

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**June 26, 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 7:03 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 Arth led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

There were no special announcements.

IV. PROCLAMATIONS AND PRESENTATIONS

A. Proclamation Honoring Campolindo High School Girls Softball Team

Mayor Trotter read into the record a proclamation honoring the Campolindo High School Girls Varsity Softball Team in recognition of its inspirational season and winning the 2013 North Coast Section (NCS) Division II Championship.

PUBLIC COMMENTS OPENED

Tom Renno, Athletic Director, Campolindo High School, recognized the accomplishments of the Girls Varsity Softball Team and noted the team's perseverance to overcome its obstacles.

Bob McLaughlin, Softball Coach, Campolindo High School, also commended the accomplishments of the Girls Varsity Softball Team and its efforts to form a cohesive organization. He expressed appreciation to those alumni who had worked with the team, and acknowledged that all athletes had contributed to the team.

PUBLIC COMMENTS CLOSED

B. Proclamation Honoring Campolindo High School Boys Volleyball Team

Mayor Trotter read into the record a proclamation honoring the Campolindo High School Boys Varsity Volleyball Team in recognition of the team's winning of the 2013 Diablo Foothill Athletic

League (DFAL), Division II NCS, and the California Interscholastic Federation (CIF) Norcal Regional Championships.

PUBLIC COMMENTS OPENED

David Chen, Volleyball Coach, Campolindo High School, thanked the Town Council for the recognition, commended all the athletes including those not present, and emphasized the entire team had played a large role in its accomplishments for the season.

Deborah Standing, Volleyball Team Mom, reported that David Chen had also been chosen as "Coach of the Year" by the Contra Costa Times for all sports.

Tom Renno commended the accomplishments of the Boys Varsity Volleyball Team, and congratulated Coaches Chen and John Vuong, who also served as coaches to the Girls Varsity Volleyball Team, and who were the first coaches to ever win an NCS tournament for both boys and girls in the same season.

PUBLIC COMMENTS CLOSED

C. Proclamation Honoring Campolindo High School Boys Baseball Team

Mayor Trotter read into the record a proclamation honoring the Campolindo High School Boys Varsity Baseball Team in recognition of the team's winning the 2013 DFAL, NCS, and CIF Division II Baseball Championships.

PUBLIC COMMENTS OPENED

Max Luckhurst, Baseball Head Coach, Campolindo High School, commended his athletes for their ability to focus and achieve their goals.

Tom Renno reiterated that the Campolindo High School Administrative Team commended the accomplishments of the Boys Varsity Baseball Team, and the accomplishments of the entire Campolindo High School sports program.

PUBLIC COMMENTS CLOSED

The Town Council recognized and commended the remarkable efforts of the Campolindo High School athletes and sports program.

D. Proclamation Declaring July 2013 as Park and Recreation Month

Mayor Trotter read into the record a proclamation declaring the month of July 2013 as "Park and Recreation Month," and urged all citizens to use and enjoy the Town's parks and recreational opportunities. He presented the proclamation to Parks and Recreation Director Jay Ingram and John Haffner, Park and Recreation Commissioner.

V. PUBLIC COMMENTS AND SUGGESTIONS

Shaheen Tonse, Moraga, referenced the Fourth of July fireworks display held annually at the Moraga Country Club Golf Course, understood a portion of the event was funded by private donations, and suggested that donations should also be solicited after the event when enthusiasm and gratitude was high, given the number of participants from nearby towns. He urged consideration of well-marked, illuminated, and policed donation booths located on Moraga Way and at the northern end of the golf course.

VI. ADOPTION OF THE CONSENT AGENDA

A. Approval of the Consent Items

Consent Agenda Item Nos. 5 and 6 were removed from the Consent Agenda for discussion.

PUBLIC COMMENTS OPENED

Maureen Freeman, Moraga, also requested that Consent Agenda Item 6 be removed for discussion.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Arth/Wykle) to approve Consent Agenda Items 1, 2, 3, 4 and 7. Vote: 5-0 [Councilmember Arth abstaining from Consent Agenda Item 2 due to absence; and Councilmember Wykle abstaining from Consent Agenda Item 3 due to absence.]

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|----|--|----------------|
| 1) | Accounts Payable Claims for 6/14/2013 (\$316,755.15) | Approved |
| 2) | Approve Revised Minutes for Town Council Regular Meeting on May 8, 2013 | Approved |
| 3) | Approve Minutes for Town Council Regular Meeting on May 22, 2013 | Approved |
| 4) | Adopt Resolution 51-2013 Authorizing Submission of a Revised Biennial Compliance Checklist for Measure J Calendar Years 2010 and 2011 Growth Management Program for Allocation of Fiscal Years 2011/12 and 2012/13 Local Street Maintenance and Improvement Funds to the Contra Costa Transportation Authority | Approved |
| 5) | <i>Adopt and Waive Second Reading of Ordinance 240 Adding Chapter 12.06 "Street Excavation and Pavement Restoration Regulation" to the Moraga Municipal Code to Establish a Pavement Cut Moratorium to Preserve Newly Paved Streets</i> | <i>Removed</i> |
| 6) | <i>Adopt Resolution 53-2013 Authorizing the Town Manager to Execute an On-Call Consulting Services Agreement with Kennedy and Associates (Walnut Creek) for Land Development Reviews, Engineering Services, and Stormwater Program Assistance in an Amount Not-to-Exceed \$108,000 for a Term of Three (3) Years</i> | <i>Removed</i> |
| 7) | Adopt Resolution 52-2013 Authorizing the Town Manager to Amend the Consulting Services Agreement with MacKay & Soms (Pleasanton) for Design Engineering Services During Construction in an Amount Not-to-Exceed \$1,000 for the Moraga Commons Off-Street Parking Project (CIP No. 10-301) | Approved |

B. Consideration of Consent Items Removed for Discussion

1. Adopt and Waive Second Reading of Ordinance 240 Adding Chapter 12.06 "Street Excavation and Pavement Restoration Regulation" to the Moraga Municipal Code to Establish a Pavement Cut Moratorium to Preserve Newly Paved Streets

Public Works Director/Town Engineer Edric Kwan requested the Council waive the second reading and adopt Ordinance 240 adding Chapter 12.06 "Street Excavation and Pavement Restoration Regulation" to the Moraga Municipal Code (MMC) to establish a Pavement Cut Moratorium to preserve newly paved streets, and advised that the item had been vetted on two separate occasions by the Town Council.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Metcalf/Chew) to adopt and Waive Second Reading of Ordinance 240 Adding Chapter 12.06 "Street Excavation and Pavement Restoration Regulation" to the Moraga Municipal Code to Establish a Pavement Cut Moratorium to Preserve Newly Paved Streets. Roll Call Vote: 5-0.

2. Adopt Resolution 53-2013 Authorizing the Town Manager to Execute an On-Call Consulting Services Agreement with Kennedy and Associates (Walnut Creek) for Land Development Reviews, Engineering Services, and Stormwater Program Assistance in an Amount Not-to-Exceed \$108,000 for a Term of Three (3) Years

Mr. Kwan presented the item authorizing the Town Manager to execute an On-Call Consulting Services Agreement with Kennedy and Associates (Walnut Creek) for Land Development Reviews, Engineering Services, and Stormwater Program Assistance in an amount not-to-exceed \$108,000 for a term of three years, and reported that Kennedy and Associates had been providing assistance and expertise to the Town for a number of years, and had been involved in the Palos Colorados project throughout the entire entitlement phase. The contract with Kennedy and Associates was due to expire and for the Town to proceed with plan check and engineering services for Palos Colorados and other development projects, staff recommended that the Town Council adopt the resolution.

PUBLIC COMMENTS OPENED

Maureen Freeman, Moraga, explained she had asked that the item be removed from Consent given the size of the contract which she suggested should have warranted a reading to the Town Council and the public. She requested that such contracts be reviewed openly with the opportunity for public comment to ensure transparency.

Mr. Kwan emphasized the importance of retaining the services of Kennedy and Associates given its history with land development in Moraga and with its work on the Palos Colorados project. He also added that while Kennedy and Associates had been providing services to Moraga for many years their rates had remained fairly similar over that time.

Town Manager Jill Keimach advised that the Palos Colorados project had been dormant for a while; understood the developer was close to obtaining all environmental permits with the exception of the Army Corps of Engineers permit; and that the developer was proceeding with a Final Map and Grading Permit.

Town Attorney Michelle Kenyon clarified that items on the Consent Agenda were deemed to be non-controversial, information on Consent Agenda items was available to the public, and any member of the public could request an item be removed from the Consent Agenda for discussion. She noted that the purpose of the Consent Agenda was to expedite the meeting.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Arth) to adopt Resolution 53-2013 Authorizing the Town Manager to Execute an On-Call Consulting Services Agreement with Kennedy and Associates (Walnut Creek) for Land Development Reviews, Engineering Services, and Stormwater Program Assistance in an Amount Not to Exceed \$108,000 for a Term of Three (3) Years. Vote: 5-0.

VII. ADOPTION OF MEETING AGENDA

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

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Trotter - Reported that he had missed the last meeting since he had been engaged in a court case; and reported that he and the Town Manager had recently met with the incoming President of Saint Mary's College (SMC) and other members of the SMC administration to discuss a number of issues.

Vice Mayor Chew - No report.

Councilmember Arth - No report.

Councilmember Metcalf – Reported that he had attended the monthly meeting of the East Bay Regional Communications System Authority (EBRCSA) along with Chief of Police Priebe; reported that the City of Oakland was considering joining the EBRCSA and was in the process of completing its evaluation of the system; the Oakland Police Officers' Association (OPOA) had filed suit against the City of Oakland regarding the City's new radio system; and EBRCSA would start meeting quarterly rather than monthly.

Councilmember Wykle - Reported that he had attended the Moraga Youth Involvement Committee (MYIC) meeting on June 13 and that the MYIC Movie Night had been held on June 15; MYIC would be sponsoring the Pancake Breakfast at the Moraga Commons on July 4, beach clean-up was scheduled for July 20; and they were involved in efforts with the Contra Costa County Food Bank.

B. Town Manager Update – Ms. Keimach reported that the Buy-a-Rocket program for the 4th of July had received \$16,000 in donations, and she expressed her appreciation for the public's efforts. She added that the preparation of a Garbage Nexus Study was underway with the Central Contra Costa Solid Waste Authority.

Mayor Trotter offered to solicit donations at the Moraga Commons during the 4th of July celebrations for fireworks contributions.

IX. DISCUSSION ITEMS

There were no discussion items.

X. PUBLIC HEARINGS

- A. Consideration of Appeal of the Planning Commission Approval of a Conditional Use Permit, a Hillside Development Permit, and a Tree Removal Permit of a 4,270.5 square foot Single-Family Residence on a Vacant 13,203 square foot Hillside Parcel Located at 1800 Donald Drive (*Staff Recommends this item be continued to the Town Council Meeting of September 25, 2013*).

Planning Director Shawna Brekke-Read explained that the appellants had requested a continuance to the Town Council meeting of September 25, 2013 to ensure that she and the Contract Planner would be in attendance. She asked that the Town Council open the public hearing, take any testimony from the public, and continue the item. While the appellants had paid an initial appeal fee to file the appeal pursuant to the Town's Fee Schedule, the applicant was responsible for all costs to process an application and process any appeals to the application. In this case, extra costs were related to courtesy mailings to the neighbors since the meeting would be continued to a date in September, although additional posting would not be required.

Councilmember Metcalf expressed concern with the fairness of the applicant bearing the cost of the continuance at the request of the appellants. He asked staff to discuss that issue further when the matter returned to the Town Council.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Chew) to continue consideration of Appeal of the Planning Commission Approval of a Conditional Use Permit, a Hillside Development Permit, and a Tree Removal Permit of a 4,270.5 square foot Single-Family Residence on a Vacant 13,203 square foot Hillside Parcel Located at 1800 Donald Drive, to the Town Council meeting of September 25, 2013. Vote: 5-0.

XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

- A. Adopt Resolution 54-2013 Deeming the Bid Submitted by HM Construction as Non-responsive and not a Responsible Bidder for the Purposes of this Project, Authorizing the Town Manager to Award a Construction Contract to Pavex Construction (San Jose) in the Amount of \$603,940 for the Construction of the Laguna Creek Wall Repair and Bank Stabilization Project (CIP 08-203), and Executing Contract Change Orders up to 15% of the Contract Amount

Mr. Kwan introduced Senior Civil Engineer/Project Manager Laurie Sugang and Construction Manager Robert Stevens, with BKF Engineers. He reported that in 2005/06, storms had created flood-related damages at the Hacienda area and Laguna creek, and he asked that the Town Council award the construction contract to Pavex Construction, the second lowest bidder to address the repair of the remaining damage. He explained that six bids had been received and the lowest bid had come from HM Construction; however, staff had deemed that bid to be non-responsive and non-responsible since the forms had not been filled out correctly, and that

the experience HM Construction had was related to building projects which was not relevant to the type of expertise required for the Laguna Creek project.

Mr. Kwan asked the Town Council to adopt a resolution deeming the bid submitted by HM Construction to be non-responsive and not a responsible bidder for the purposes of this project, authorize the Town Manager to award a construction contract to Pavex Construction (San Jose) in the amount of \$603,940 for the construction of the Laguna Creek Wall Repair and Bank Stabilization Project (CIP 08-203), and execute contract change orders up to 15% of the contract amount.

Responding to the Council, Mr. Kwan acknowledged the low Engineer's Estimate had been a concern, noting delays due to the presence of the California Red-Legged Frog, making the environmental permits more difficult to obtain. Additionally, a recommendation to combine the Laguna Creek Wall Repair and the Bank Stabilization project created a further delay. He reported that the environmental permits were now in place and the Town was ready to proceed with the project. He also affirmed that as part of the bidding process, HM Construction had been required to submit five similar projects in its experience and had listed only two, which supported the staff determination of a non-responsive bidder.

Senior Civil Engineer/Construction Manager Laurie Sugang explained that the Engineer's Estimate had been prepared as part of the entire bid package prior to its distribution in May.

Mr. Kwan also clarified the fiscal impacts shown in the staff report, noting that the Town's receipt of Notification of Obligation and Payment from the State of California Emergency Management Funds (EMA), and Federal Emergency Management Funds (FEMA), had been based on the cost of the project itself and the amount funded would cover the expense of the construction contract along with funds from Measure J. He acknowledged the Engineer's Estimate was low and that three of the bid proposals had been clustered close to one another, indicating a more realistic cost for the project. He further commented that a mandatory pre-bid meeting had been held at the site; staff had discussed the project clearly with all prospective contractors; had offered an addendum to any questions; and the Town had a good construction management team to ensure the project proceeded smoothly.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

The Town Council recognized that while the Engineer's Estimate was low, the fiscal impact to the Town would be modest.

ACTION: It was M/S (Arth/Wykle) to adopt Resolution 54-2013 Deeming the Bid Submitted by HM Construction as Non-responsive and not a Responsible Bidder for the Purposes of this project, Authorizing the Town Manager to Award a Construction Contract to Pavex Construction (San Jose) in the Amount of \$603,940 for the Construction of the Laguna Creek Wall Repair and Bank Stabilization Project (CIP 08-203), and Executing Contract Change Orders up to 15% of the Contract Amount. Vote 5-0.

- B. Consideration of VSS International, Inc., Bid Protest and Possible Action regarding 2013 Pavement Repair Project to Rescind Contract Award of June 12, 2013, Award Contract for this Project and/or Other Related Actions Related to Award of Contract and Possible Adoption of Appropriate Resolution 55-2013

Mr. Kwan outlined the history of the project, reported that five bids had been received on May 27, 2013, and during the June 12 Town Council meeting staff had recommended awarding the contract to the third lowest bidder, VSS International, Inc.; however, that morning staff received a bid protest from Central Valley Engineering and Asphalt (CVEA). He outlined the analysis of the five bids received as shown in the staff report, noted that at the time of the staff recommendation, CVEA had not submitted the Waste Assessment Form as part of the bid package, and staff had recommended that the CVEA bid be deemed incomplete and non-responsive. CVEA had filed a protest the morning of June 12 contesting the staff determination and suggested their missing Waste Assessment Form was a bid irregularity that could be waived. During the Town Council meeting of June 12, staff recommended the contract be awarded to the third lowest bidder, VSS International, Inc., with the bid protest from CVEA discussed by the Town Council based on the information available at that time. On June 12, the Town Council awarded the construction contract to CVEA. On Friday, June 14, the Town received a bid challenge from VSS International Inc., which staff had evaluated for this meeting. He explained that the Town Council packet included all information on the bid protest and any correspondence that had been received to date.

Mr. Kwan identified the four options for Town Council action as outlined in the staff report including: preserving the Council's initial decision on June 12, 2013, and awarding the contract to CVEA and waiving the irregularity; choosing not to waive the irregularity which would make CVEA a non-responsive bidder and the Town Council would then be required to award the contract to the third lowest bidder, VSS; rejecting all bids and then rebidding with the option to split the project in 2013 and 2014; and rejecting all bids and constructing in the 2014 season.

In response to the Council, Mr. Kwan reiterated that CVEA had not submitted the Waste Assessment Form with the bid package as required, with a completed form to be submitted prior to demolition. Said criteria had clearly been identified in the bid package information. The remaining four contractors had submitted the required signed form. CVEA had not contacted staff to inquire whether the form was required as part of the bid submission during the mandatory pre-bid meeting, or at any time during the question period so that staff may issue an addendum. He commented that since he was not the contractor, he would not know whether the omission of the Waste Assessment Form would have affected bid prices from CVEA.

Mr. Kwan commented that one option for Council consideration could be a split construction season which may result in additional mobilization of the contractors and which could impact the bid prices. The bid results would have to be re-analyzed as a result. He cited Attachment B to the staff report, Canvass of Bids Summary, and reviewed the numbers at that time.

Responding to correspondence received from Ryan Wood with Downey Brand, Attorneys LLP, legal counsel for VSS International, Inc. dated June 25, 2013, Mr. Kwan acknowledged the argument that CVEA was a non-responsible bidder. As to experience, he reported that all of the contractors had met the minimum requirements according to the experience and requirements form. Responding to some of the specifics in the correspondence from Mr. Wood as to the percentage of solubility, he noted an addendum had been issued on May 7, 2013 to all contractors interested in bidding that the Town would accept 93 percent solubility, based on Nichols Consulting Engineers' expertise in paving and referred to a Caltrans report accepting 93 percent solubility as a good product. He added that a representative of Nichols Consulting Engineers was present to speak to the specific technicality of that issue.

Ryan Shafer, Nichols Consulting Engineers, described the differences in the percentage of solubility, a subject of controversy, with all agencies including Contra Costa County that have specifications allowing 97.5 percent, although part of that percentage came from the advice and opinions from supplier Paramount Petroleum, which was a proprietary spec. He noted that there was only one petroleum refiner that could meet the 97.5 percent specification and the 93

percent would allow for more bidders. In light of the request from CVEA, he found it to be a reasonable request and noted that his firm had conducted its research and evaluated Caltrans' 93 percent, which was found to be completely appropriate. For the purpose of Town Council consideration, he recommended that the Town Council disregard the solubility argument as an invalid argument and suggested that the appropriate product could still be achieved at 93 percent based on the research that had been conducted when the temperatures and binder had still worked correctly. Performance, longevity, and elasticity of the material would not be affected and based on the current specifications, temperatures and solubility were in compliance with Caltrans.

Mr. Shafer explained that the 93 percent solubility and possible lower temperatures would not result in a sticky goopy mess. He clarified that part of the project involved a pilot project where a small location would be selected and the material would be applied in the appropriate climate and temperatures to ensure it was a good fit for the streets and was working effectively. He could not speak to the temperature data although the specifications had been reviewed at multiple levels and he was comfortable with the specs as presented.

Mr. Kwan also clarified the experience requirements in the bid documents for pavement operations with experience in five projects, with references to be provided. The bid contractors had met the minimum requirements for experience. He noted a requirement of specific experience would have restricted the number of bidders and affected the prices; the intent was to spur competition and get the best prices for the Town by opening up the competition. He added there was a section in the technical specifications that was explicit that the contractor would have the staff (foreman, superintendent) with specific experience with rubberized cape seals; and if not, a new staff person would have to be hired to handle those responsibilities. As to whether VSS International Inc. had the specific staff to meet the criteria, that information was required to be submitted afterwards, typically during the pre-construction meeting. Based on the experience qualifications sheet, VSS had represented projects which had the types of treatments the Town was seeking. He added it was common practice to include such specifications for this purpose, and suggested it was not risky to award a contract to a contractor who did not have the experience with rubberized cape seal. He emphasized the contractors had met the minimum requirements and the Town could not reject the bid based on that specific criteria.

Mr. Kwan added that staff had worked closely with the City of Lafayette and the county to obtain contractors, see their specifications, learn from those mistakes, and ensure the Town's specifications were the best at the current time. He understood those entities had success with the product under discussion. When asked, he was uncertain of the treatment that had been installed on Canyon Road in 2007, although Moraga Road had used a rubberized cape seal utilizing a different technology than the upcoming projects. The project on Canyon Road had involved the work of VSS International Inc. and he understood the project had been a success.

As to the matter of process, Ms. Kenyon explained that the bid protester was not required to speak first although the bid protester and all bidders, if present, were allowed to speak prior to public comment.

Ryan Wood, Downey Brand, Attorneys, LLC, suggested it would be risky to go with CVEA in light of its relative life experience with its subcontractor APS. He was unaware that APS had performed anywhere in the state regardless of the technology, and suggested it would be dangerous to proceed with a company that was brand new and had not worked with the material before, creating a risk to the Town. He pointed out the Town already had a history with that individual which was not a good one. He suggested the Town would regret the decision to move forward with CVEA.

As to the bid protest on the technical matters, and while the Town Attorney was in agreement, Mr. Wood stated the Waste Assessment Form specifically included a dollar and cents component, and stated it was an acknowledgement by the bidder that failure to follow the requirements of this form and the Waste Management Directive could result in a 40 percent forfeiture of the retention, which materially affected the bid and its costs. As a result, since CVEA had failed to sign the form, it gave CVEA a competitive advantage that had not been built into the bid, would not be an irregularity, and could not be waived for that reason.

Jordan Reed, VSS International, Inc., stated that he had previously spoken before the Town Council on June 12, 2013. He noted that 40 percent of the retention would be lost to the contractor if they failed to comply by diverting waste as specified in the Waste Assessment Form, and expressed concern that CVEA had not acknowledged that portion of the contract, making it risky for the Town to waive it as a minor irregularity given the dollar value tied to that portion of the contract.

Jack Van Kirk, Director, Asphalt Technology, VSS International, Inc., described his background in the field and the technologies under discussion; noted that both products could be used successfully although he expressed concern whether low bidders had the experience to provide the quality of product the Town desired where experience would be very important; described the background and history of VSS as the largest maintenance contractor in California with multiple experiences; and urged the Council to consider a contractor that had the experience to place a product that would last. He stated that VSS had a long history with the types of binders under discussion; asked that the Town Council consider selecting a contractor with the experience to make the project a success; and noted that while low bidders met the minimum requirements they did not always have the experience and he would be hesitant to move forward with such a contractor given that limited experience. He urged the Town Council to consider VSS' experience with these types of binders.

Jeff Roberts, Chief Operating Officer, VSS International, Inc., also spoke to his background and experience in the industry, emphasized the skill and expertise in project management and field operations at VSS, noted the number of jobs conducted each year with all jobs reviewed on-site before a project was bid, and expressed his confidence with VSS's numbers as accurate to get the job done. He added that VSS had the staff and the experience to complete the Town's project, was the best in the industry, and he would be the person who would ultimately be responsible for delivering to the Town a project of the highest quality.

PUBLIC COMMENTS OPENED

John Haffner, Moraga, commented that he had the privilege of mobilizing the community for Measure K to fund this and future projects and commended the efforts of everyone to make that process a success. He recognized the Town Council's struggle to make the right decision and suggested VSS should present only the facts and allow the Council to make a decision. He was confident the Town Council would make the right decision.

Edy Schwartz, Moraga, thanked staff and the Council for the time and effort involved in its decisions, recognized that the Town staff had much experience and that staff had initially recommended the bid be awarded to VSS; expressed concern with the significant difference in costs between the lowest and second lowest bidder; understood that since CVEA had not submitted the Waste Assessment Form there could be implicated costs which were currently unknown; and spoke to the tremendous amount of work on Measure K with the primary concern of the community that the money be well spent avoiding the type of disaster that had occurred with the roadwork on Moraga Road. She urged the Town Council to consider the best qualified contractor who could do the best for the Town.

Dick Olsen, Moraga, described the history, background, and purpose of the Revenue Enhancement Committee (REC) and the efforts of the Revenue Enhancement Community Outreach to Neighborhoods (RECON), with the primary focus the ultimate outcome of the Moraga Road rubberized cape seal project, which had been a fiasco. He spoke to a lack of confidence in trusting the Town Council to do the job the right way, and referenced the history and background of the Measure K efforts leading to its successful passage, with the sales tax proceeds to fund only a part of the solution to ultimately repair the Town's roads. Given that an additional revenue measure could likely be needed in the future, he stated that much depended on how well or how poorly the Town handled the current effort. Based on his understanding of the situation, the Town Council had decided to award the bid to a contractor with no known prior experience in performing rubber cape seal paving applications, which he found to be a risky decision impacting the public's long-term faith in the Town Council. Also, CVEA had submitted an incomplete proposal while other qualified bidders provided all information as requested, and attorneys responsible for reviewing the Town's bid had found that a lack of specificity in the documents could have left the Town open to potential litigation. He urged the Town Council to award the contract to VSS, the lowest responsible bidder, which had relevant experience, and which had provided a complete bid package.

Jane Low, Moraga, emphasized the importance of getting it right and suggested that the lowest bid was potentially risky. She emphasized that she had supported Measure K given the condition of the Town's roads.

PUBLIC COMMENTS CLOSED

Mayor Trotter commented that both of the bidders being discussed were responsible within the technical meaning of the Public Contracts Code, and the Town Council must make a decision on the responsiveness of the bid, with the Council obliged to award the contract to the lowest responsive and responsible bidder.

Ms. Kenyon identified the two issues before the Town Council: whether the bidders were responsible bidders, and were the bids thereafter responsive. As to the first question, it had been deemed both by staff and by legal counsel that all of the bidders, based on the technical specifications in the bid requirements, had met the minimum requirements specified in the bid documents. As to responsiveness, the lowest bidder had an irregularity in its bid documents meaning the lowest bidder had not formally completed the bid documents because of the irregularity of not submitting the Waste Assessment Form.

Ms. Kenyon added that the Town Council may waive the irregularity if the irregularity did not create a competitive advantage. Based on the testimony received, there was some evidence presented both by VSS and the citizenry that, in fact, waiving the irregularity for CVEA could create a competitive advantage. The Town Council may decide to waive the irregularity in which case it would have to award the contract to CVEA since it would then be the lowest responsive bidder; or if the Town Council decided it did not want to waive the irregularity because it was of the opinion it would create some competitive advantage, then CVEA would no longer be the lowest responsive bidder and VSS would then become the lowest responsive bidder.

Ms. Kenyon advised that the action taken by the Town Council on June 12, 2013, could be reconsidered since VSS had submitted a timely bid protest and the Town Council was not legally tied to the previous decision. In this case, the Town Council was reconsidering the entire bid award and the action to be taken would be to rescind that previous resolution. She added that every decision the Council made must be based on some rational basis, and with what the Council had heard at the current time, there was a basis and sufficient evidence in the record where the Council could make a decision not to waive the irregularity since it could create a

competitive advantage. In her opinion, the Town Council had the discretion to waive the irregularity and the Council had enough evidence in the record to state that.

Councilmember Wykle emphasized that the community should rest assured that the Council would do the right thing. He noted during the meeting of June 12 that the Town Council determined there was an irregularity as related to the Waste Assessment Form, which was the reason the contract had been awarded to CVEA. He found the risk to have started with the procurement package, and given the Town's experience in the past the bid package should have asked for more experience in that area to ensure the best project.

For the record, **Councilmember Metcalf** stated that he had disagreed on June 12, and disagreed now, with the previous comments. In his opinion, the issue was that legal counsel had informed the Town Council it must award to the lowest bidder unless the Council was convinced there was no competitive advantage. If the low responsive and responsible bidder had submitted a complete bid there would be no impact to the contract price; however, staff and the Council could not make that finding which was the reason he had expressed concern regarding the absence of the form and there could be no assumptions as to the contractor's intentions. He emphasized there was no substitute for experience and he wanted someone who really knew what they were doing. For that reason, he was more convinced he had voted accurately on June 12.

Councilmember Metcalf added that while Moraga had a good consulting crew and inspection group, it would be dealing with temperature sensitive material, and needed to get the best contractor to do the job right. He also spoke to his efforts over the years to have Moraga's streets repaired, and as a member of the REC and RECON groups where the primary issue was the community's distrust of the Town Council given the debacle with the Moraga Road project, he expressed concern with the Council creating a risky proposition where there might be regrets. He did not want to see that happen and urged the majority of the Town Council to reconsider the action taken on June 12 and get the job done right.

Councilmember Arth agreed with many of Councilmember Metcalf's comments, and agreed that although the Town had consultants who would monitor what was being placed on the Town's roadway it did not offer the luxury of picking the lowest bidder. He suggested there would be a good project with a quality contractor and quality inspectors.

Vice Mayor Chew acknowledged that no representative from CVEA was present in the audience. He asked the Town Attorney if the previous action taken by the Town Council was rescinded, whether the Council must choose the next lowest bidder, and what the consequences in terms of cost might be if the Council chose the option to rebid and spread the project out into 2014.

Ms. Kenyon summarized the four options available to the Council as outlined in the staff report.

Ms. Keimach clarified that if the Town Council chose the option to reject all bids and rebid, the Council would again be required to select the lowest responsive and responsible bidder. She expressed concern with that option since the Town Council could end up in the same situation.

Mr. Kwan suggested if the Council chose the option to reject all bids and spread the project out into 2014, the costs would involve the mobilization of crews into the 2014 season, and at worse could double the current mobilization costs. If the project were rebid, it would be possible for construction to occur during this construction season but under ideal situations. If the project was delayed, it would impact an extensive overlay program planned for the next year with two large construction projects possibly occurring simultaneously. If the construction contract was awarded to VSS, he suggested the two-week delay that had occurred could be made up.

Mr. Roberts advised that VSS had two chip seal crews running full time, six slurry seal and micro-surfacing crews, and had scheduled availability during the months of July, August, September, and October, with most of the work taking place in August and September. He spoke to the volatility of the asphalt market with an uptick in asphalt prices over the past two months, which could be a cost factor if the project was delayed.

Mr. Kwan noted that the unit prices may not remain the same if the bids were rejected and the Town went out to rebid again. There would be a provision in the specifications for ideal weather conditions and possibly the next construction season, which information would be provided for all bidders and the project would be priced accordingly.

Councilmember Metcalf pointed out that if the Council chose to proceed with Option 4, it would not know who submitted the bids and as time went on pavements would deteriorate rapidly; the Town's roadways were already in a state of rapid decline which was why a concentrated program within a short period of time had been sought by the community; splitting the season would go against that objective; and the public had been told the Town would not string out the work and allow the streets to deteriorate further. For all those reasons, he opposed Option 4.

Councilmember Arth preferred to see the work start and be completed this year and for that reason he did not support a rebid or splitting the bids. He wanted to see the work done the way the citizenry of Moraga expected it to be done.

Councilmember Wykle commented that his opinion had changed from the June 12 meeting given a slightly different legal opinion in that the absence of the Waste Demolition Form could materially affect the contract.

Ms. Kenyon affirmed that the Council may, but was not required to, waive that irregularity and reiterated there was sufficient evidence in the record with VSS' protest and based on the testimony that would warrant the Town Council choosing not to waive the irregularity.

Councilmember Wykle agreed that the Town would lose some leverage if it were to rebid and it would be challenging. He asked the Town Attorney whether she expected CVEA to submit another bid protest, to which Ms. Kenyon replied she did not expect that to happen since CVEA had indicated it would not, although that did not mean CVEA would not file some sort of litigation. CVEA had not submitted a letter to object to the protest from VSS.

Councilmember Wykle suggested the bid package could be cleaned up if the project was split into two seasons, although the competitive advantages would be lost; he therefore did not support splitting the project into two seasons.

Mayor Trotter suggested that reconsideration of the June 12 action taken by the Town Council would be wise and he thanked the majority of the Council for agreeing to do so. He suggested there was basis in the record to accept the bid protest, award the contract to VSS, and not to waive the irregularity based on legal reasons. He noted that the Town Council had made a decision months ago in the wake of the passage of Measure K to prioritize this work and have the Certificates of Participation in order, which effort would be wasted with a split season approach. He suggested that any defects in future bids could be cured based upon this experience.

Mayor Trotter offered revised language to Attachment F to the staff report, Resolution Rescinding Resolution 49-2013, Consenting to relieve American Asphalt of its bid due to mistake, and authorizing the Town Manager to award a construction contract to VSS International, as follows:

- Revise the third NOW, THEREFORE BE IT RESOLVED, clause as shown on Page 3:
 3. Deems the bid submitted by Central Valley Engineering and Asphalt as nonresponsive due to the failure to submit the signed Waste Assessment Form with its bid, and finds based on substantial evidence provided at its June 26, 2013 meeting that the failure of Central Valley Engineering and Asphalt to submit that form may have affected the amount of the bid or have given a competitive advantage to Central Valley Engineering and Asphalt as bidder.

Councilmember Metcalf offered a motion to approve Attachment F, as modified, seconded by **Councilmember Arth**.

Vice Mayor Chew supported the motion, as stated, although he commented for the record that the majority of the Council had acted on the information available on June 12, and he suggested the action at that time was appropriate. Based on the evidence presented, he was convinced that CVEA may not have provided the best job for the Town. He held VSS International to its word to provide the best job for the Town of Moraga.

ACTION: It was M/S (Metcalf/Chew) to adopt Resolution 55-2013, Rescinding Resolution 49-2013, Consenting to relieve American Asphalt of its bid due to mistake, and authorizing the Town Manager to award a construction construct to VSS International, as modified. Vote: 5-0.

Mayor Trotter declared a recess at 9:37 P.M. The Town Council meeting reconvened at 9:44 P.M. with all Councilmembers present.

- C. Adopt Resolution 56-2013 Approving the Fiscal Year 2013/14 Operating and Capital Improvement Program Budgets

Administrative Services Director Stephanie Hom presented the Fiscal Year 2013/14 Operating and Capital Improvement Program (CIP) Budgets which had been previously presented to the Town Council on May 22, 2013, and subsequently to the Audit and Finance Committee (AFC). Based on the Council discussion on May 22, staff had made some revisions to the proposed budget as reflected in Attachment A, the proposed FY 2013/14 Operating Budget, and Attachment B, Proposed Five-Year CIP Budget, included as part of the staff report.

Ms. Hom stated there had been extensive discussions during the May 22 Town Council meeting regarding a funding request for the Lamorinda Spirit Van Program, with \$9,000 to be funded from Measure J funding. The Lamorinda Spirit Van Program Director had requested funding in the amount of \$15,000. Staff had conducted a re-review of the budget but did not recommend using additional Measure J funds for the project since Measure J funds were currently structurally balanced. With some funds remaining in surplus, she recommended that \$3,000 could be used from the General Fund for the Program. The Town had also received a request after the May 22 Council meeting from the Friends of the Moraga Library, which request had been attached to the staff report.

As to the CIP Budget, Mr. Kwan detailed the CIP projects which had unidentified funding sources as outlined in the staff report, many of which were related to park projects. The CIP projects had been vetted by the Hacienda and Park Foundations which supported the three projects staff had recommended the Town Council consider funding. The staff report also identified a list of projects staff was not recommending for funding at the current time due to the lack of a dedicated funding source.

Mr. Kwan referenced CIP #8, Storm Drain Master Plan (Phase 1 of 4), currently funded in phases over four years due to the limited funding which had been discussed by the Local Sales Tax Oversight Committee on May 29, 2013, when committee members had questioned whether to combine all four phases into FY 2013/14 in order to coordinate storm drain information and potential repairs with street reconstruction and pavement work. He commented that analysis of 36 inch or larger storm drain pipes had been conducted in August 2008; analysis of storm drain pipes less than 36 inches in size must be conducted through televising. The Committee recommended expediting the first two phases which included mapping, televising, prioritizing, cost estimating, isolated flooding issues, and addressing pipes in poor condition although it would not address the capacity issues which Phases 3 and 4 would do. He noted there were savings if all four phases were completed in one year; however the priority should go to the first two phases.

With respect to CIP #4, Hacienda Improvement Program and its funding sources, Mr. Kwan described that as an annual CIP program; Council did not need to fund the project in the next year. The project was based on a number of maintenance-related issues at the Hacienda that could not be absorbed in the operating budget. The Hacienda Foundation wanted to include in the CIP the development of a site plan to assist in their Strategic Plan efforts. He clarified the estimated cost involved actual replacement of the carpeting with wood flooring. Of the total \$35,000 shown, approximately \$10,000 would be used for the flooring and the remaining for the creation of the site plan.

Parks and Recreation Director Jay Ingram affirmed that a consultant would have to be retained to prepare the Hacienda Site Plan through a Request for Proposal (RFP) process. The Town Council had previously directed staff to obtain input from the Hacienda Foundation as to the Hacienda Improvement Plan. The Hacienda Foundation supported the CIP and half of the group requested that the Town fund a site plan for the property. As to who would pay for the cost of the Hacienda Strategic Plan, that detail had yet to be discussed.

Responding to the Council, Ms. Keimach clarified the lease payments shown for Moraga Country Club, and reported that the Town had records indicating a letter including the schedule had been forwarded to the Moraga Country Club in 2006.

Ms. Hom also clarified the number shown on Page 30 of the Operating Budget, General Government, regarding Moraga Country Club, was a budget projection and the estimate could be refined once staff had received updated information based on the lease provisions between the Town and the Moraga Country Club. She hoped to have better data after the start of the next fiscal year and acknowledged the estimate had been based on older analysis.

Mayor Trotter reported that the 2006 letter from the Town to the Moraga Country Club had been based on a proposal from Bob Kennedy to deviate from the terms of the lease, and he recalled the Town had received a response that Moraga Country Club was not interested in the proposal at that time.

PUBLIC COMMENTS OPENED

Nancy Hom, President, Friends of the Moraga Library, explained that Friends of the Moraga Library Board consisted of an all volunteer board; the Moraga Library was currently closed on Sundays and Mondays and the County Library had only recently provided cost estimates to re-open the library on those dates. The Friends of the Moraga Library Board had recently approved funding in the amount of \$25,000 to support the re-opening of the Library on Sundays from 1:00 to 5:00 p.m. She commented that the \$25,000 would not cover incidental expenses and she requested that the Town consider providing funding in the amount of \$4,500.

Rodger Lum, a member of the County Library Commission, also asked that the Town Council consider the funding request given the importance of the County Library System and the need to make the Library more accessible to everyone.

Bob Kennedy, Moraga, spoke to CIP#8, the Storm Drain Master Plan, which would involve \$200,000 split into four \$50,000 segments given the limited funding. He expressed concern with the second phase of the project which would be in the next year and the unknown condition of storm drains that could impact newly repaved roads, and potentially a request for more funds for additional road work in the future. He urged Council consideration of conducting the second phase in this fiscal year and suggested that the Infrastructure Repair Fund could be considered for funding or charging the televised portion of the work in the next year to Measure K funds.

Mr. Kwan acknowledged there could be some savings if the mapping and survey work were done at the same time, which could be better defined when the RFP was put out for the project.

Ms. Keimach commented that in reviewing the third phase, it would provide the data needed to justify the flow analysis for storm drains, and given the Storm Drain Development Impact Fee was the Town's largest fee, the Town should have strong data to analyze whether the numbers were accurate. She commented that there was some analysis required as part of the Nexus Study where there could be some cost savings and cost reimbursements for the information directly related to the Nexus Study.

Mr. Kwan explained that the information would likely be provided after the pavement construction for the current season, with the cost of the treatment lower since it was preventative maintenance, and the impacts would be less than cutting into a newly reconstructed or overlaid street. He acknowledged that he must move forward with the pavement program but did not have the information on the condition of the storm drain pipes, and if he had the information it could salvage the overlay program for the next year; he agreed with the need to generally coordinate the efforts for CIP #8 with road repairs.

Ms. Horn advised that the request from Friends of the Moraga Library in the amount of \$4,500 was intended as an annual/yearly request to cover incidental expenses as part of the effort to promote the Library being open on Sundays. If the Town were to deny the request, she would recommend the Friends of the Moraga Library Board not proceed with the effort to open the Library on Sundays. She acknowledged a request from the Council for census information on Moraga resident usage of the Library if the funding was approved for this year and if the same request was made in the next year. She recognized that information would allow the Council to evaluate resident usage of the Library and added that the \$25,000 the Friends of the Moraga Library Board had approved had come from its members and book sales.

PUBLIC COMMENTS CLOSED

Responding to the request from the Friends of the Moraga Library, Ms. Keimach suggested the discussion should be on the balance of the Council's priorities since the Council had also received a request for additional funds for the Lamorinda Spirit Van. The funds could come from the Council or the Town Manager Contingency Budget, or from the Fund Balance. She emphasized that each Department worked hard each year to come in under budget, and any time a staff person left there were some costs savings.

Councilmember Metcalf spoke to the Council budget for Travel and Conferences, as shown on Page 32 of the budget, and recommended that budget be reduced to \$2,000.

Ms. Horn clarified that the Friends of the Moraga Library was really asking for \$3,750 for this fiscal year since it had yet to make the request of the County to re-open the Moraga Library on Sundays, which would take some time.

Vice Mayor Chew did not support the use of \$3,000 of General Purpose funds to increase the annual funding for the Lamorinda Spirit Van given the need for the Council to balance its priorities. He would rather see any additional funds used for the Moraga Library given the benefits to a wider range of the community. He also did not want to see the Council budget for Travel and Conferences reduced since it had already been drastically reduced in the past.

Councilmember Metcalf stated that he had been impressed by the comments from Cliff Dochterman, the Town's former representative to the County's Commission on Aging, as to the needs of the aging population of the County. He had supported the initial funding request for the Lamorinda Spirit Van in the amount of \$15,000 and recognized that staff had re-reviewed the budget and found that an additional \$3,000 could be used to fund the program; he applauded staff for those efforts. He supported the additional funds in the amount of \$3,000 for the Lamorinda Spirit Van Program but would not support lowering the funding below \$9,000.

Ms. Keimach explained that the funding for the Lamorinda Spirit Van Program had been \$5,000 each year but had increased to \$9,000 each year over the past three years.

Mayor Trotter stated that the initial funding request for the Lamorinda Spirit Van Program had always been \$15,000. He acknowledged that staff had found \$3,000 in funds that could be used to increase the request from \$9,000 for this fiscal year to \$12,000, but he did not support that request although he agreed that the funding for the program should not go below \$9,000. He suggested that the Town contact the City of Lafayette to determine whether there was a more cost-effective way to provide the service as opposed to the current model which he found to be very expensive. In response to the funding request from the Friends of the Moraga Library, he supported an amount of \$3,750 in funding since the Library provided more benefits than the Lamorinda Spirit Van to Moraga residents, and suggested those funds could be taken from the Town Manager's Contingency Budget.

Councilmember Arth supported an additional \$3,000 to the Lamorinda Spirit Van Program and \$3,750 to the Friends of the Moraga Library.

Councilmember Wykle recognized that both programs were good causes; however, given the competing priorities for the Town at the current time he supported funding in the amount of \$9,000 for the Lamorinda Spirit Van and \$3,000 for the Friends of the Moraga Library, to be taken from the Council's Travel and Conferences budget, recognizing that \$750 remained to be funded for Friends of the Moraga Library.

Ms. Keimach advised that both the Operating Budget and CIP must be approved by the Council at the current time, and that any motion should be very clear from the staff perspective.

ACTION: It was M/S (Metcalf/Arth) to approve the Fiscal Year 2013/14 Operating Budget, as presented, subject to the following amendments: the Lamorinda Spirit Van funding be increased to \$12,000 using a combination of Measure J funds in the amount of \$9,000 with the balance of \$3,000 to come from the Town Manager's Contingency Budget; and with funds for the Friends of the Moraga Library in the amount of \$3,750, with funding of \$750 from the Council Travel and Conferences Budget and the balance of \$3,000 from the Operating Surplus. MOTION FAILED: Vote: 2-3. Noes: Chew, Wykle, Trotter.

Mayor Trotter offered a motion, seconded by **Vice Mayor Chew** to approve the Fiscal Year 2013/14 Operating Budget, as presented, and subject to the following amendments: the

Lamorinda Spirit Van funding to be kept at \$9,000 for Fiscal Year 2013/14; and the Town Council shall appropriate an additional \$3,750 to keep the Moraga Library open for four hours on Sundays from 1:00 to 5:00 p.m., with the entire amount of \$3,750 to be taken from the Town Manager's Contingency Budget.

On the motion, **Councilmember Wykle** asked that \$750 for the request from the Friends of the Moraga Library come from the Council Travel and Conference Budget.

Mayor Trotter accepted the amendment to his motion.

Ms. Hom clarified that the Council had reached over \$3,000 in its annual travel and conference expenses for this fiscal year. If the Council was close to exceeding its Travel and Conferences Budget, and Councilmembers needed to attend future conferences, staff could bring that issue to the attention of the Council during the Mid-Year Budget review at which time the Council could consider transfers to add to the budget.

Vice Mayor Chew urged consideration of a future discussion of the Council's Travel and Conferences Budget emphasizing the importance of Council participation in such conferences.

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

Ms. Hom stated that if the Council was to exceed its Council Travel and Conferences Budget overall for the entire year, it would be shown as over budget at the end of the year.

Councilmember Metcalf asked that the motion be split given that he did not support the recommended motion for funding for the Lamorinda Spirit Van Program.

As the maker of the initial motion, **Mayor Trotter** split his motion and called for the question on the following motion:

ACTION: It was M/S (Trotter/Chew) that the Town Council appropriate an additional \$3,750 to keep the Moraga Library open for four hours on Sundays, from 1:00 to 5:00 P.M., with the amount of \$3,000 to be taken from the Town Manager's Contingency Budget and the balance of \$750 from the Council Travel and Conferences Budget. Vote: 5-0.

ACTION: It was M/S (Trotter/Wykle) to continue the funding for the Lamorinda Spirit Van Program at \$9,000 for Fiscal Year 2013/14. Vote: 3-2. Noes: Arth, Metcalf.

To clarify his vote, **Councilmember Metcalf** stated for the record that he was not opposed to funding the Lamorinda Spirit Van Program in the amount of \$9,000 but that he had supported an increase in funding for the program, as requested for this Fiscal Year.

ACTION: It was M/S (Wykle/Chew) to adopt Resolution 56-2013 Approving the Fiscal Year 2013/14 Operating Budget, as amended. Vote: 5-0.

Speaking to the CIP Improvement Program Budget, specifically CIP #2, Hacienda ADA Accessibility to Upper Floors, Mr. Ingram described the work of Town staff on the second floor of the Hacienda and noted that the Hacienda Foundation had worked on a plan for some time and expected to come to the Town Council in early fall. With respect to the use of the upper floor space, he commented that one writing camp had used the space in the last week and it was possible that additional classes could also use the space.

Vice Mayor Chew was not opposed to the concept of ADA improvements to the upper floors of the Hacienda but questioned how to move forward effectively in using the money given the limited staff use of the upper floors and since there was no vision for the use of the upper floors. He was not comfortable appropriating funds for CIP #2 at the current time.

Mayor Trotter supported the appropriation of funds for CIP #2 assuming that it would allow staff to decide when in the fiscal year an evaluation would be conducted, with more direction from the Hacienda Foundation as to its long-term vision. He expected a specific proposal would be presented to the Town Council for approval before the funds were actually spent.

Councilmember Metcalf described the differences between the budget and an actual appropriation to spend, with spending authorized by the Town Council, or in some cases, the Town Manager.

Ms. Keimach noted that any project over her \$15,000 signing authority would come back to the Town Council regardless of whether it was in the CIP or not; in this case, CIP #2 regardless of the amount, should come back to the Council for approval.

By consensus, the Town Council supported CIP #4, Hacienda Improvement Program, although **Vice Mayor Chew** continued to express concern with what the money was for, and while he understood \$10,000 was for the replacement of flooring, he expressed concern with the costs for the development of a site plan for the Hacienda.

Mr. Kwan identified the requirements for a site plan in order to map out the Hacienda and all its buildings, all information which was needed for a Strategic Plan that could evolve ultimately into a Master Plan. He suggested it was likely that a surveyor would be retained, with staff working with the county to obtain copies of aerial photos which could save the Town some money.

Mayor Trotter recommended that when staff needed expenditure approval for the site plan for CIP #4, it should return to the Council. He did not agree that approval was needed from the Town Council for the replacement of flooring.

Ms. Keimach pointed out that there would be costs to the Town for bringing the site plan back to the Council given the staff time and suggested if the cost of the site plan was over \$10,000 it could come back to the Council.

Mayor Trotter clarified that the consensus of the Town Council was to appropriate CIP #4, and if the site plan exceeded the parameters it would be brought back to the Council for approval.

Speaking to CIP #12, Commons Park Playground Improvement Program, Mr. Kwan clarified the Town spent approximately \$500 annually to maintain the skate park pavers, and replacing pavers with concrete would stop that annual spending. The installation of playground fencing had been recommended by the Town's Risk Manager to provide safety to playground users. The costs had been estimated at \$25,000 for the fencing (four-foot tall iron coated fencing material), \$5,000 for the replacement of the pavers, and \$5,000 for administration costs, for a total project cost of \$35,000.

Mr. Ingram added that not only was child safety an issue in the playgrounds but the fencing was also intended to prevent child abductions. He affirmed that the numbers for the fencing had been based on his experience with the fencing at Rancho Laguna Park.

By consensus, the Town Council supported the approval of CIP #12, CIP #33 (Housing Element), CIP #34 (Nexus Study), and CIP #8, as shown.

ACTION: It was M/S (Trotter/Metcalf) to adopt Resolution 56-2013 Approving the Fiscal Year 2013/14 Capital Improvement Program Budgets, as amended, based on the discussions on the specific proposed Capital Improvement Projects. Vote: 5-0.

ACTION: It was M/S (Metcalf/Chew) to extend the Town Council meeting to 11:35 P.M. Vote: 5-0.

- D. Adopt Resolution 57-2013 Accepting the Annual Gann Appropriations Limit for the FY 2013/14 Operating Budget

Ms. Hom reported that the Constitution of the State of California required every municipality in the state to determine its general fund appropriation limit annually, and the Town Council, as the legislative body, must approve the computation by resolution which would be subject to review as part of the annual independent audit of the Town's financial statements. She reported that the numbers in Exhibit A, Gann Appropriations Limit Calculation for the Fiscal Year Ending June 30, 2014, would be slightly amended and recalculated based on the decisions the Town Council had just made to the Operating and CIP Budgets, and she was confident it would still be well within the Gann Appropriation Limit. The signed resolution for approval would include slight changes to the numbers as contained in the resolution, and she affirmed the only number that would change would be the Proposed FY 2013-14 Budget figure as shown on Page 1 of Exhibit A to the staff report dated June 26, 2013.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Metcalf/Chew) to adopt Resolution 57-2013 Accepting the Annual Gann Appropriations Limit for the FY 2013/14 Operating Budget, as amended. Vote: 5-0.

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

Vice Mayor Chew requested that a future agenda item include a discussion of Councilmembers' attendance and the expenditures to attend conferences.

Mayor Trotter expressed the willingness to speak with the Vice Mayor off-line on the matter prior to agendaing the item.

Ms Keimach commented that as a practical matter, if the Council decided not to attend as many conferences in the future, the League of California Cities Annual Conference was upcoming and she sought direction from the Council as to whether there should be Council attendance. She reported that during the June 12 Council meeting, the Mayor had been appointed as the First Alternate, Vice Mayor Chew as the Second Alternate, and Councilmember Wykle as the Third Alternate for the League of California Cities Annual Meeting on September 18 to 20, 2013. She understood that the Mayor would be unable to attend that meeting.

Mayor Trotter stated for the record that he would characterize attendance at the League of California Cities Annual Meeting as important, but he would be unable to attend.

ACTION: It was M/S (Trotter/Wykle) to extend the Town Council meeting to 11:40 P.M. Vote: 5-0.

Vice Mayor Chew agreed to have an off-line discussion with the Mayor on the issue.

XIII. COMMUNICATIONS

The Town Council acknowledged the receipt of the following correspondence:

- A. Receive Grand Jury Report No. 1308, "Encouraging Citizens to Apply for Grand Jury Service" by the 2012/13 Contra Costa Grand Jury dated June 3, 2013 (no response required from Moraga)

XIV. ADJOURNMENT

ACTION: It was M/S (Wykle/Arth) to adjourn the meeting at 11:35 P.M. Vote: 5-0.

Respectfully submitted by:



Marty C. McInturf, Town Clerk

Approved by the Town Council:



Dave Trotter, Mayor

