

**TOWN OF MORAGA  
TOWN COUNCIL SPECIAL MEETING**

**July 16, 2014  
MINUTES**

**7:00 P.M. Special Meeting**

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

Teleconference Location (Trotter)  
The Lodge at Suttle Lake  
General Manager's Office near Dining Room  
13300 Highway 20  
Sisters, OR 97759

**I. CALL TO ORDER**

The special meeting was called to order at 7:09 P.M. by **Mayor Ken Chew**.

**ROLL CALL**

Councilmembers present: Mayor Ken Chew, and Councilmembers Phil Arth, Michael Metcalf\* and Dave Trotter\*\*

\*Councilmember Metcalf arrived at 7:50 P.M.

\*\*Councilmember Trotter participated through Teleconference Location, as shown on agenda

Councilmembers absent: Vice Mayor Roger Wykle

**II. PLEDGE OF ALLEGIANCE**

**Councilmember Arth** led the Pledge of Allegiance.

**III. SPECIAL ANNOUNCEMENTS**

There were no special announcements.

**IV. PROCLAMATIONS AND PRESENTATIONS**

There were no proclamations or presentations.

**V. PUBLIC COMMENTS**

Denise Coane, Moraga, reported that she had attended a recent Design Review Board (DRB) meeting to express her disappointment with the way the City Ventures Moraga Town Center Homes development had been handled by the Planning Department. She asked that all story poles be installed along Country Club Drive; believed the Planning Department was not impartial and was not listening to residents; and read into the record a quote from a May 6, 2013 staff report which had raised concerns the constituency was not being represented.

Ms. Coane asked that the Town Council become involved in the issue and suggested that development not be allowed adjacent to transit stations or fire departments. She submitted a survey prepared by Moraga First, a group of concerned local citizens; asked that the Town Council fill out the survey; requested a meeting with the Town Council after its August break; and submitted the information to Town staff at that time.

There were no comments from the public from the posted Teleconference Location.

## VI. ADOPTION OF THE CONSENT AGENDA

### A. Approval of Consent Items

Staff noted that Consent Agenda Items 3 and 7 had been amended as reflected by redline revisions with copies provided on the dais and to the public that night.

#### PUBLIC COMMENTS OPENED

There were no comments from the public.

There were no comments from the public from the posted Teleconference Location.

#### PUBLIC COMMENTS CLOSED

<b>ACTION: It was M/S (Arth/Trotter) to adopt the Consent Agenda, as shown, and as amended. Roll Call Vote: 3-0-2. Absent: Metcalf, Wykle.</b>
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| 1) | Accounts Payable Claims for: 6/26/14 (\$262,033.67)<br>7/01/14 (\$90,919.30); 7/02/14 (\$28,233.00)  | Approved |
| 2) | Approve Minutes for the Town Council Special Meetings on<br>May 14, 2014, May 28, 2014, and June 11, 2014  | Approved |
| 3) | Approve Minutes for the Town Council Regular Meeting on<br>May 28, 2014, as amended  | Approved |
| 4) | Review and Accept Second Quarter Update of Town Council<br>Adopted Goals for 2014  | Approved |
| 5) | Consider Resolution 53-2014 Authorizing the Filing of an<br>Application for Funding Assigned to Metropolitan Transportation<br>Commission and Committing any Necessary Matching Funds<br>And Stating the Assurance to Complete the Project (Moraga<br>Center Specific Plan Area Pedestrian and Bicycle Infrastructure<br>Improvements) | Approved |
| 6) | Consider Resolution 54-2014 Supporting the Town of Moraga's<br>Application to the 2014 Priority Development Area (PDA)<br>Planning Grant Program to the Contra Costa Transportation<br>Authority (CCTA), for Municipal Code Amendments to Implement<br>the Moraga Center Specific Plan   | Approved |

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| 7)  | Consider Resolution 55-2014 Eliminating the Town's Involvement in and Approving and Authorizing the First Amendment to the Agreement for Construction and Maintenance of a Private Road between the Town of Moraga and Certain Property Owners on Canyon Road and Country Club Drive, as amended   | Approved |
| 8)  | Consider Resolution 56-2014 Authorizing the Town Manager to Execute an Agreement between East Bay Municipal Utility District (EBMUD) and the Town of Moraga to Reimburse the Town for Adjustment of Gate Valves as part of the 2014 Pavement Repair Project (CIP 08-106) and for Future Town Projects  | Approved |
| 9)  | Consider Resolution 57-2014 Authorizing the Town Manager to Award Design Professional Services Agreements for On-Call Geotechnical Engineering Services with Cal Engineering & Geology (Walnut Creek), Hultgren-Tillis Engineers (Concord), and WRECO (Walnut Creek) in an Amount Not to Exceed \$75,000 Annually for Three Years for a Total Amount Not to Exceed \$225,000 Per Agreement, Contingent on Available Annual Budget Appropriations | Approved |
| 10) | Consider Resolution 58-2014 Authorizing the Town Manager to Amend the Purchase Order with JV Lucas Paving, Inc. (Lafayette) to Resurface the Commons Park Pathways as Part of the Commons Park Improvement Program (CIP 14-304) in an Amount Not to Exceed \$33,175 for a Total Amount of \$48,597   | Approved |

**B. Consideration of Consent Items Removed for Discussion**

No items were removed from the Consent Agenda.

**VII. ADOPTION OF MEETING AGENDA**

By consensus, the Town Council modified the meeting agenda to move Items A and D under XI. Ordinances, Resolutions and Requests for Action prior to Item X. Public Hearings.

**PUBLIC COMMENTS OPENED**

There were no comments from the public.

There were no comments from the public from the posted Teleconference Location.

**PUBLIC COMMENTS CLOSED**

**ACTION: It was M/S (Trotter/Arth) to modify the meeting agenda to move Items A and D under XI. Ordinances, Resolutions and Requests for Action prior to Item X. Public Hearings. Roll Call Vote: 3-0-2. Absent: Metcalf, Wykle.**

**VIII. REPORTS**

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

**Mayor Chew** – Thanked Councilmember Trotter for attending the last couple of Mayors’ Conferences in the Mayor’s absence. He advised that he would share information from his recent trip to China at a future date when the full Town Council was present.

**Vice Mayor Wykle** – Absent.

**Councilmember Arth** – Reported that he had met with two residents to discuss the Via Moraga project on June 27 and had attended an Audit and Finance Committee (AFC) meeting on July 8.

**Councilmember Metcalf** – Absent.

**Councilmember Trotter** – Reported that he had attended a Central Contra Costa Solid Waste Authority (CCCSWA) Board meeting on June 26; served as a Traffic Controller for the Fourth of July Annual Fun Run; raised funds to assist the Town in meeting its \$24,000 goal for the fireworks display; attended the Mayors’ Conference in the City of Oakley on July 10 when there had been a presentation by a group encouraging municipalities to offer better electrical services and rates to constituents; and had attended a memorial service for Maria White at St. Perpetua Church on July 11.

- B. Town Manager Update – Town Manager Jill Keimach reminded everyone of the Moraga Night Out event scheduled for August 5 which offered an opportunity for neighborhoods to come together; reported the Town had exceeded its goal for the Fourth of July fireworks display due in part to the efforts of Councilmember Trotter and generous donations throughout the Town from businesses and individuals; and congratulated the Administrative Services Director and her team for the award-winning Comprehensive Financial Annual Report, and noted that when the award plaque was received, a presentation would be made to the Town Council.

## IX. DISCUSSION ITEMS

There were no discussion items.

The meeting agenda had been modified to allow consideration of Items A and D under XI. Ordinances, Resolutions and Requests for Action at this time.

## XI. ORDINANCES, RESOLUTIONS AND REQUESTS AND ACTION

- A. Consider Resolution 59-2014 Authorizing the Town Manager to Award a Construction Contract to Bay Cities Paving & Grading, Inc. (Concord) in the Amount of \$3,289,663 for the Construction of the 2014 Pavement Repair Project (CIP 08-106) and to Execute Contract Change Orders up to 15% of the Contract Amount

Public Works Director/Town Engineer Edric Kwan reported that the 2014 Pavement Project would pave 28 street segments with overlay treatments; the bid opening on June 23, 2014 had resulted in the receipt of five bids from well qualified contractors; as part of the bid process the Town must select the lowest responsible and responsive bidder for the base bid amount; and Bay Cities had been deemed the lowest responsible and responsive bidder. Now that the contractor had been chosen, the Town may elect to choose the bid alternate, which entailed switching some of the conventional asphalt to rubberized asphalt; 21 streets would be paved

with rubber and seven with conventional asphalt. While this option would be 10 percent more expensive, the performance on the street would last twice as long, dampen the sound of vehicles, retard cracks, and save 12,000 tires from the landfill.

Mr. Kwan recommended that the Town Council approve the resolution authorizing the Town Manager to Award a Construction Contract to Bay Cities Paving & Grading, Inc. (Concord) in the Amount of \$3,289,663 for the Construction of the 2014 Pavement Repair Project (CIP 08-106) and to Execute Contract Change Orders up to 15% of the Contract Amount.

Responding to the Council, Mr. Kwan acknowledged that two of the bidders had been non-responsive, oftentimes because bidders omitted a required bid document, and in the case of the second and third lowest bidders, they had omitted specific forms required to determine responsiveness. He acknowledged that the omission of those items may have been an accident of the contractor.

#### PUBLIC COMMENTS OPENED

There were no comments from the public.

There were no comments from the public from the posted Teleconference Location.

#### PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Arth/Trotter) to adopt Resolution 59-2014 Authorizing the Town Manager to Award a Construction Contract to Bay Cities Paving & Grading, Inc. (Concord) in the Amount of \$3,289,663 for the Construction of the 2014 Pavement Repair Project (CIP 08-106) and to Execute Contract Change Orders up to 15% of the Contract Amount. Roll Call Vote: 3-0-2. Absent: Metcalf, Wykle.**

- D. Consider Resolution 60-2014 Declaring that the Town of Moraga is Subject to Provisions of Division 17 (Sections 26500 et. seq.) of the California Public Resources Code Regarding Geologic Hazard Abatement Districts ("GHAD Law"), and Directing the Town Clerk to Forward a Copy of the Resolution to the State Controller

Planning Director Shawna Brekke-Read reported that the Town Council had discussed the item at its May 14, 2014 meeting to address development projects in the Town requiring a Geologic Hazard Abatement District (GHAD); the Town Council directed staff to begin the GHAD formation process for a Moraga GHAD to add the Rancho Laguna II, Hetfield Estates, and Palos Colorados development projects; this was the first step in forming the Moraga GHAD, with the Town Council declaring the Town subject to GHAD Law, and stating the Town Council would serve as the GHAD Board of Directors.

Ms. Brekke-Read affirmed that staff had not recommended including the Los Encinos development in the Moraga GHAD for the reasons outlined in the July 16, 2014 staff report since the lots contained the entirety of the subdivision area. She also affirmed that a property owner would need to consent to be included in the GHAD. The Final Map for the Los Encinos development had already been recorded; the subdivision had not been conditioned to require the formation of a GHAD.

Assistant Town Attorney Karen Murphy advised that a common open space area was not required to form a GHAD. She confirmed the information regarding the reasons why the Los Encinos development had not been recommended for inclusion in the Moraga GHAD, and clarified that the agenda item was for the Town Council to declare the Town subject to the

provisions of GHAD Law, with the properties subject to the GHAD to come forward at a later time.

**Councilmember Trotter** understood that this was a procedural resolution, although he recommended an amendment to the resolution to include language to leave open the possibility that Los Encinos may be included in the Moraga GHAD in the future based upon a more thorough review of the policy issues.

Ms. Murphy suggested that the third WHEREAS clause of the resolution could be amended to read:

***WHEREAS**, the Town may in the future desire to consider the inclusion of other proposed and existing residential developments in a GHAD;*

**Councilmember Trotter** accepted the revision proposed by the Assistant Town Attorney.

Ms. Brekke-Read recommended a further modification to the third WHEREAS clause to read:

***WHEREAS**, the Town may in the future desire to consider the inclusion of other proposed and existing residential developments in a GHAD;*

#### PUBLIC COMMENTS OPENED

Roger Poynts, Moraga, noted he had submitted a speaker card but was not present to speak since the item had been moved from the last agenda item to the first and he arrived after the public comments for re-agendized item XI.D had been closed. Mr. Poynts requested that the comments he had expected to be able to ask the Town Council be included in the minutes. He wanted to ask the Town Council to explain its reasoning behind the May 14, 2014 decision to create a GHAD in Moraga. Specifically, to ask the elected officials how a GHAD benefited its citizens. The May 14 meeting minutes were devoid of any Town Council discussion or reasoning about this issue. He stated that he believed it was imperative before undertaking any legislative act that affected the citizens of Moraga to ask who benefited. He did not believe there had been a satisfactory answer to this question stated publicly by the Town Council.

There were no comments from the public.

There were no comments from the public from the posted Teleconference Location.

#### PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Trotter/Arth) to adopt Resolution 60-2014 Declaring that the Town of Moraga is Subject to Provisions of Division 17 (Sections 26500 et. seq.) of the California Public Resources Code Regarding Geologic Hazard Abatement Districts ("GHAD Law"), and Directing the Town Clerk to Forward a Copy of the Resolution to the State Controller, with an amendment to the third WHEREAS clause to read:**

***WHEREAS**, the Town may in the future desire to consider the inclusion of other proposed and existing developments in a GHAD.*

**Roll Call Vote: 3-0-2. Absent: Metcalf, Wykle.**

The Town Council returned to Agenda Item X. Public Hearing at that time.

#### X. PUBLIC HEARINGS

- A. Consider Introducing and Waiving First Reading of an Ordinance to Amend Moraga Municipal Code (MMC) Title 8, Planning and Zoning:
- 1) Amend MMC Section 8.04.020 (Definitions), Adding Definitions for Supportive and Transitional Housing and Emergency Shelters and Corresponding Amendments to Lists of Permitted Uses in Applicable Districts;
  - 2) Add MMC Chapter 8.164 Allowing Emergency Shelters by Right in the Institutional District;
  - 3) Add MMC Chapter 8.168 Allowing Reasonable Accommodation from the Zoning Ordinance for Individuals with Disabilities; and
  - 4) Add MMC Chapter 8.172 Allowing Density Bonus for Affordable Units Consistent with State Density Bonus Law

Ms. Brekke-Read reported that the Town was in the process of updating its Housing Element as required by State law. The Town's consultants had identified changes required to allow the Housing Element to be certified by the State Housing and Community Development Department (HCD). The Planning Commission had considered the changes based on ordinances used in other cities, with the proposed Density Bonus Law Ordinance to reference State law, which changed over time. The Planning Commission had recommended that the Town Council approve the proposed amendments, which staff supported.

#### PUBLIC HEARING OPENED

There were no comments from the public.

There were no comments from the public from the posted Teleconference Location.

#### PUBLIC HEARING CLOSED

**ACTION: It was M/S (Arth/Trotter) to Introduce and Waive First Reading of an Ordinance to Amend Moraga Municipal Code (MMC) Title 8, Planning and Zoning: 1) Amend MMC Section 8.04.020 (Definitions), Adding Definitions for Supportive and Transitional Housing and Emergency Shelters and Corresponding Amendments to Lists of Permitted Uses in Applicable Districts; 2) Add MMC Chapter 8.164 Allowing Emergency Shelters by Right in the Institutional District; 3) Add MMC Chapter 8.168 Allowing Reasonable Accommodations from the Zoning Ordinance for Individuals with Disabilities; and 4) Add MMC Chapter 8.172 Allowing Density Bonus for Affordable Units Consistent with State Density Bonus Law. Roll Call Vote: 3-0-2. Absent: Metcalf, Wykle.**

The Town Council returned to XI. Ordinances, Resolutions and Requests for Action, and the remaining agenda items at that time.

- B. Consider Resolution 61-2014 Authorizing the Town Manager to Enter Into a Second Amendment of a Right of Entry and License Agreement for an Additional Five Years with Annual CPI Increases with John Hoover for Cattle Grazing on Mulholland Open Space Preserve

Parks and Recreation Director Jay Ingram reported that the First Amendment of a Right of Entry and License Agreement for Cattle Grazing on Mulholland Open Space Preserve would expire at the end of August 2014. If approved, the Second Amendment would run through 2019. The agreement had worked well for the Town and the annual rent increase had been based on the San Francisco Consumer Price Index (CPI). He recommended that the Town Council adopt

Resolution 61-2014 authorizing the Town Manager to enter into a Second Amendment of a Right of Entry and License Agreement for an additional five years with annual CPI increases with John Hoover for cattle grazing on Mulholland Open Space Preserve.

In response to the Council, Mr. Ingram explained that Mr. Hoover had built a watering system for his cattle, maintained the fence line for the property, and the presence of cattle helped keep weeds and invasive species down, all benefiting the Town.

#### PUBLIC HEARING OPENED

John Hoover, Moraga, added that he also provided discing and fire break services for the Town at his expense. He explained that Hoover Cattle Company and Carr Ranch had been in existence in Moraga since 1916, and had been managing cattle on the land for generations. He appreciated the moderation between the Town and the ranching, and emphasized the desire to stay local while educating people in the area about the livestock. He added that the Parks and Recreation Director had also been a pleasure to work with.

There were no comments from the public.

There were no comments from the public from the posted Teleconference Location.

#### PUBLIC HEARING CLOSED

**ACTION: It was M/S (Arth/Trotter) to adopt Resolution 61-2014 Authorizing the Town Manager to Enter into a Second Amendment of a Right of Entry and License Agreement for an Additional Five Years with Annual CPI Increases with John Hoover for Cattle Grazing on Mulholland Open Space Preserve. Roll Call Vote: 3-0-2. Absent: Metcalf, Wykle.**

Councilmember Metcalf arrived at 7:50 P.M.

- C. Consider Resolution 62-2014 Authorizing the Town Manager to Award a Consultant Services Contract to Cole Management & Engineering, Inc. (Concord) in an Amount Not to Exceed \$40,000 for Construction Inspection Services for the Moraga Country Club Remedial Grading Work (Subdivisions 7351 and 7747)

Mr. Kwan explained that Moraga Country Club had gone through the process with the Town and with the County to obtain permits for remedial grading, and as part of that work would be replacement of existing improvements which would have to be inspected by the Town. Since the Town did not have the staff capacity, the Town would have to go through one of the short-listed Construction Management firms. The resolution would authorize the Town Manager to award a Consultant Services Contract to Cole Management & Engineering, Inc. (Concord) in an amount not to exceed \$40,000 for Construction Inspection Services for the Moraga Country Club Remedial Grading Work (Subdivisions 7351 and 7747). The funds for the contract would come from the deposits the Bruzzone family had previously provided.

#### PUBLIC COMMENTS OPENED

There were no comments from the public.

There were no comments from the public from the posted Teleconference Location.

#### PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Arth/Trotter) to adopt Resolution 62-2014 Authorizing the Town Manager to Award a Consultant Services Contract to Cole Management & Engineering, Inc. (Concord) in an Amount Not to Exceed \$40,000 for Construction Inspection Services for the Moraga Country Club Remedial Grading Work (Subdivisions 7351 and 7747). Roll Call Vote: 4-0-1. Absent: Wykle.**

## **XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS**

**Mayor Chew** stated with respect to the construction of the new Council Chambers, he had heard that it was common practice in many cities to put a metal sheet in front of the dais for bullet-proof purposes in the event of an issue. He asked that such a shield be considered as a future agenda item with staff to provide information on potential costs.

Ms. Keimach reported that she had spoken with the Mayor about this issue in the last couple of days and the question was whether the Council should consider agendizing an item for staff to consider putting bullet-proof material at the dais as a future agenda item.

**Councilmember Metcalf** clarified that the same issue had been raised a year ago and Town Council consensus had determined that the matter not be pursued.

Ms. Murphy advised if the consensus of the Town Council was that the Mayor's request be considered as a future agenda item it would be done, although if there was no consensus it would not be agendized for future consideration.

Councilmember Metcalf reiterated his comments that the Council had previously discussed the item and had decided not to pursue it.

Councilmember Trotter reiterated his comments that he was not interested in pursuing bullet-proof protection for the Council.

**Councilmember Arth** did not support the request as a future agenda item. He was confident of the Town Council's safety and suggested it would not be a wise expenditure of Town funds.

There was no consensus to place the item in front of the Council as a future agenda item.

In response to **Mayor Chew's** concern that there was no opportunity to discuss the issue, Ms. Murphy reiterated that there was no consensus to place the issue on a future agenda although the Town Council may discuss in the future rules for the placement of future agenda items, which could be placed as a future agenda item to allow a discussion. Pursuant to the Council procedure, a member of the Town Council may have the opportunity to request that items be placed on an agenda for a future meeting subject to the Brown Act.

**Mayor Chew** reiterated his concern with the lack of opportunity for discussion and liked the idea of a review of the rules for the placement of future agenda items.

**Councilmember Trotter**, speaking to the procedure and not the specific proposal, commented on his understanding and opinion that individual Councilmembers had a right to place any item on a future agenda. If the Mayor insisted that the item be agendized, he may request it as a matter of legislative privilege.

**Mayor Chew** commented that he did not believe the current process was democratic or proper and there was not enough information to decide whether an item could be agendized or not.

Ms. Murphy advised that the process for future agenda items would be placed on a Council agenda for discussion to allow the entire Council the opportunity to discuss what other jurisdictions did and the proposed processes. She cautioned that the Council not have a discussion on the issue at the current time since it had not been agendized.

### **XIII. COMMUNICATIONS**

#### **A. Certificate of Appreciation for Patty Mills dated June 29, 2014**

**Councilmember Trotter** reported that he had an address for staff to send the Certificate of Appreciation to Patty Mills and he would be in touch with staff upon his return to Town.

**Councilmember Trotter** left the meeting at 7:59 P.M.

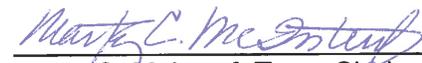
Mr. Ingram explained that Patty Mills was a National Basketball Association (NBA) player who had played for Saint Mary's College (SMC) in 2008 and 2009; had recently won an NBA title with the San Antonio Spurs; was an Australian Olympian; and was one of the first Australians to play for SMC.

Ms. Keimach added that the certificate was to have been presented to Mr. Mills at a recent basketball game by Councilmembers Arth and Trotter, although Mr. Mills had been unable to make the game and the certificate was to be mailed.

### **XIV. ADJOURNMENT**

<b>ACTION: It was M/S (Arth)/Metcalf) to adjourn the meeting at 8:10 P.M. Vote: 3-0-2. Absent: Trotter, Wykle.</b>
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Respectfully submitted by:

  
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Marty C. McInturf, Town Clerk

Approved by the Town Council:

  
\_\_\_\_\_  
Ken Chew, Mayor