p.m. but with the lights on all weekend, essentially SMC had more time than before allowing for play on the weekends.

REBUTTAL:

Mr. Beseda explained that SMC had contacted the local high schools and found that the hours of operation for those playing fields were typically as late as 10:00 p.m. or later. He also clarified that SMC had not received any dispensation on its recent project, with SMC actually having gone beyond the notification process. He disagreed there was a simple engineering solution and noted that a field had previously been located at the site with the field space considerably limited by the move of the baseball field. As to the issue with lights operating during the rain, he acknowledged that during an earlier Planning Commission meeting SMC had commented that if the weather did not permit, activities would not occur on the field. The intramural field was an all-weather field and students played in the rain. He disagreed that the original plan called for the lights to be turned off on the weekends, although SMC had offered that if the lights were on until 10:00 p.m. SMC would consider turning the lights off during the weekends. However, when the decision was made to move the hour back to 9:00 p.m., due to scheduling SMC had been unable to meet that recommendation.

Mayor Trotter declared a recess at 9:35 p.m. The Town Council meeting reconvened at 9:42 p.m. with all Councilmembers present.

PUBLIC HEARING CLOSED

Ms. Murphy advised that the process by which SMC obtained approval was not under discussion during this public hearing and the only item under discussion was whether to affirm or deny the decision of the Planning Director to turn off the intramural field lights at 9:00 p.m. due to noise effects from the field.

Councilmember Arth recognized the importance of physical fitness, spoke to his and his family's history with education and faculty experience at SMC, and recognized the long time presence of SMC in the Moraga community. He pointed out that SMC was not the same as it had been years ago given the demand in enrollment and its facilities with the challenge to

accomplish the same goals without infringing on the neighborhood, which in this case, he suggested SMC had done. He recommended that SMC students encourage SMC to repair the former football field so that it could be utilized as a second playing field which would solve the problem. At the current time, he supported the decision of the Planning Director to keep the cut-off time for the intramural field lights at 9:00 p.m. until SMC adequately addressed the noise problems.

Councilmember Metcalf spoke to the appeal before the Town Council of a decision of the Planning Director and commented that the discussion had gone broader than the question at hand. Having read SMC Attorney Freiman's analysis, and while the neighbors in the Bluffs may not agree, he questioned whether SMC had acquired vested rights with the decision made by the Town and the permit for the intramural field lights with the original permit. He asked the Town Attorney to opine on that issue.

Ms. Murphy stated there was no vested right to keep lights on past 9:00 p.m. because in the action of the DRB in 2011 SMC had obtained the right to install the lights for the field with conditions in place for the permit, which conditions included the language under discussion and the possibility for modification pursuant to that condition.

Councilmember Metcalf read into the record the DRB Condition from March 28, 2011, and asked staff whether any complaints about the lights had been filed in the record.

Ms. Murphy advised that with regard to the investigation and complaints, there were letters in the file contained in the staff report from 2012 which addressed noise complaints in addition to other complaints. She cited a letter received July 31, 2012 from Judie Howard expressing concern with the noise and the associated impacts. She noted the DRB condition had not specified a standard for investigation and commented the Planning Director had noted that she had reviewed the complaints from the neighbors, had discussed the issue with SMC, and there had been additional complaints after that time.

Ms. Brekke-Read explained that there were different ways to regulate noise in the Town. The Commercial Districts included specifications for allowable decibel levels at the property line and the Town's Noise Ordinance was more general for the entire community. The investigation that planning staff had taken was the same it used for all complaints from neighbors. The first method of investigation was that staff contacted the individual, applicant, or business owner against whom a complaint was registered. In the case of SMC, she had documented e-mail when SMC had been conducting testing during the summer and SMC had informed neighbors it would not operate the lights during the summer while the students were not on campus, and during that time SMC wanted to test the lights. The email explained SMC had acknowledged a problem with the noise and staff had been working with SMC and the neighbors on that issue.

As to whether the Town Council may impose DRB Condition 2 without infringing on SMC's vested rights, Ms. Murphy stated that SMC's right was not unconditional. It was subject to the requirements of the condition and specifically allowed for circumstances in which the lights may be turned back to 9:00 p.m.

Responding to the Council, Mr. Beseda explained some graduate and undergraduate classes at SMC were offered in the evening and had been for several years.

Mark Orr, SMC Director of Athletics, noted that the intramural sports had previously been placed on the two front fields with the Lacrosse team having participated with the inception of the intramural field and with Men's Lacrosse having been relocated from the front field. The front field was twice as large as the intramural field and had previously housed the intramural sports. He reiterated that the field space had been reduced from the previous fields to the intramural

field to accommodate the activities on the campus and the 10:00 p.m. deadline for lighting had allowed more students to be able to participate.

Councilmember Chew questioned how the problems with complaints had been investigated and commented that the Planning Director had testified there was communication during the investigation phase. He asked SMC to respond to those comments.

Mr. Beseda stated that there had been no investigation, with the Planning Director reporting investigations on the lights and with no testing on sound since SMC believed the issue had been all about lights based on the communication and activities it had with the Town.

Councilmember Metcalf noted that, while he understood the neighbors' concerns, the same concerns had occurred with the Summer Concert Series at the Commons Park where the Town was required to conduct definitive measurements and where the Park Foundation was required to make corrections. He suggested it was time for an objective noise study to review noise issues.

Ms. Keimach explained that the decision had not been taken lightly, but an investigation had occurred. There was no decibel level criteria for residential areas so that a quantitative investigation could not be done although the Planning Director had tried to solve the problem, with several meetings with the Planning Commission offering an opportunity for SMC, the neighbors and the Commission to review the issue and reach a solution. She affirmed she would have found that process to constitute an investigation but emphasized the process had started before it had reached the Planning Commission level and staff had encouraged SMC to analyze and hire a consultant to review the noise as it related to the lighting.

Councilmember Wykle recognized the importance of SMC to the Town. He was confident the problem could be resolved and provided background history of the item when it had come before the Planning Commission.

Councilmember Chew asked the Town Attorney about the appeal and due process concerns.

Ms. Murphy explained that the issue of the DRB condition and the Planning Director's actions based on that condition was the subject of the appeal, and the decision before the Council was whether the Planning Director's decision based on noise should be upheld or modified. As to the due process concerns, she noted that the appellant had exercised its right to due process by filing the appeal that was the subject of the hearing being held at the current time.

Councilmember Chew recommended the Town Council grant the appeal and revisit the condition and set up better parameters to address the concerns of the residents.

Ms. Murphy clarified that the DRB condition being discussed was the condition for the project from 2011. She advised at this point that the Town may not amend the condition as the permit had been approved in 2011 and had not been appealed or challenged. The only way to amend the condition was through an application by SMC to amend the condition.

Mayor Trotter described his personal relationship with SMC having attended SMC college games for some time, and as a member of the Planning Commission years ago considering certain elements of its Master Plan for the site. He understood that SMC would like to modernize its Master Plan again and his position on this appeal would not impact his objective view of that plan. He suggested the airport analogy did not apply in this case since the homes, including the Bluffs around SMC, had been in place for decades prior to SMC placing lights and an intramural field operating at night close to a residential neighborhood.

Mayor Trotter advised that as a land use attorney, he saw no vested rights problem associated with enforcing the DRB condition. He noted the complaints to the Planning Commission which the Planning Director had investigated and which continued with the Planning Director having had a substantial dialogue with SMC and the residents around the intramural field, which culminated in a discussion before the Planning Commission in the fall of 2012, and which process had constituted an investigation.

Mayor Trotter commented that the concept of quiet enjoyment applied and those impacted had the right to make complaints and the Town Council had the right to enforce the condition in light of the ongoing complaints and investigation into noise. He was inclined to back up the judgment of staff, to deny the appeal subject to SMC finding a better way to resolve the problems and later request reconsideration. While he was of the personal opinion that the sounds from SMC were music and not a cacophony, he did not want to impose his value judgments on those residents who lived close to the SMC intramural field. He also understood the amphitheater effect from SMC through to the Bluffs neighborhood. He recommended denial of the appeal with the proviso that SMC continue to work on the issue and with the neighborhood to craft a different solution that could be presented to the Town Council at a future date.

Councilmember Chew pointed out that homes surrounded Campolindo High School and the Moraga Country Club closer than the homes to the SMC intramural field. He suggested that there would be noise regardless of where people went. He liked the noise from SMC which showed SMC was an active college filled with a full student body and faculty, emphasized that SMC had been in the community prior to the establishment of the Town of Moraga, and guaranteed it would be in place long after everyone was gone. He opposed appeasing a few residents over occasional inconveniences over the well-being of the student body and faculty of SMC. He added that the Town's relationship with SMC had improved steadily over the years and he enjoyed the cooperation of SMC with the Town and the Moraga Chamber of Commerce as a partner in the community. He urged the Town Council to uphold the appeal, and let the residents consider legal challenges against SMC and not take up the Town's time and money.

Councilmember Metcalf was concerned that the Planning Director had been placed in a difficult position as a result of the language in the DRB condition and he did not want to see SMC suffer. He commented on the improved relationship between SMC and the Town of Moraga which was due to many present in the audience. He found SMC to be a wonderful asset and emphasized the importance of the Town/Gown relationship. He noted that the economic vitality of the Town depended a lot on SMC, and the market potential due to SMC was enormous, which he did not want to see negatively impacted. While SMC had property rights, he suggested that SMC should also consider any transgressions to the neighbors and he agreed there was a problem which could not be measured, but given that SMC would be bringing other projects to the Town in the future he questioned upsetting the neighbors and encouraged a solution.

Councilmember Wykle recommended the denial of the appeal and suggested that SMC had ample opportunity to address the situation and it had not been done. He urged support of staff and the Planning Director, adding that the games at Campolindo High School did not occur on a daily basis.

Mayor Trotter noted that Councilmember Metcalf's recommendation to uphold the appeal involved no incentive to find solutions to resolve the situation. He supported the Town/Gown relationship, had supported SMC projects in the past, and intended to support serious projects which enhanced the student experience in the future. He saw no reason for that relationship to suffer as a result if the Town Council were to affirm the Planning Director's decision.

Councilmember Chew clarified that Campolindo High School conducted activities every night, including practices with associated noise although not until 10:00 p.m. He again supported upholding the appeal, and he sought fairness on both sides. He did not want to see the situation become mired in litigation.

Ms. Murphy reminded the Town Council there was no resolution in the packet and that any direction would be to direct staff to prepare a resolution to be brought back to the Council, either to deny or to uphold the appeal subject to specific findings. She affirmed that if the Town Council were to offer a motion to deny the appeal, it should incorporate the testimony and discussion this evening in terms of the discussion on the findings, which could include an ability to come back.

Councilmember Wykle offered a motion, seconded by **Councilmember Arth** to direct staff to prepare a resolution denying the appeal and upholding Planning Director's decision to maintain a 9:00 p.m. limitation for turning off intramural field lights. This resolution shall include records of complaint and investigative efforts to look into that complaint, as noted during the hearing, in the staff report, in attachments, and also encourage Saint Mary's College to further address the issue with the possibility to return at a later date to reconsider 10:00 p.m. operations.

In response to the Council and on the motion, Ms. Murphy explained with respect to noise, that if there was a desire for SMC to work with the Town to compromise on a set of facility modifications that would not necessarily involve a formal amendment, SMC could submit information that the problem had been addressed.

Ms. Keimach recommended such information, if submitted to the Town, could go back to the Planning Commission which would review a new application for an extension up to 10:00 p.m. The Planning Director or staff could always bring the issue before the Planning Commission, based on authority in the Zoning Ordinance. By taking the matter to the Planning Commission, she suggested it would allow a more transparent discussion with SMC and the residents, rather than staff-level review.

Ms. Keimach pointed out that one of the letters of correspondence from SMC had listed a process of hiring a lighting consultant and sharing the data with the community, with a response from the neighborhood. SMC could follow the process it had suggested and bring it back with the data from an objective third party, with the Town to measure the noise with a third party. She noted the neighbors were interested in working with SMC to find a solution.

Mayor Trotter suggested that this was an area in which the Town could exercise discretion with respect to the evidence brought before it.

ACTION: It was M/S (Wykle/Arth) to direct staff to prepare a resolution to deny the appeal and uphold Planning Director's decision and maintain a 9:00 P.M. limitation for turning off intramural field lights. This resolution shall include records of complaint and investigative efforts to look into that complaint, as noted during this hearing, in the staff report and attachments and also encourage Saint Mary's College to further address the issue with the possibility to return at a later date to reconsider 10:00 P.M. operations. Vote: 3-2. Noes: Chew, Metcalf.

ACTION: It was M/S (Wykle/Chew) to extend the Town Council meeting to 11:30 P.M. Vote: 5-0.

XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

A. Receive and File Fiscal Year 2011/12 Audited Financial Statements

Administrative Services Director Stephanie Hom reported the Town Council had been provided with the Audited Financial Statements and other documents the auditor had been required to prepare to ensure that the Town was within its appropriation limits. A new auditor, Maze & Associates, had been used, which had opined that the Town's financial statements were clean and conformed to the Governmental Accounting Standards Board (GASB). She highlighted the audited financial statements, affirmed they had been reviewed by the Audit and Finance Committee (AFC), noted that recommended modifications had been incorporated, and asked that the Town Council receive and file the Town of Moraga's Audited Basic Financial Statements for the year ended June 30, 2012; Memorandum on Internal Control and Required Communications; and Independent Accountant's Report on FY 2011/12 Appropriation Limit.

PUBLIC COMMENTS OPENED

Graig Crossley, Moraga, commented that the staff report sounded good.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Chew/Metcalf) to receive and file the Town of Moraga's Audited Basic Financial Statements for the year ended June 30, 2012; Memorandum on Internal Control and Required Communications; and Independent Accountant's Report on FY 2011/12 Appropriation Limit. Vote: 5-0.

B. Adopt Resolution 11-2013:

- 1) Authorizing the Town Manager to Award a Construction Contract to GECO Incorporated [Novato] in the Amount of \$58,000 for the Construction of Restroom Renovations and Americans with Disabilities Act Access to the Pavilion Building (CIP 12-302); and
- 2) Authorizing the Town Manager to Execute Contract Change Orders Up to 15% of the Contract Amount; and
- 3) Approving a Budget Amendment from Asset Replacement Fund 750 in an Amount of \$37,025; and
- 4) Accepting and Appropriating a Donation of \$10,000 from the Hacienda Foundation towards Project Budget, Restricted to the GECO Incorporated Contract

Edric Kwan, Public Works Director/Town Engineer, reported the Pavilion project had gone out to bid and staff had worked closely with the Hacienda Foundation. When the bids came in, there was a budget shortfall of \$47,025. The Hacienda Foundation had contributed resources, materials, and knowledge valued at \$20,000 and a donation of \$10,000 to go towards the shortfall. He requested that the Town Council adopt the proposed resolution which would allow the project to move forward and meet deadlines for weddings in the month of May.

PUBLIC COMMENTS OPENED

Graig Crossley, Hacienda Foundation, supported the resolution and contract and hoped it would be allowed to proceed as soon as possible.

PUBLIC COMMENTS CLOSED

Councilmember Metcalf asked that the record show that the Hacienda Foundation funds could not have been made possible absent contributions from long-time Hacienda supporter Joan Bruzzone.

ACTION: It was M/S (Arth/Metcalf) to adopt Resolution 11-2013: 1) Authorizing the Town Manager to Award a Construction Contract to GECO Incorporated [Novato] in the Amount of \$58,000 for the Construction of Restroom Renovations and Americans with Disabilities Act Access to the Pavilion Building (CIP 12-302); 2) Authorizing the Town Manager to Execute Contract Change Orders Up to 15% of the Contract Amount; 3) Approving a Budget Amendment from Asset Replacement Fund 750 in an Amount of \$37,025; and 4) Accepting and Appropriating a Donation of \$10,000 from the Hacienda Foundation towards Project Budget, Restricted to the GECO Incorporated Contract. Vote: 5-0.

- C. Adopt Resolution 12-2013 Authorizing the Town Manager to Amend the Consultant Services Agreement with Pakpour Consulting Group, Inc. [Pleasanton] for Continuation of Engineering Reviews on Planning Entitlements in an Amount Not to Exceed \$200,000 for a Term of Three Years, with the Sole Source of Funding Derived from Funds Provided by Applicants

Mr. Kwan reported that in August 2012, the Public Works Department had two engineer vacancies that necessitated the establishment of an immediate contract with an engineering plan-checking firm to review subdivision entitlement applications submitted to the Planning Department in order to meet the Permit Streamlining Act. A Request for Qualifications (RFQ) was issued for three engineering firms, with Pakpour Consulting Group determined to be the most experienced and qualified consultant, and which had begun to work immediately on development applications submitted to the Town. He recommended the Town Council authorize the Town Manager to amend the Consultant Services Agreement with Pakpour Consulting Group, Inc. for continuation of engineering reviews on planning entitlements in an amount not to exceed \$200,000 for a term of three years, with the sole source of funding provided directly from the applicants with no impact on Town funds.

In response to the Council, Mr. Kwan explained it was very likely he would be conducting a RFP process for surveying services for final map review since the Town would need the expertise and services of a licensed land surveyor. At this time, there was no urgency to bring on a second consultant although it would be needed after entitlements, during the improvement plan and the final map stage.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Metcalf/Chew) to adopt Resolution 12-2013, Authorizing the Town Manger to Amend the Consultant Services Agreement with Pakpour Consulting Group, Inc. [Pleasanton] for Continuation of Engineering Reviews on Planning Entitlements in an Amount Not to Exceed \$200,000 for a Term of Three Years, with the Sole Source of Funding Derived from Funds Provided by Applicants. Vote: 5-0.

- D. Adopt Resolution 13-2013 Approving and Authorizing the Town Manager to Execute Operation and Maintenance Agreements of Stormwater Treatment Systems

Mr. Kwan reported that in accordance with the requirements of the Municipal Regional Stormwater Permit and National Pollutants Discharge Elimination System (NPDES) permits, some land developments triggered post-construction stormwater treatment systems and

required the developments to engage in an Operation and Maintenance Agreement (O&M) to ensure the stormwater systems run well, which runs with the land and is typically recorded prior to Final Map approval for subdivisions. He advised that typically most local jurisdictions had delegated the authority from the Councils to the City/Town Manager in order to facilitate the process. The Town had two projects which required O&M agreements, at 8 and 10 Kimberly Drive, and at the SMC Recreation Center improvement project. In order for the O&M agreements to be recorded and allow for Final Map, final building inspection, or building occupancy, he asked that the approval and authority be passed to the Town Manager.

Responding to the Council, Mr. Kwan identified the requirements for new construction. The Town would incur no expense since the applicant would be required to pay for staff review of the O&M agreements and there would be no fiscal impacts to the Town. If staff determined the matter deserved Town Council attention, staff would bring the matter to the Town Council, and staff could be more specific with the conditions of approval as part of the planning process.

Ms. Murphy affirmed a condition of approval on a project could be considered which required the stormwater and O&M agreement to be approved in a separate action by the Town Council.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Arth) to adopt Resolution 13-2013 Approving and Authorizing the Town Manager to Execute Operation and Maintenance Agreements of Stormwater Treatment Systems. Vote: 5-0.

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

Councilmember Metcalf requested that a future agenda item include a presentation on the Radio Loan Program.

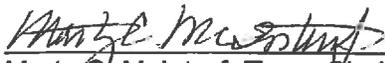
XIII. COMMUNICATIONS

There were no communications.

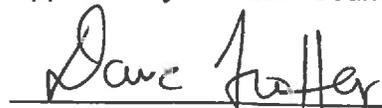
XIV. ADJOURNMENT

ACTION: It was M/S (Chew/Arth) to adjourn the meeting at 11:22 P.M., with the Town Council to recommence to a Special Meeting of the Town Council to Interview Applicants for Appointments to the Planning Commission, the Appointment of Town Treasurer, and Appointments to the Audit and Finance Committee. Vote: 5-0.

Respectfully submitted by:


Marty C. McInturf, Town Clerk

Approved by the Town Council:


Dave Trotter, Mayor