TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING

November 13, 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 7:00 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

Vice Mayor Chew led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

Mayor Trotter reported that the Town Council had met in Closed Session and there was no reportable action from that meeting.

IV. PROCLAMATIONS AND PRESENTATIONS

There were no proclamations or presentations.

V. PUBLIC COMMENTS AND SUGGESTIONS

Barry Behr, Moraga, expressed his appreciation to the Town Council for the execution of Measure K, the pavement of Town streets, and the resolution of the illegal parking with the installation of 'No Parking' signs across from Saint Mary's College (SMC).

Lynda Deschambault, Moraga, asked that the Town Council consider as future agenda items a review of the Town's records retention schedule, the Town's Best Practices, and a review of the guidelines to help define the term "within the existing character of the neighborhood."

VI. ADOPTION OF THE CONSENT AGENDA

A. Approval of the Consent Items

Consent Agenda Items 2, 3, and 7 were removed from the agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Arth) to approve Consent Agenda Items 1, 4, 5 and 6. Vote: 5-0.

1)	Accounts Payable Claims for: 10/18/13 ($100,286.96); 11/01/13 ($1,696,588.87)	Approved
2)	*Approve Minutes for the Regular Town Council Meeting on October 9, 2013*	*Removed*
3)	*Review, Accept and File AB 1600 Development Impact Fees Annual Report for the Fiscal Year Ended June 30, 2013*	*Removed*
4)	Review and Accept First Quarter (July 1 to September 30, 2013) Fiscal Year 2013/14 Revenue and Expenditure Report	Approved
5)	Accept Pavement Improvements Completed by VSS International, Inc. (West Sacramento) for the 2013 Pavement Repair Project (CIP 08-106) and Authorize the Town Manager to File the Certificate of Completion with the County	Approved
6)	Authorize the Town Manager to Execute an Agreement with Contra Costa County Public Works Department for Review of Subdivision Maps for Technical Correctness and Authorize the Town Engineer to Delegate Duties to the County Surveyor in Accordance with the Subdivision Map Act	Approved
7)	*Approve by Motion a Request from the Moraga Chamber of Commerce for Use of a Portion of the La Sala Building for Office Space*	*Removed*

B. Consideration of Consent Items Removed for Discussion

1. Approve Minutes for the Regular Town Council Meeting on October 9, 2013

Mayor Trotter advised that he had submitted redline changes to the regular minutes of the October 9, 2013 meeting with copies provided on the dais and to the public that night. He asked that the meeting minutes be approved, as amended.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Trotter) to approve the Minutes for the Regular Town Council meeting on October 9, 2013, as amended and subject to the redline revisions as presented on November 13, 2013. Vote: 3-0-2. Abstain: Chew, Arth.

2. Review, Accept and File AB 1600 Development Impact Fees Annual Report for the Fiscal Year Ended June 30, 2013

Administrative Services Director Stephanie Hom clarified, in response to the Town Council, that the Development Impact Fee Nexus Study was currently underway.

Councilmember Wykle found the local traffic mitigation impact fees to be low and asked that the Nexus Study review those fees.

Councilmember Metcalf reported that the Lamorinda Fee and Finance Authority (LFFA) had decided to update its Nexus Study. He was uncertain when it would be brought back to the Town Council.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Metcalf) to Review, Accept and File AB 1600 Development Impact Fees Annual Report for the Fiscal Year Ended June 30, 2013. Vote: 5-0.

3. Approve by Motion a Request from the Moraga Chamber of Commerce for Use of a Portion of the La Sala Building for Office Space

Councilmember Metcalf reported that he had been approached by some members of the Hacienda Foundation who expressed dismay with the above referenced request to the Town Council absent consultation with the Hacienda Foundation.

Parks and Recreation Director Jay Ingram advised that he would continue to work with the Hacienda Foundation. He referenced the many uses at the Hacienda, and understood that the office space in question was used by Moraga Movers once a month and by the Hacienda Foundation possibly six times a year.

Ms. Keimach added that this was a good opportunity for the Hacienda Foundation to express concerns with the request. She also emphasized there had been no ill intent with respect to the Hacienda Foundation. The space under discussion had been used as an office space and the request was to share the office space, which was primarily used by Moraga Movers.

PUBLIC COMMENTS OPENED

Steve Woehleke, Moraga, representing the Hacienda Foundation Board of Directors, explained that the Board of Directors had been working hard to increase the visibility and use of the Hacienda and while the Board had no concerns with the subject request from the Moraga Chamber of Commerce, the Board had no knowledge of the request. He suggested it would have been beneficial to have involved the Board in those discussions.

Judy Dinkle, Moraga, Boardmember of both the Park and Hacienda Foundations, emphasized the contributions from both Foundations for capital improvements to the Hacienda, and while both Foundations supported the request, the Hacienda was seen as a community center with a necessity for rentals to maintain the Hacienda funds for necessary improvements and ongoing maintenance. She reported that both Boards wanted to be involved in discussions as to the use of the Hacienda while recognizing that the final decision would be made by the Town Council

and Town staff. She was uncertain whether the request would impact the existing storage needs for both Boards.

Kathe Nelson, Executive Director, Moraga Chamber of Commerce, explained that the intent was to have a space for the Chamber of Commerce from 8:00 a.m. to 12:00 noon, for one day a week. She noted that no other office space had been offered to the Chamber, although the Chamber had not pursued alternatives since the Moraga Movers had been amenable to the Chamber's use of the space. She added that the Hacienda was a perfect spot to increase the Chamber's visibility to the public.

PUBLIC COMMENTS CLOSED

Councilmember Metcalf reported that his wife was a member of the Hacienda Foundation but he would not recuse himself from the discussion because he did not want to see the Town, Council, or staff misuse the volunteers in the Town who made a difference. He found the situation to be an affront to the Hacienda Foundation, and did not want to see it happen again.

Vice Mayor Chew noted that the request had been placed on the agenda for Town Council action which allowed for public comment. He saw nothing wrong with the staff request.

Mayor Trotter suggested that since the request involved the Hacienda grounds it would have been better for staff to have notified the Hacienda Foundation. He understood the request from the Chamber of Commerce was recent.

Ms. Keimach commented that while that would have been a reasonable request, there were 14 people on the Hacienda Foundation and there was limited staff in the Parks and Recreation Department. Given that, staff had tried its best, had good intentions, and occasionally things did not go as well as desired. She and the Parks and Recreation Director had been dismayed about the oversight and staff was doing its best given its limited resources.

Councilmember Metcalf made a motion to approve the request from the Moraga Chamber of Commerce for use of a portion of the La Sala building for office space, which was seconded by **Councilmember Arth**.

Mayor Trotter offered an amendment to the motion to approve by motion a request from the Moraga Chamber of Commerce for use of a portion of the La Sala Building for office space, and to share the space with the Hacienda Foundation and Moraga Movers at no cost to the Moraga Chamber of Commerce.

ACTION: It was M/S (Metcalf/Arth) to approve by Motion a Request from the Moraga Chamber of Commerce for Use of a Portion of the La Sala Building for Office Space, and to share the space with the Hacienda Foundation and Moraga Movers at no cost to the Moraga Chamber of Commerce. Vote: 5-0.

VII. ADOPTION OF MEETING AGENDA

ACTION: It was M/S (Wykle/Chew) 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 Lamorinda Mayors and City Managers Breakfast in the City of Orinda on October 31; the meeting of the Central

Contra Costa Solid Waste Authority (CCCSWA) Board on the same date; with the Vice Mayor a meeting with staff and consultants of the CCCSWA on November 4 in order to discuss the new rate setting under the new garbage franchise beginning on March 1, 2014; the Audit and Finance Committee (AFC) meeting on November 5; the Opening Night of the California Independent Film Festival (CAIFF) November 7; and had spoken briefly during the Veterans Day Ceremony at Moraga Commons Park on November 11.

Vice Mayor Chew - No report.

Councilmember Arth - Reported he had attended the Moraga Chamber of Commerce meeting on November 6 with a discussion of the parking lot situation in the North Rheem Shopping Center, a discussion on the fairness of the Town's sign regulations; and two of the Chamber of Commerce Board of Directors had termed out of office and been replaced with new members.

Councilmember Metcalf - Reported that Caltrans had tentatively scheduled the opening of the fourth bore of the Caldecott Tunnel for this weekend; had attended a recent meeting of the Contra Costa Transportation Authority (CCTA) with a discussion of express lanes and the use of the existing FasTrak transponder, and he offered a flyer on the program with more information available on the Metropolitan Transportation Commission (MTC) website; a meeting of the Lamorinda School Bus Transportation Agency; the AFC meeting with a discussion of the revenue and expenditure review; a meeting of the Southwest Area Transportation Committee (SWAT) with a discussion of the Terraces project located in the City of Lafayette; and the Veterans Day ceremony on November 11.

Councilmember Wykle - Reported that he attended the Veterans Day event at Commons Park on November 11.

B. Town Manager Update – Ms. Keimach updated the Council on the Sunday hours for the Moraga Library and reported that, on average, 190 residents had used the library and checked out 270 books on Sundays since the library hours had been amended.

IX. DISCUSSION ITEMS

A. Livable Moraga Road Update

Senior Planner Ellen Clark updated the Town Council on the Livable Moraga Road Project and presented a PowerPoint presentation on the efforts explaining the project scope was considering how to improve the function, character, and connectivity of Moraga Road, focusing on the area between Campolindo High School and St. Mary's Road. She detailed the data gathering and reconnaissance tasks completed thus far and the work done by staff and the consultant team.

Ms. Clark advised that the next steps included a continuation of the outreach efforts by conducting meetings with various community groups, agency meetings, a stakeholder meeting with major property owners, and a focused workshop in partnership with Campolindo High School on December 9 to address specific circulation and design issues around the high school. Meetings would also be scheduled with the Town Advisory Committee (TAC) to obtain initial input. The next major phase of the project would be to develop and review the project alternatives based on the issues, opportunities, and concepts heard to date. Staff and the consultant team would develop an analysis of each alternative for consideration by the TAC and

the public. A recommended alternative for the project would be refined and presented to the Town Council for its input and direction and would be used as the basis for California Environmental Quality Act (CEQA) review and design drawings.

PUBLIC COMMENTS OPENED

Bob Reynolds, Moraga, reported that he had attended the Livable Moraga Road Project sessions and the public workshop. He inquired whether those traveling along Moraga Road were motorists or pedestrians since he understood much of the traffic along Moraga Road was a result of Campolindo High School students driving to and from home. He understood that a component of the project was to improve pedestrian access to Campolindo High School, but suggested it would not make much difference given the majority of the households were located far from the high school. He suggested an analysis on the way the road was used, and what incremental impacts may result through improving pedestrian and bicycle access before Town resources were expended.

PUBLIC COMMENTS CLOSED

Councilmember Metcalf suggested the Town did not have a traffic problem but bottlenecks near Campolindo High School and Miramonte High School which affected Moraga. He commented that both schools had limited parking accommodations, and asked staff whether neighborhood parking permits had been considered in this case.

Ms. Clark advised that neighborhood parking solutions such as permits had not been considered, specifically, but suggested that real improvements could be made with the circulation and drop-off areas of the schools since they seemed to create much of the friction, congestion, and backups and which would be evaluated by the consultants and both schools. She understood that the Acalanes Union High School District (AUHSD) had bond funds that could be used for campus improvements and that the Principal of Campolindo High School was interested in how to improve the frontage, aesthetics and function along Moraga Road. She suggested that Travel Demand Management (TDM) was another tool to be considered which could change the circulation behavior of students and parents.

Councilmember Wykle asked that the consultant review the peak hour capacity numbers and suggested that pedestrian and bicycle improvements with residents required to pay to park may help to get those residents out of their cars.

Councilmember Arth suggested that bicycle improvements would likely encourage students to bicycle to and from school.

Vice Mayor Chew questioned whether the focus of the project to improve Moraga Road for all users was consistent with all transportation planning objectives. He asked staff whether there were successful models from elsewhere in the State to create a situation where people preferred to bicycle to/from school or elsewhere. He noted that bicycle use in Europe was tremendous and in some places cities there were more bicycles than automobiles.

Ms. Clark noted there were countless studies showing that better networks and facilities for pedestrians and bicyclists created a much better rate of non-motorized transportation use.

Planning Director Shawna Brekke-Read reported with respect to the Complete Streets Policy that while the Town did not have a specific policy in place, the Town's General Plan had been found compliant with State law.

Councilmember Metcalf understood that the Hacienda Foundation had commenced with a serious effort to review the entrance to the Hacienda off of Moraga Road, which was a good idea. He asked whether staff had been in communication with the Hacienda Foundation as related to the Livable Moraga Road Project effort.

Ms. Clark affirmed she had met with Mr. Reynolds a couple of months ago, and would be scheduling a meeting with the Hacienda Foundation; staff was aware of the Hacienda Foundation's efforts for that portion of Moraga Road.

Mayor Trotter also encouraged staff to work with the Hacienda Foundation on its efforts to open up the turn at the former Corporation Yard which would increase visibility and exposure for the Hacienda and which would integrate nicely with the Livable Moraga Road Project. He emphasized that he had been clear in the past to staff that the number of traffic lanes on Moraga Road not be narrowed, with no intent to repeat the controversy caused by the Beautification Committee "Gates Report" and traffic calming measures on Camino Pablo. He requested assurance from staff that narrowing was not one of the options being considered.

Ms. Clark explained that the point of the current process had been to gather input, understand the issues, and listen to the range of ideas. She affirmed that during the recent public workshop some participants had suggested narrowing Moraga Road while others had recommended widening to four lanes along its entire length. Staff had communicated the Council's concerns and the outcome of previous processes to the consultant team with an emphasis on prioritizing solutions that would not reduce the capacity along Moraga Road.

Mayor Trotter suggested the Town could do a better job improving its pedestrian and bicycle lanes heading northeast along the Commons, and possibly on the northwest side behind Moraga Road along the creek. He commented with respect to the street on the northeast side that there was potential for improvements depending upon whether the public right-of-way was wider than the street, where the road could be widened to a proper width for a pedestrian/bicycle lane along that side of the street. He cited the history of a past effort to create a safer sidewalk to Los Perales Elementary School, when it had been found that the homes along that route had landscaping into the public right-of-way. In that case, the Town had conducted public outreach and had informed the owners of the public right-of-way and the Town's desire to make safety improvements, and the property owners were accepting of that process. He suggested the same education process would be important in this case.

Ms. Clark reported that a Civil Engineer was on the project team and one of the tasks was to document the right-of-way conditions which would be done over the next couple of months.

Councilmember Metcalf noted that he had not committed his support to any one solution and wanted to see staff and the consultant do the right thing, and if something could be done to a vast stretch of pavement to make it a complete and safe street, he would be open to any idea.

X. PUBLIC HEARINGS

A. Consider Appeal of the Planning Commission Approval of a Conditional Use Permit, a Hillside Development Permit, and a Tree Removal permit, for an approximate 4,270 square foot Single-Family Residence on a Vacant 13,203 square foot Hillside Parcel Located at 1800 Donald Drive. A Mitigated Negative Declaration for the Project was Adopted on March 5, 2012. *(Continued from June 26, 2013 and September 25, 2013)*

Planning Director Brekke-Read introduced Consulting and Environmental Planner Doug Donaldson.

Consulting and Environmental Planner Doug Donaldson described the 4,270 square foot Single-Family Residence, consisting of a unique energy-conserving design located at 1800 Donald Drive on a steep wooded hillside parcel in the 6-dwelling units to the acre (DUA) zoning designation, with properties located on the southeast and southwest of the project site zoned Open Space-Moraga Open Space Ordinance (MOSO) Density Transfer, and with the property located to the southeast of the Hacienda de las Flores and a public parking lot for the Hacienda located 200 feet east of the subject property. The design plans called for a structure which stepped down the existing slope, minimizing the need for grading and which would not require a grading permit. The home would have three levels off-set down the hill, supported on a foundation driveway of drilled piers and grade beams, with off-street parking provided for four vehicles utilizing a bridge structure, to be supported on piers for access to and from Donald Drive minimizing the need for grading.

Mr. Donaldson advised that the application had originally been submitted in March 2011 for a duplex. The design details had evolved over time although the general size, location, and massing of the building had not substantially changed. The project was first presented to the Planning Commission in November 2011, at which time additional information had been requested of the applicant, as outlined in the staff report. The Design Review Board (DRB) had held a Study Session in January 2012. In March 2012, the project had gone back to the Planning Commission, at which time the Planning Commission had adopted a Mitigated Negative Declaration (MND) compliant with the California Environmental Quality Act (CEQA) but had not approved the project, requesting additional design information. The project went back to the DRB in October 2012, which recommended approval subject to Moraga-Orinda Fire District (MOFD) review of the plans. Subsequently, the plans were again revised calling for a bio-retention basin for rainfall runoff in response to some of the mitigation measures in the MND, and on April 15, 2013, the Planning Commission unanimously approved a Conditional Use Permit for a single-family dwelling in the 6-DUA district with side yard adjustments on both sides and with Hillside Development and Tree Removal Permits.

Mr. Donaldson stated that the decision of the Planning Commission had been appealed to the Town Council through the filing of a petition submitted by Save Moraga Hillsides, which included a letter listing the reasons for the appeal as outlined in detail in the staff report. He noted that all of the issues raised in the appeal letter had been carefully assessed by staff and discussed individually in the staff report. Staff determined that the issues listed in the appeal letter had been considered by the Planning Commission and the DRB, and that the appeal would not raise any policy or procedural concerns that would warrant the reversal of the decisions of the Planning Commission and DRB.

Staff had also determined that the proposed 4,270 square foot home had been sited and designed in accordance with the policies established for hillside development, with no fill on the site; excavated soil for the foundation would be removed from the site, with the project designed for a minimal amount of grading necessary for the construction of the building foundation, retaining the hillside in its near-natural state as much as feasible; with no grading or padding of the hillside beyond the proposed footprint of the residence with the exception of the area needed for the bio-retention basin; the structure had been sited as low as possible on the site; the driveway dropped down from Donald Drive at the entrance; and the constraints had been well balanced and designed in a way to comply with Hillside Development Ordinance requirements.

Mr. Donaldson suggested the findings could be made for the use permit, as outlined in the staff report. He identified staff's support for the approval of a Tree Removal Permit since only the trees necessary for construction or in poor condition would be removed and the wooded nature of the site would be retained.

Mr. Donaldson advised that after the filing of the appeal, a letter had recently been filed by Michael Carradine, an Architect, who had raised a number of concerns with the approval of the single-family residence. Staff and the project applicant had reviewed Mr. Carradine's letter and had determined the project met the applicable height limits. The project would have a Floor Area Ratio (FAR) of .32 which was reasonable and in conformance with the applicable height limits, the sideyard setbacks and setbacks for the proposed deck had been found to be appropriate for the site, and the driveway bridge was unique but not a separate or accessory structure pursuant to the Town's zoning code and would not require a variance.

Mr. Donaldson asked that the Town Council hold a public hearing; accept testimony from the appellant, the applicant and the public; consider and discuss the appeal; and consider the resolution before the Town Council. He recommended denial of the appeal and upholding the decision of the Planning Commission.

PUBLIC HEARING OPENED

APPELLANTS:

Michael Carradine, Moraga, Architect, stated that he was acting as an advisor to the Appellants, the Bunton family at 2092 Donald Drive, who had asked him to evaluate the project.

Lynda Deschambault, Moraga, reported she had also been contacted after the appeal had been filed by Mr. Bunton to provide assistance with the appeal. She stated that Mr. Carradine had been asked to speak on the appellant's behalf.

Town Attorney Karen Murphy affirmed that the appellants may designate someone to represent them; and if that was the case, the appellants had designated Mr. Carradine.

Mr. Carradine explained that he had evaluated the project from an architectural viewpoint and had made observations and comments. His first impression was that the project appeared to be proportional and normal, although after reviewing it in detail, he suggested it was large with floors 16.5 feet in height, windows 12 feet high, and the home 80 feet long, and was much larger in comparison to homes in the Moraga Country Club. He referenced Addendum K to the staff report, his letter dated November 2, 2013, suggesting the home would be larger than most buildings in Moraga and there was no representation of scale with nothing to compare it to. He commented that he had taken the square footage of the building and noted the amount of unusable space which added to the bulk of the home. He had hoped the designer would re-evaluate and remove the dead space which would reduce the size of the building.

Mr. Carradine suggested the entire project appeared to be dominated by the parking with what he characterized as freeway ramps coming down with a steep grade and the entire top floor dedicated to parking for four parking spaces where two were required and with no guest parking. He questioned the need for all of the parking, suggested the size could be reduced with less parking, and with straight-in parking like a normal garage reducing the bulk. He identified the layout of the proposed home, the dead spaces, questioned the intent of the future uses of the interior spaces, and questioned whether all of the space had been included in the total square footage calculation. He added that if the floor height was reduced the entire building would shrink. He suggested one third of the entire project could be removed while still providing all of the necessary services in the same type of square footage without impacting the value for the property owner.

Mr. Carradine reiterated the size of the building was a concern and questioned why no variance was being required for the driveway bridge and disagreed with the staff determination that a

variance was not required in this case. He suggested the driveway bridge was a separate structure that would require a variance since it was in the yard and above grade. Had the project gone through the variance process, he suggested that alternatives would have been considered. Mr. Carradine offered photographs of properties in the Moraga Country Club which enjoyed parking in the garages and in the front with fewer impacts to the site. He also suggested the building would be greener if the sides of the building could be cut down and be more environmentally friendly with more space on the outside for landscaping.

Responding to the Council, Mr. Carradine stated that he had reached no agreement between the appellants and the project proponents. There had been some verbal conversations with Mr. Bunton who had initially met with the applicants, had discussed some ideas some of which were related to him [Mr. Carradine], but he had tried to stay out of that process, and understood it had been difficult to reach the property owner of the subject property.

Mr. Carradine spoke to the Town's regulations which triggered the requirement of a grading permit, noting that any cut over three feet in depth from grade, or any cut over 50 cubic yards required a grading permit, with some exceptions as outlined in the Town's regulations. Although the Planning Commission found in its findings there would be no grading required, he disagreed and suggested a grading permit should be required as part of the Conditional Use Permit given the vertical cuts involved with the project.

APPLICANT:

James Wright, Orinda, Architect for the project located at 1800 Donald Drive, explained that his clients had hired him to present an eco-friendly design. He described his background, education and experience in design and architecture and explained that the home design created for 1800 Donald Drive had been conceived as a near zero energy home, following simple passive house principles. He identified the materials proposed to be used for the home consistent with a near zero energy home, noting that an initial co-generation system tying the foundation to a rain water cistern for energy thermal storage had been omitted from the design to address concerns raised by the appellant, Mr. Bunton. He stated that the building was actually 3,551 square feet in size, 718 square feet less than the 4,270 square feet shown in the staff report in that the shell space had been excluded.

Mr. Wright discussed the history of the project with Town staff identifying the intent to minimize the impacts of the building on the site where no grading was required. A design solution had been achieved that conformed to the Town's zoning through the integration of a curved roof structure that surrounded the uppermost level of the garages and entry foyer disguising them in the roof line, with the living and lower levels articulated in the exposed rear, with driveway ramps down to the street, and the adjacent garage level with a roofline that was near or below street elevation. The design would be private, secluded, and hidden from public view amongst the trees.

Mr. Wright displayed a computer model of the building, reiterated the materials to be used on the building structure with a fire-retardant skin. He presented views of the structure and various elevations including views from the Bunton residence prior to the installation of story poles, noting that the terrain required an elevated bridgeway for access due to the front yard setback. As a result, a two-driveway design created a motor court for accessing the two parking spaces with the floor tucked into the roof structure of the curved linear roof. He also identified the shell space which served no purpose for the site but explained that because of the steepness of the site most hillside homes had such unusable dead space. Even with the shell space, the home still appeared to be a two-story structure with none of the roof visible from below the site.

Mr. Wright identified the existing grade and the Town's grading requirements, noted that foundations were exempt from the grading requirement, and refuted Mr. Carradine's assertion that a grading permit would be required since structures and structural spoils were exempt from the grading code. He explained that he started at the lowest point up 45 feet, established the height limit, and projected the ground plane up 35 feet to establish the zoning plane for the top of the building. He reiterated that the roofline was actually below the ceiling height of the living level and there were no 16.5-foot high ceilings in the building, only 15 foot ceilings. The foundation plan was also identified, with the plans having incorporated mapping of the foundation at the request of staff and the appellant, making the height limits and zoning envelope clear. In response to the Council, Mr. Wright reiterated that the square footage of the building would be 3,551 square feet in that the shell space had been excluded.

Ms. Brekke-Read explained that garages were not counted in the square footage and a ceiling height of 16 feet or greater was counted twice. In this case, staff had counted the ceiling height in the shell space that was over 8 feet in height which had led to the staff calculation of 4,270 square feet.

Mr. Wright also noted that the amount of cubic yards would be zero because there would be no grading on the site; the only material to be exported would be for the structure foundation.

Mr. Donaldson affirmed that Mr. Wright had discussions with the Town Engineer about working out the plans and the design of the building where it would not require a grading permit. He suggested the best way to approach that issue had been to impose a condition of approval through the Planning Commission resolution of approval requiring a grading permit. He concurred that the project would not require a grading permit and while there were technical questions that could change that through the working drawings phase, the condition of approval would address any changes in the foundation design that may require a grading permit. He noted that staff had not calculated the number of yards that would be excavated as part of the project but staff was aware that the drilled piers and grade beams would be exempt. In the event the architect's plans triggered the 50 cubic yard requirement for a grading permit, a grading permit would be required with Planning Commission, DRB and Town Council approvals. He affirmed that the architect had a strong incentive to make it work.

Mr. Donaldson acknowledged that this was a difficult project and site and there would be close calls, with the architect trying to work that out. He added that a building permit would be very detailed with more specific drawings than a zoning permit, and while potentially the calculations may be wrong, the project was also conditioned to require the applicant to provide funds for monitoring during construction. As to the driveway structure, he emphasized that staff had evaluated it at several different levels and it met the Town's code definition of not being an accessory structure.

Ms. Brekke-Read explained that the driveway structure was supported by piers, not retaining walls, and was not a structure. She too affirmed that the driveway structure had been evaluated closely by staff since 2011 and even more recently with current Planning staff who concurred that the driveway was not a structure. There was no example in Moraga of a similar structure although she understood there were similar structures in neighboring cities. She also noted the applicant had retained the services of a geotechnical engineer with a structural engineer to review the plans during the building permit plan check phase, not the design review stage, since staff did not have the construction drawings. Soils reports were required and reviewed by the Town's own geotechnical consultant who had provided feedback to staff.

Mr. Wright clarified that a structural engineer had done the foundation included in the sub-plans which had been provided to staff and a structural engineer was involved as part of the DRB review process. The foundation had been engineered to put to rest any concerns with the

grading. He emphasized there would be no grading involved with the project, no soils export per the grading permit with zero grading, with the only soils spoils a product of the foundation. The foundation and grade beams rested on top of the earth, all piers would go down, with the allowable 36 inches of daylight to get as much space in the buildings. The foundation spoils would be exported with the daylight soils exempt since they did not qualify as part of the 50 cubic yard requirement for a grading permit.

PUBLIC COMMENTS OPENED

Ted Gamble, Moraga, explained that his property was located above 1800 Donald Drive, and as a long-time resident of Moraga, he was familiar with the road from Laird Drive to the top of the barricade as part of the open space. He commented that the road had been constructed in the early 1930's, was narrow, with 1800 Donald Drive located on a sharp curve above. He expressed concern with safety during the construction period given the narrow road and the need for a crane to drop most of the materials down to the site, which materials and equipment would have to be placed on the road. He spoke to the number of people who used the road to access the barricade and open space, and which would be exacerbated with construction materials and the potential blockage of the road. He added that when he had initially learned of the sale of the property, he had approached Town staff and had been told not to worry in that the property was unbuildable when it was part of the County, and although it had been incorporated as part of the Town, it remained a non-buildable site.

Lynda Deschambault, Moraga, suggested the home was nice looking but not as eco-friendly or green as suggested with no opportunity for solar or geothermal options. She spoke to the massive scale of the home and pointed out that the Bunton residence was 1,813 square feet in size, with the driveway bridge structure to be 1,600 square feet. Even if the garage, shell space, and bridge were removed from the design, the home remained 250 percent larger than the Bunton residence. She commented that when she had been a member of the Town Council, the property had been considered for development and the Town Council could not reach an agreement on whether development was acceptable. She recommended that the Town purchase the property and pointed out that Upper Donald Drive had experienced a slide with no recorded reports and located only 500 feet away. She also reported that she had been asked to assist in the appeal process, had spoken with the property owner Mr. Williams briefly, and Mr. Bunton had spoken with Mr. Williams. She referenced correspondence dated November 13, 2013 and presented at this time, and identified a Memorandum of Understanding (MOU) addressed to the property owner that she, Mr. Bunton, Mr. Carradine, and three residents had signed, all asking that the home be reduced in size. She noted that Mr. Williams had not returned phone calls with the appeal group, although Mr. Williams had expressed the willingness to consider the MOU if the appeal was not pursued.

Steve Williams, Danville, identified himself as the property owner and spoke to the two-year process for a project that involved no variances. He identified a drawing from the appellant group which he understood had just been written this date, which had not been discussed, and that he was not interested in signing or discussing any agreement. He cited the appellant's model of the property which showed the massing of a separate garage structure and separate home structure and would be much taller than the proposed structure. He stated it would require a variance and it would not serve those residing up the street. He suggested the only person the drawing served was Mr. Bunton since it would pull the home away from Mr. Bunton's duplex located at 2092 Donald Drive where his son lived. Photographs of the site illustrated there were no significant visual impacts to the Bunton's duplex property. He suggested that the only purpose of the appellant's proposal was to bring the project back to the Planning Commission, the DRB, and ultimately the Town Council at significant cost. He emphasized the quality of the proposed design which would not be visible from the street, barely visible from

below, and which would be a wonderful home that would be an asset to the Town. He clarified, when asked, that the home was owned by his pension plan and it would not be his residence.

REBUTTAL:

Mr. Wright commented on the many attempts for a dialogue with Mr. Carradine and Mr. Bunton. He questioned Mr. Carradine's testimony related to the building as proposed. He also commented that former Senior Planner Richard Chamberlain had informed him that there was a precedent in Moraga for the driveway bridge structure, and from the beginning of the process and with current Planning staff he had been reassured as to the precedent of that structure.

Mr. Carradine remained concerned with the driveway structure in the front yard, requiring a building permit and variance.

PUBLIC HEARING CLOSED

Mayor Trotter suggested the issue of dueling architects had nothing to do with the matter being considered by the Town Council and asked that the testimony be disregarded. He found the issues to be whether the driveway was a structure or not, whether there was sufficient information to make a determination as to whether a grading permit would be required, and whether the proposed home was in keeping with the existing residential neighborhood.

Councilmember Arth found the structure to be sensitive to the topography of the lot and he personally supported the project and was ready to approve it.

Councilmember Metcalf suggested that variety in a neighborhood was a good thing and the Town may have to get used to having larger homes. He was curious why a causeway structure was not considered a structure and wanted to know the legal basis to make the determination that the driveway bridge was not a legal structure triggering a variance.

Mr. Donaldson suggested the question was whether the driveway bridge was a structure that required a variance. Accessory buildings or structures required a variance, but the driveway bridge, which was integral to the building, was not a separate use and not considered a structure pursuant to the code. He reiterated that the driveway was not a structure requiring a variance, staff had gone over this matter numerous times, and he was confident with staff's interpretation of the code.

Mayor Trotter emphasized the seriousness of the issue, his desire to make an appropriate decision, and absent the actual language from the code and analysis, he wanted to continue the item so that information could be provided. As to the grading issue, he understood that piers and grade beams may not be subject to the 50 cubic yard requirement, and was uncertain the soils to be removed to place the building would not be subject to the 50 cubic yard requirement. He recommended that calculations be provided on the vertical benches to determine whether they exceeded 50 cubic yards. He would rather see that information now than rely on a condition which hypothetically may raise issues or problems in the future.

Ms. Murphy suggested another key issue was how the accessory structure or use related to the setback codes. She agreed that additional analysis may be helpful.

Councilmember Wykle suggested that this was a good project but located on a problematic site. He commented that the home appeared to be a three-story structure based on the schematics provided and which should be better clarified.

Vice Mayor Chew was generally not opposed to large houses, although the problem with the subject project was the lack of clarity with the grading permit requirement. He could not recall that the Planning Commission had approved a project in the past, subject to a condition of whether a grading permit was required. He also found that the issue of whether the driveway bridge was a structure needed to be cleared up and that the square footage of the home was not clear. Having viewed the site, he affirmed it was a steep hill and while he could not imagine building a home on the parcel he did not suggest it could not be done. He was not comfortable overturning the appeal and approving the project at this time but was also uncertain whether the item should be continued.

Councilmember Arth clarified the square footage of the shell space at 718 square feet, the difference between the square footage shown in the staff report at 4,270 square feet and the architect's testimony of the square footage at 3,551; clarified the square footage of the Bunton property which was zoned 6-DUA with no size limit and where a larger structure could be built; questioned restricting the subject parcel to a smaller home when the Bunton property could accommodate a larger home; was comfortable with the staff determination that the project met the code; was not interested in challenging the staff determination; and was comfortable approving the project.

Councilmember Metcalf wanted assurance that the staff determination was legally defensible. He supported a continuance to a date certain based on the issues raised by the Mayor. If he was reassured that the Town was on a strong legal footing, he had no problem with the project.

Councilmember Wykle also supported a continuance to ensure that the Town Council had all of the actual facts prior to any action and to ensure the Town was on firm legal ground.

Mayor Trotter suggested that a continuance based on the three issues he had identified made sense and allowed the applicant and appellants the opportunity to communicate with each other. He recommended the item be continued to a date certain.

Ms. Murphy advised that the Town Council may continue the item and keep the public hearing closed, although if new information was presented at the next meeting it made sense to provide everyone an opportunity to comment on any new information.

Ms. Keimach noted that verification of the 50 cubic yards of grading could not be done at a staff level. She asked the architect when that information could be provided to allow for peer review.

Mayor Trotter allowed Mr. Wright to address the Town Council at this time.

Mr. Wright reiterated that the daylight exempt space allowed the structure to tuck into the hill, below the ground plane. He advised that he could calculate in the model and make a presentation on exactly the quantity of soil to be removed, which could be verified. He expressed the willingness to provide the information immediately.

On the discussion between staff and the Town Council, it was decided that the item be continued to a date certain of January 22, 2014, with the Town Attorney advising that continuance to a date certain would not require re-noticing.

ACTION: It was M/S (Trotter/Metcalf) to continue the Appeal of the Planning Commission Approval of a Conditional Use Permit, a Hillside Development Permit, and a Tree Removal Permit, for an approximate 4,270 square foot Single-Family Residence on a Vacant 13,203 square foot Hillside Parcel Located at 1800 Donald Drive to a date certain of January 22, 2014, based on the Town Council's discussion. Vote 4-1-0. Noes: Arth.

XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

A. Accept Storm Drainage Repair Improvements Installed by Siteworks Construction, Inc. (Lafayette) for the 199 Calle la Mesa / 677 Moraga Road Storm Drainage Repair Project (CIP 14-105); Authorize the Town Manager to File the Certificate of Completion with the County; and Consider Resolution __-2013 Authorizing the Town Manager to Amend the On-Call Consultant Services Agreement with Cal Engineering & Geology (Walnut Creek) by an Additional $9,000 for a Total Contract Amount of $40,000 for Construction Engineering for the Project

Public Works Director/Town Engineer Edric Kwan reported that the Town Council had approved various actions on September 25, 2013, to repair storm drain damages on property located in Lafayette and Moraga. The project was complete with $12,000 in savings, with $10,000 to go to the City of Lafayette. He also asked that the engineering contract with Cal Engineering & Geology be amended with an additional $9,000 for a total contract amount of $40,000 for the construction engineering for the project as the construction period was for five weeks rather than the original two-week estimate. He asked that the Town Council determine the project as accepted, and direct the Town Manager to file the Certificate of Completion with the County.

Responding to the Council, Mr. Kwan identified the administrative costs at $7,500 with the staff time for the project going over by $2,500, with available funds in the construction contract contingency and funds available in savings to cover that overage. He affirmed that the Town of Moraga was to bear the burden of the administration and civil engineering costs with the remainder costs to be split 50-50 with Lafayette. The Town of Moraga would pay a total of $88,175 and the City of Lafayette $78,135. The Town of Moraga had appropriated $98,300 and the City of Lafayette $88,000.

Ms. Keimach added that the $2,500 had been incurred prior to the City of Lafayette entering the discussion. Lafayette had not been charged those funds, and from the point Moraga starting speaking with Lafayette those costs had been split 50-50.

Councilmember Wykle reported that he had viewed the work which he commended.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Metcalf) to accept Storm Drainage Repair Improvements Installed by Siteworks Construction, Inc. (Lafayette) for the 199 Calle la Mesa / 677 Moraga Road Storm Drainage Repair Project (CIP 14-105); Authorize the Town Manager to File the Certificate of Completion with the County; and Consider Resolution ___-2013 Authorizing the Town Manager to Amend the On-Call Consultant Services Agreement with Cal Engineering & Geology (Walnut Creek) by an Additional $9,000 for a Total Contract Amount of $40,000 for Construction Engineering for the Project. Vote: 5-0.

B. Receive Final Climate Action Plan (CAP) Task Force Recommendation

Ms. Brekke-Read explained that the Town Council had authorized the charter for the formation of a Climate Action Plan (CAP) Task Force intended to create a proposed CAP for the Town to address State Assembly Bill (AB) 32 requiring agencies to address ways to reduce Greenhouse Gas Emissions (GHGs). Every project proposed in Moraga must consider its impacts on GHG

emissions. The CAP Task Force met over a period of 16 months with presentations from different organizations, and the CAP Task Force reviewed various sectors of a CAP including land use, transportation, solid and waste water, green purchasing, agriculture, and energy. At about the same time QuEST, a consulting firm, had contracted with PG&E through a grant to complete a baseline study of the Town's GHGs in 2008, and draft an Energy Action Plan.

Ms. Brekke-Read explained that the CAP Task Force discussed the various options for Moraga, identified as Attachment A to the staff report, Consolidated Measures List. She noted that QuEST had agreed pro bono to review the Consolidated Measures List and identify those that had the highest likelihood of achieving reduced GHGs and measures that could be calculated. She commented that the CAP Task Force had met to discuss those measures and wanted the consultant firm to review and finish the CAP which was beyond the purview of staff's technical resources. She asked that the Town Council consider contracting with QuEST to complete the CAP including calculating the potential GHG reduction from the identified measures. She advised that QuEST had agreed to do the work for $15,000, and acknowledged there were some items that must be double checked with the minutes from the CAP Task Force meetings.

Councilmember Wykle commented that he had been unable to attend all of the CAP Task Force meetings, although there had been a lot of dialogue about each of the measures listed in Attachment A. He thanked Ms. Brekke-Read for her leadership of CAP Task Force meetings.

Ms. Brekke-Read explained that the work product envisioned from the consultant would list the ideas behind the measures to reduce GHGs, identify the baseline GHGs for 2008, identify the measures, and measure their effectiveness. She commented that one of the Task Force members worked for a firm that did such work and had been pleased with the price offered by QuEST.

PUBLIC COMMENTS OPENED

Graig Crossley, Moraga, Chair of the CAP Task Force, introduced Task Force members present in the audience, identified those who had wished to be present but were unable to attend, and explained the purpose of the color shading for the Consolidated Measures List. He added that the Task Force would like to sunset the committee with the recommendations in the Consolidated Measures List representing the best efforts of the Task Force. He thanked the Town Council for the opportunity to serve on the CAP Task Force.

Rob Lucacher, Moraga, CAP Task Force member, suggested that work still needed to be done in collateral activity with the Town's committees/commissions to carry the measures and take them forward.

Lynda Deschambault, Moraga, commented that the first GHG study had been done in 2004 through a grant from the San Francisco Foundation and the work of the CAP Task Force would take that effort to the next step. As the Executive Director of the Contra Costa County Climate Leaders, she reported that almost 90 percent of the cities in the County completed CAPs. She encouraged interested persons to review the Climate Leaders website and reported that all 19 cities in the County had a page on the website, which would be a great resource as the Town moved forward. She was pleased the Town had received such a good bid from QuEST. She also recommended the inclusion of an energy or CAP piece as part of a future General Plan Update.

PUBLIC COMMENTS CLOSED

Councilmember Wykle offered a motion seconded by the Vice Mayor to receive the Final CAP Task Force Recommendation, and authorize $15,000 from the Planning Operating Budget to award a contract to QuEST to complete the CAP for the Town of Moraga.

Mayor Trotter recommended that staff contact the individual doing the franchise work for the CCCSWA in order to obtain data which could be used in the CAP effort which could help quantify the information contained in the Consolidated Measures List.

As to whether the $15,000 would include a scope of work, Ms. Brekke-Read advised that a scope of work and schedule would be identified. The $15,000 was within the Town Manager's discretion to approve the scope of work.

ACTION: It was M/S (Wykle/Chew) to receive the Final Climate Action Plan (CAP) Task Force Recommendation, and authorize $15,000 from the Planning Operating Budget to award a contract to QuEST to complete the Climate Action Plan (CAP) for the Town of Moraga. Vote: 5-0.

ACTION: It was M/S (Trotter/Arth) to sunset the Climate Action Plan (CAP) Task Force effective immediately; with CAP Task Force members to be thanked for their service. Vote: 5-0.

Ms. Keimach announced that the CAP Task Force would be recognized at the State of the Town scheduled for November 21.

C. Consider Resolution 78-2013 Approving a Charter for the Creation of a Hillside and Ridgeline Steering Committee, and Consider Appointing Town Councilmembers to the Steering Committee

Ms. Brekke-Read welcomed any questions from the Town Council on the request to approve the creation of a Charter for a Hillside and Ridgeline Steering Committee and Appoint Town Councilmembers to said committee.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Arth) to Adopt Resolution 78-2013 Approving a Charter for the Creation of a Hillside and Ridgeline Steering Committee, as written; and Appointing Mayor Trotter and Councilmember Metcalf to the Steering Committee. Vote: 5-0.

D. Consider, Discuss and Provide Direction to Staff Regarding: 1) Concepts to Enhance Use of the Hacienda de las Flores Operations, Including a Concession-Type Arrangement; 2) Future Terms of a Non-Exclusive Agreement for Services with Cafe Hacienda by home/made, LLC for Continued Weekday Selling of Breakfast and Lunch Foods and Beverages at the Hacienda; and 3) Additional Equipment and Facility Upgrade Requests

Parks and Recreation Director Ingram corrected a statement made in the first paragraph of Page 3 of the November 13, 2013 staff report, explaining that assuming $500 a day in gross sales, the weekly fee for the use of the Hacienda grounds and kitchen would be roughly $125 a week, and a total of $1,700 over the 14 weeks of the agreement, not $375. He noted that the Town Council had requested a broader discussion on a concession-type arrangement for the

Hacienda. If such an arrangement were to continue with the current operator, the financial terms should be identified or the Town should decide whether to proceed with the current operator and whether or not it should conduct an RFP process for other operators to submit a bid. Lastly, the Town Council should discuss the provided list of additional improvement and equipment requests from the current operator. He advised that the first amendment agreement would end on Friday, November 15, 2013.

Responding to the Council, Mr. Ingram understood that the current operator hoped to operate a site at the Hacienda and in the former Mondello's Restaurant location. He detailed the contract agreement with the current operator, home/made LLC, and affirmed that the Town received no payment from the operator as part of the first amendment to the agreement, even though the weekly rate was $50 and 3% of gross sales.

PUBLIC COMMENTS OPENED

Bob Reynolds, Moraga, President, Park Foundation, speaking for himself, stated that he had drafted a letter which had been submitted to the Town Council primarily discussing the nature of the Hacienda facility with little to do with the operation of the Café Hacienda other than the potential interference with other uses in the facility. He pointed out the remodel of the kitchen in the Hacienda done years ago had been entirely funded, planned, executed, and construction managed by the Park Foundation at great expense, in conjunction with Town staff and many members of the community. He acknowledged the prior kitchen was not functional and was too small, with a decision made that the kitchen be upgraded in such a way to be able to accommodate caterers offering a commercial kitchen available to the community for certain events. While he had no argument with the Café Hacienda, and he agreed the business had been a great addition to the Hacienda, he questioned Café Hacienda as a dedicated use in that type of a facility with the changes noted in terms of equipment and scope, which could result in a repurposing of the kitchen not in line with the goals for the kitchen at the outset. He reported that the Park Foundation had recently discussed concerns with the proposal, one of which was the continued and indefinite presence of Café Hacienda which could render the programming of the main floor and patio to the point it would substantially change the nature of what could be done at the Hacienda.

Mr. Reynolds advised that the Park Foundation had decided it would like to meet jointly with the Hacienda Foundation and approach a study of this situation for a short period of time, and work with Town staff to come up with some recommendations.

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

John Burgess, Hacienda Foundation, reported that the Hacienda Foundation Board of Directors had recently met to discuss the proposal and had concluded it would like to support the extension of the contract but not the Town's capital investment at this time until the Hacienda Foundation had the opportunity to review whether the proposal was consistent with its long-term vision and Strategic Plan for the Hacienda enhancements. He suggested it would be beneficial for the Town to extend the contract on a short-term basis, with a committee of the two foundations and Town staff.

Steve Woehleke, Moraga, representing himself as a private citizen, and the current President of the Hacienda Foundation, echoed the comments made by Mr. Reynolds and the staff report, that the Café Hacienda had brought positive contributions to the Hacienda. He commended staff for going forward with the trial effort; spoke to the technical and commercial challenges with this effort, the uncertain viability, and the potential for alternatives which he supported. If the Town Council were to consider alternatives, he encouraged a review of the wide spectrum of all

alternatives and suggested consideration of not only a restaurant but food trucks, which alternatives may allow the kitchen facilities to be off-site.

Kathe Nelson, Moraga Chamber of Commerce, applauded the spirit of working together which would ultimately bring the right decision and ability to move forward. She noted there had been three different incarnations of Town economic development committees, with the public eager for an upscale restaurant with outdoor seating, which the Café Hacienda provided. She expressed her hope that it would stay in whatever form the Town Council determined to be best.

Graig Crossley, Moraga, a member of both the Park and Hacienda Foundations, noted the Hacienda was public property and he supported a group meeting of both Foundations and staff to discuss the proposal prior to any Town investment. If the Town considered a full-time restaurant, he suggested it would change the nature and character of the Hacienda and he opposed any action absent public notification and absent allowing any other business the opportunity to bid on such a proposal.

Scott Bowhay, Moraga, a member of the Hacienda Foundation, but speaking for himself, stated that he had heard positive comments about Café Hacienda, but would like to see details to ensure it would not impact other uses. He commented on the difficulties for the Hacienda Foundation to plan the Oktoberfest event since it had been unable to locate supplies. He wanted to see a broader discussion as to how to allocate the resources at the Hacienda.

Edy Schwartz, Moraga, explained that she had attended many community meetings, including the meetings of the Economic Development Action Committee (EDAC), with the Hacienda now having what the community-at-large had requested. She too spoke to the positive comments in the community about the Café Hacienda operation which enjoyed patrons from outside of Moraga. She supported further conversations between the Park and Hacienda Foundations and staff. She expressed concern with the net and gross stipulations of the agreement and expressed concern with a new business being faced with having to pay gross rent. She emphasized her efforts over the years to bring quality businesses to Moraga.

Gayle Somers, Operator of the Café Hacienda, understood that others had been asked and offered the opportunity to open a business at the Hacienda but no one had stepped up. She emphasized the time and money spent on the operation and the desire to continue with the use. She spoke to the positive feedback from customers with everyone delighted to patronize the café and enjoy the beauty of the Hacienda. She emphasized the amount of goodwill that had been garnered and understood that details remained to be worked out.

In response to the Council, Ms. Somers stated she was optimistic for a February/March 2014 opening at the former Mondello's Restaurant space, acknowledged there was a potential conflict between the operation of a daily restaurant and a catering facility that needed to use the same space, and identified the difficulties with the existing kitchen at the Hacienda because of the catering interest, which meant that Café Hacienda had to move out of the kitchen each week, which was not a sustainable activity. She suggested that any caterer would be thrilled with the Hacienda kitchen space and the facilities available since most caterers did their work off-site. She suggested if there was an improved refrigerator and range in the La Sala kitchen, the space could allow plenty of area to work and prepare. She acknowledged that she had been invited to participate in the dialogue with the Park and Hacienda Foundations and Town staff.

Judy Dinkle, Moraga, a member of the Park and Hacienda Foundations, stated that she had initially been opposed to the Café Hacienda but had later changed her opinion. She commended the work of Café Hacienda with the use supporting the goals of the Hacienda Foundation to enhance, improve, and increase the use of the space. She acknowledged the café had brought many people to the Hacienda who would not have come otherwise. She

agreed with the need for a committee to work together to resolve the issues, and she urged the Town Council to support the use and maintain the lines of communication.

Ellen Beans, Moraga, asked whether the Town's recreation programs or any revenues to the Town had been affected as a result of the presence of Café Hacienda, to which Mr. Ingram affirmed that some recreation programs had been affected but had been able to locate elsewhere on the Hacienda grounds. He also acknowledged the inability to program the dance room since it was now a dining area.

ACTION: It was M/S (Metcalf/Wykle) to extend the Town Council Meeting to 11:45 P.M. Vote: 5-0.

Kimberly Nelson, Recreation Coordinator, acknowledged that a ballet program had been discontinued because of the lack of space during the spring session, with staff attempting to revive that program.

Mr. Ingram reiterated in response to a question from the Council that as part of the first agreement there had been no money to the Town, with the second agreement, which required weekly payments, also resulting in no payment to the Town to date. He added that the kitchen was a commercial kitchen, inspected by the Contra Costa County Health Department, with the agreement with Café Hacienda a non-exclusive use agreement.

Mayor Trotter advised that he would not close the public comment. He referenced a proposal for staff and both the Park and Hacienda Foundations and Ms. Somers to come up with a plan that could accommodate both a weekly or daily restaurant use, catering kitchen, and expose as many people to the Hacienda as possible. He asked the Council to discuss whether it was appropriate to have a restaurant use at the Hacienda which was not paying the Town any funds since it was a promotional opportunity to provide exposure to a Town facility which may have benefits in the future, and whether that arrangement raised any questions of a gift of public funds or facilities.

Ms. Murphy advised that there had been a benefit to the public in terms of increased visibility to the Hacienda and any future agreement should document the benefits to the Town in terms of continued use whether financial or not.

Councilmember Metcalf commented that he had viewed a large number of tables used at the Café with all of those people having the benefit of a nice venue with good food and terrific service. While the Town was not receiving any monies from the business, start-up businesses did not make a lot of money and the Town should look at the situation as promotional with many people benefitting from the operation.

Councilmember Wykle stated that he had patronized the business. He liked the idea of bringing the three groups together to discuss a solution, and while he agreed there were issues he was confident that those issues could be resolved.

Mayor Trotter clarified that he was not judging the fact there had been no revenue to the Town from Café Hacienda but acknowledged that was occurring. He suggested the Council may have to make a policy decision whether to support the Café activity on an interim basis while the use issues were worked out with the broader groups, which he could support even if the Town was not receiving any payments. He also suggested the capital improvements made sense for the Hacienda, and suggested a solution that made sense could be reached, and potentially in the future the business could start paying the Town.

Councilmember Arth commended the Café Hacienda operation which had improved over time. He agreed something must be done to take care of the obligations, agreed that the lease agreement should not have been based on gross, and would like to see some amendment to the lease to reduce that obligation. He commented that when the operator started making money a gross lease agreement could be re-visited.

Vice Mayor Chew questioned what issue should be solved first, the competing need for the facility, further capital investments, or an extended agreement. He understood that the way the operations were currently run it was unsustainable and, in order to make it sustainable, capital investment needed to be made. He questioned whether that was good use of taxpayer funds.

Mayor Trotter suggested the extension of the interim arrangement to the first quarter of 2014 should be considered, suggested the joint Foundation process did not need to take too much time, and expressed his hope to see a recommendation brought back to the Town Council in a timely manner. He understood that the way the Café Hacienda had been operating could not be sustained, but it could continue in the short term, and affirmed with Ms. Somers from the audience that could be done in the short term through the first quarter of 2014. He wanted to see the outcome of the discussions with the joint Foundations, the operator, and staff, and conclude with a list of proposed expenditures to meet a weekly restaurant need and catering/community kitchen need. In the interim, the Council could consider a policy whether to have a restaurant on an interim basis that was not likely to pay the Town much money in the short term.

ACTION: It was M/S (Wykle/Chew) to extend the Town Council Meeting to 12:00 A.M. Vote: 5-0.

Vice Mayor Chew pointed out that the policy decision may change the intended use of the Hacienda.

Councilmember Metcalf commented it was clear from the public testimony that the operation was a good one, there was support to keep it going, but there were problems that must be addressed, with willingness for a joint discussion with the Foundations, the operator, and staff.

Councilmember Wykle also understood that the intent of the discussions was to consider strategically whether a full-time kitchen facility was the right thing for the Hacienda. He suggested that discussion could occur and in the meantime the Café Hacienda could remain.

In response to the Mayor and on the question of whether to allow the Café Hacienda to continue to operate in the interim on a net basis while the two Foundations, staff, and the operator had discussions for a possible solution to be considered by the Town Council in early 2014, **Vice Mayor Chew** stated that he could accept that direction provided a solution could be worked out.

Mayor Trotter identified a show of hands of the Council in support of his policy question. He reiterated he was confident a solution could be worked out.

Mr. Reynolds emphasized that one of the problems with the Café Hacienda was that it was not easily found by the public. He asked that there be some relaxation of the Sign Ordinance in the interim to allow members of the public to find the business, particularly during the winter.

Mr. Ingram stated that the current agreement ended on Friday, November 15, 2013. The new agreement could run from Monday, November 18, 2013 to March 31, 2014.

E. Consider Adopting and Waiving Second Reading of Ordinance No. 242 Amending Section 8.068.060; Front and Side Yard Setbacks Established Under County Zoning of Title 8, of the Moraga Municipal Code to Clarify the Intent of the Section and Finding the Amendments Categorically Exempt from the California Environmental Quality Act (CEQA)

Ms. Brekke-Read welcomed any questions from the Town Council.

PUBLIC COMMENTS OPENED

Shannon Zwakman, Moraga, asked that the Town Council support the ordinance amendments.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Metcalf/Wykle) to adopt and Waive Second Reading of Ordinance No. 242 Amending Section 8.068.060; Front and Side Yard Setbacks Established Under County Zoning of Title 8, of the Moraga Municipal Code to Clarify the Intent of the Section and Finding the Amendments Categorically Exempt from the California Environmental Quality Act (CEQA). Roll Call Vote: 5-0.

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

There were no requests for future agenda items.

XIII. COMMUNICATIONS

A. Letter of Commitment for Multifamily Program Support from Town of Moraga to Green Building Program Manager, StopWaste, from November 1, 2013

XIV. ADJOURNMENT

ACTION: It was M/S (Wykle/Arth) to adjourn the meeting at 11:52 P.M. Vote: 5-0.

Respectfully submitted by:

Marty C. McInturf, Town Clerk

Approved by the Town Council:

Dave Trotter, Mayor