

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**March 25, 2015
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 7:04 P.M. by **Mayor Roger Wykle**.

ROLL CALL

Councilmembers present: Mayor Roger Wykle, Vice Mayor Michael Metcalf, and Councilmembers Phil Arth, Teresa Onoda and Dave Trotter

Councilmembers absent: None

II. PLEDGE OF ALLEGIANCE

Vice Mayor Metcalf led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

There were no special announcements.

IV. PROCLAMATIONS AND PRESENTATIONS

There were no proclamations or presentations.

V. PUBLIC COMMENTS

Jennifer Burke, Moraga, reported that during the past three years her family had to endure large and disruptive parties from the adjacent property on Wandel Drive. Although there had been numerous complaints, only warnings had been issued and no abatement had occurred given the revolving tenants residing in the property. She asked the Town Council to consider issuing a nuisance abatement warning against the property owner pursuant to Moraga Municipal Code (MMC) regulations. She also urged a stronger MMC that penalized those property owners whose tenants' behavior habitually violated the Town's regulations.

Fanny Wilson, Moraga, identified her residence as across the street from the property on Wandel Drive. She too commented on the history of parties and disruptive behavior at the property which was not conducive to a family-friendly environment. While she had spoken with both Town and Saint Mary's College (SMC) staff who were committed to ensuring the enforcement of the Town's regulations, she found that the Town's ordinance was not strict enough and she urged modifications to the existing ordinance for Town Council consideration and expressed the willingness to participate on a committee to address such an effort.

Julie Strong, Moraga, also expressed concern with the referenced property, characterized the property as a party house, and asked the Town Council to provide assistance to the neighbors to address the situation.

Andrew Baxter, Moraga, spoke to the proposed plans for the former Moraga Tennis and Swim Club (MTSC). He was informed by the Mayor that the item would be addressed by the Town Council later on the agenda.

Jerome Seibert, Moraga, reported that he had brought the issues with the property on Wandel Drive to the attention of the Town Council in 2008. At that time, he had presented a petition signed by 14 of his neighbors. He described the house as occupied by SMC students and noted that up to ten vehicles were parked on the street, there were loud parties, the landscaping was not maintained, trash littered the property, and there was no regard for neighbors or their properties. He suggested the property had been converted into a non-regulated business enterprise and the property owner rarely inspected the property, which had resulted in numerous health and safety violations negatively impacting neighboring property values. He asked the Town Council to consider several new regulations.

Dino Walter, Moraga, a resident of the referenced property for the past eight months, expressed his apologies on behalf of the tenants for what had occurred, and hoped in the future they could work with the neighbors to communicate and establish a relationship to allow them to live amongst each other. He clarified, when asked, that no one from SMC had encouraged him to address the Town Council.

John Smith, Moraga, understood there were five party houses in Moraga, with one of them located adjacent to his own residence. He suggested the issue affected many properties throughout the community.

VI. ADOPTION OF THE CONSENT AGENDA

A. Approval of Consent Items

Consent Items 2, 4, and 5 were removed from the Consent Agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Arth/Trotter) to adopt Consent Agenda Items 1, 3, and 6. Vote: 5-0.
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| 1) | Accounts Payable Claims for: 3/06/15 (\$180,805.66);
3/06/15 (\$4,085.24) | Approved |
| 2) | <i>Approve Minutes for the Special and Regular Meetings on
January 28, 2015</i> | <i>Removed</i> |
| 3) | Approve Minutes for the Tri-City Meeting on February 19,
2015 | Approved |

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| 4) | <i>Consider Resolution 32-2015 Authorizing the Town Manager to Award a Construction Contract to Suarez and Munoz Construction, Inc. (Hayward) in the Amount of \$43,900 for the Construction of the Pavilion Turf Improvements Project (CIP 15-303) and Execute Contract Change Orders up to 15% of the Contract Amount and Appropriating \$20,920 from Fund 100 – One Time Developer Fees (Palos Colorados) to Fund the Project Shortfall</i> | <i>Removed</i> |
| 5) | <i>Consider Resolution 33-2015 Authorizing the Town Manager To Execute a Professional Services Contract with Godbe Associates for a Total Amount Not to Exceed \$39,610 for Completion of a Community Survey for the Livable Moraga Road Project Segment 3 Design Options and Appropriating \$40,000 from Measure J (Fund 210) to the Livable Moraga Road Project</i> | <i>Removed</i> |
| 6) | Receive and Accept Annual Review of Camino Ricardo (Subdivision 9321) Development Agreement Determining Good Faith Compliance by the Owner with the Terms of the Agreement | Approved |

B. Consideration of Consent Items Removed for Discussion

1. Approve Minutes for the Town Council Special and Regular Meetings on January 28, 2015

Councilmember Trotter advised that redline changes had been made to the Regular Town Council minutes of January 28, 2015, and copies had been provided to the Council and to the public. He asked that the Council approve the minutes, as modified.

ACTION: It was M/S (Trotter/Arth) to approve the Special and Regular Minutes, as modified, for the Town Council meeting on January 28, 2015, subject to the redline strikeout changes provided to the Town Council. Vote: 5-0.

2. Consider Resolution 32-2015 Authorizing the Town Manager to Award a Construction Contract to Suarez and Munoz Construction, Inc. (Hayward) in the Amount of \$43,900 For the Construction of the Pavilion Turf Improvements Project (CIP 15-303) and Execute Contract Change Orders up to 15% of the Contract Amount and Appropriating \$20,920 from Fund 100 – One Time Developer Fees (Palos Colorados) to Fund the Project Shortfall

Councilmember Onoda questioned the expenditure of funds at the time since an architect would be making a presentation to the Town Council in April to offer ideas for improvements to the Hacienda.

Public Works Director/Town Engineer Edric Kwan explained that the Town was working with existing infrastructure and the intent of the project was to address the need for the Town's maintenance crews to make constant repairs to the Hacienda property's irrigation system, particularly to prevent any issues with the grass during special events, such as weddings. He noted that the Capital Improvement Program (CIP) had been developed in the last fiscal year in preparation for this fiscal year's budget and the project had been identified as a priority.

Mayor Wykle commented that normally he would have agreed with Councilmember Onoda, however, given the existing needs at the Hacienda and the fact that any recommendations from an architect would not occur until sometime in the future, he could support the item as submitted.

Responding to Council, **Mr. Kwan** stated that repairs to the existing irrigation system had been made when found, although he expected more leaks given the age and condition of the system. As an option, he suggested that the Council could consider the use of Asset Replacement funds, which had a current balance of \$100,000 for the project. He clarified that the lawn area under discussion was for the Pavilion only.

Councilmember Onoda recognized that weddings were important, although she suggested that brides would not be looking at the grass. She again asked that the Town Council defer the item until the plans for the Hacienda had been identified.

ACTION: It was M/S (Trotter/Wykle) to adopt Resolution 32-2015 Authorizing the Town Manager to Award a Construction Contract to Suarez and Munoz Construction, Inc. (Hayward) in the Amount of \$43,900 for the Construction of the Pavilion Turf Improvements Project (CIP 15-303) and Execute Contract Change Orders up to 15% of the Contract Amount and Appropriating \$20,920 from the Asset Replacement Fund (Fund 750) to Fund the Project Shortfall. FAILED. Vote: 2-3. Noes: Arth, Metcalf, Onoda.

Vice Mayor Metcalf emphasized that the state was in a drought and the leaky system needed to be repaired. He disagreed that brides would not look at the grass and emphasized the importance of the appearance of the Hacienda and grounds. He suggested the payment of the project should not be borne by the Asset Replacement Fund since that fund was being depleted, and supported the staff recommendation for the use of Palos Colorados funds given the recreational facility.

Councilmember Arth explained that he had opposed the motion since he was of the opinion funds should come from the Palos Colorados fund. He too supported the staff recommendation.

ACTION: It was M/S (Arth/Metcalf) to adopt Resolution 32-2015 Authorizing the Town Manager to Award a Construction Contract to Suarez and Munoz Construction, Inc. (Hayward) in the Amount of \$43,900 for the Construction of the Pavilion Turf Improvements Project (CIP 15-303) and Execute Contract Change Orders up to 15% of the Contract Amount and Appropriating \$20,920 from Fund 100 – One Time Developer Fees (Palos Colorados) to Fund the Project Shortfall. Vote: 3-2. Noes: Onoda, Trotter.

3. Consider Resolution 33-2015 Authorizing the Town Manager to Execute a Professional Services Contract with Godbe Associates for a Total Amount Not to Exceed \$39,610 for Completion of a Community Survey for the Livable Moraga Road Project Segment 3 Design Options and Appropriating \$40,000 from Measure J (Fund 210) to the Livable Moraga Road Project

Councilmember Onoda questioned the expenditure of \$2,000 for the incentives to participate in the focus groups and suggested Moragans loved to volunteer and did not need to be paid to participate.

Councilmember Trotter clarified with the Vice Mayor that participants in the Revenue Enhancement Community Outreach to Neighborhoods (RECON) effort had not been paid but had been given refreshments.

Acting Town Manager Ellen Clark affirmed that there were funds in the budget for food for the participants of the focus groups.

PUBLIC COMMENTS OPENED

Sal Captain, Moraga, suggested offering wine rather than food.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Onoda) to adopt Resolution 33-2015 Authorizing the Town Manager to Execute a Professional Services Contract with Godbe Associates for a Total Amount Not to Exceed \$39,610 for Completion of a Community Survey for the Livable Moraga Road Project Segment 3 Design Options and Appropriating \$40,000 from Measure J (Fund 210) to the Livable Moraga Road Project; and striking the payment amount from the contract for the payment to participants in the focus groups. Vote: 5-0.

VII. ADOPTION OF MEETING AGENDA

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

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

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Wykle – Reported that he and the Chief of Police had attended the Moraga Baseball Association Parade on February 28.

Vice Mayor Metcalf – No report.

Councilmember Arth – Reported that he had attended the SMC Alioto Recreation Center Dedication Ceremony on March 12; a Citizen Corps Council meeting on March 12, at which time the project counselors had been designated for the various events; and the Town and Gown Breakfast at SMC on March 19.

Councilmember Onoda – Reported that she had attended the SMC Alioto Recreation Center Dedication Ceremony on March 12; and the Town and Gown Breakfast at SMC on March 19.

Councilmember Trotter – Reported that he had attended the SMC Alioto Recreation Center Dedication Ceremony on March 12; the Town and Gown Breakfast at SMC on March 19; and the NorCal Finals of Division III CIF at American Canyon High School on March 21, at which time Campolindo High School had defeated Drake by a score of 50-44 and would now play for the State Title in Division III on Friday, March 27 at U.C. Berkeley, an event he planned to attend.

B. Town Manager Update – No report.

IX. DISCUSSION ITEMS

There were no discussion items.

X. PUBLIC HEARINGS

A. Master Fee Schedule Update

Conduct a Public Hearing to Consider Resolution 34-2015 Authorizing Updates to the Town of Moraga's Master Fee Schedule to Reflect the Adopted Historic Preservation Ordinance, New Electronic Community Information Sign, and Amendments to the Hourly Rates for Public Works/Parks Maintenance Staff Services Effective May 25, 2015

Administrative Services Director Stephanie Hom presented the staff report for consideration of a resolution authorizing updates to the Town's Master Fee Schedule associated with the adopted Historic Preservation Ordinance, new electronic community information sign, and amendments to the hourly rates for the Public Works/Parks Maintenance staff services, to be effective May 25, 2015. The item had been published at least ten days prior to the Town Council meeting date as required by State law, with a 60-day waiting period after the adoption of the resolution before the fees could be implemented. She asked that the Town Council adopt the resolution as proposed by staff.

Parks and Recreation Director Jay Ingram affirmed, when asked, that the Town hoped to see an increase in revenues as a result of the fees for the use of the electronic community information sign, although that would depend on the approval of fee waivers in that many local organizations were already using the existing marquee after having fees waived.

PUBLIC COMMENTS OPENED

Barry Behr, Moraga, reported that Moraga Valley Kiwanis used the existing marquee sign to post upcoming activities and the profit from those activities was returned to the community. He asked the Town Council to revise the fees that could be charged to non-profit organizations in the recognition that could result in a reduction in fees for the use of the new electronic community information sign.

Dave Schnayer, Moraga, understood that a \$3,000 deposit would be imposed on privately-owned properties as part of the fees for the Historic Preservation Ordinance, although the fee would be waived for a Town or publicly-owned property. He asked staff to clarify that aspect of the proposed fees.

Ms. Clark reported that the Town typically did not charge itself for applications it made for encroachment or use permits, with Town staff time incurred, which would be payment for work that would occur anyway.

PUBLIC COMMENTS CLOSED

Responding to Council, Mr. Ingram noted that some community groups had approached the Town requesting a fee waiver for the use of the new electronic community information sign, with said groups currently exempt from paying for the use of the existing marquee sign. On April 8, staff would return to the Town Council with a presentation on the policies and procedures for the rental of the electronic community information sign, at which time he expected to identify the entities that paid no fees to the Town for the use of the existing marquee sign.

ACTION: It was M/S (Trotter/Onoda) to adopt Resolution 34-2015 Authorizing Updates to the Town of Moraga's Master Fee Schedule to Reflect the Adopted Historic Preservation Ordinance, New Electronic Community Information Sign, and Amendments to the Hourly Rates for Public Works/Parks Maintenance Staff Services Effective May 25, 2015.
Vote: 5-0.

XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

A. Home-based Winery Businesses

Conduct Study Session and Provide Direction on Approach to Regulations for Home-based Winery Businesses

Ms. Clark reported in 2012, the Planning Commission and the Town Council, as a work item, had requested that staff study possible new regulations for wineries in Moraga. Staff had met with local wineries and other residents interested in the issue to begin the discussion and identify key issues and possible approaches to developing new regulations.

Contract Planner Ben Noble presented the staff report and reiterated that the item had originated as a 2012 work item, although due to staff turnover the effort had paused until it resumed in December 2014. At that time, staff had again met with the local wineries to discuss the current winemaking activities in Moraga. Moraga had 15 existing small non-commercial home-based wineries, with four bonded by the state and federal government for the commercial sale of wine.

Mr. Noble identified the concerns and issues with respect to winemaking; the Town's existing winery regulations; state and federal regulations; staff assessment of current regulations; home-based winery regulations in other communities; and the suggested approach of winery regulations, as reflected in the staff report. He asked the Town Council to provide direction to staff on the development of regulations for wineries in Moraga; direct staff to work with the local winemakers and neighbors to prepare new winery regulations for Planning Commission and Town Council consideration to reflect the approach outlined in the staff report; with a return at a future date with draft regulations for consideration. Responding to Council, Mr. Noble stated that the largest winery in Moraga produced approximately 1,000 cases of wine.

PUBLIC COMMENTS OPENED

Barry Behr, Moraga, expressed concern with the potential impacts from home-based winery businesses, particularly increased traffic, customers attending events, and the potential for clients/vendors to deliver/pick up items. He was familiar with the bottling process which had associated noise impacts, and also expressed concern with spraying of acreage. He had researched active wineries in Moraga and had reached out to one local winemaker (Sal Captain), whose operation provided a great model that involved minimal events and limited deliveries, with larger events held through the assistance of a local service organization. That winemaker also promoted carpooling to minimize traffic and operated a green business, all benefits to the community. He asked the Town Council to consider requiring the businesses to provide a 72-hour notice to immediate neighbors when spraying would occur on any property; and asked that staff, the Town Council, and others work closely with Mr. Captain and the local winemakers to make the process better for all.

Mary Lou Blumer, Moraga, who lived between two wineries, agreed that the businesses were interesting and fun, but urged regulations related to noise and increased traffic.

Scott Sampson, Moraga, described his property as ten acres in size located at 500 Rheem Boulevard, with a small vineyard with 300 vines. He had no current plans to increase the size of

the vineyard, but noted he was in the process of renewing the prior bond which had expired. He wanted the opportunity to expand his vineyard sometime in the future and expressed concern after recently purchasing the property that new regulations could be imposed. He suggested if vineyards were to be examined that other items should also be considered such as gardens, developments on lots, and other agricultural improvements.

Bill Durkin, Moraga, commented that he had been a home-based winemaker and a gardener for ten years; emphasized the sense of community generated by both activities; and noted that SMC had historically grown wine in the past and he had been in discussions with SMC to renew that tradition. He spoke to the pending effort to bring distinction to the Lamorinda area through a unique viticultural environment that would increase the value of wines and properties.

Responding to Council, Sal Captain, Moraga, and Mr. Noble identified the four bonded wineries, three of which were actively producing wine. The fourth bonded winery was in the process of trying to get the bond status renewed. Active wineries were identified as Parkmon Winery, Captain Vineyards, Bullfrog Winery, and the property located at 500 Rheem Boulevard.

Bill English, Moraga, a member of the Lamorinda Winegrowers Association Board of Directors, explained that the staff report had confused vineyards with wineries. He defined a winery as a commercial facility taking fruit and converting it to wine, while a vineyard was an agricultural activity. The staff report had described the home-based businesses as wineries when, in fact, they were just vineyards. Vineyards were allowed and promoted by the regulations and should not be discouraged. He added that the reference to home-based non-commercial wineries were actually hobbyist winemakers who produced less than 200 gallons per year, were not allowed to sell the product, were not regulated by the state or federal government; and as a result were not home-based businesses. He suggested the winemaking community in general should be supported and he urged the Town Council to find ways to help everyone live together.

Edy Schwartz, Moraga, was excited to be involved with the winery business as a member of the business community. She urged consideration of appropriate regulations and agreed that the model used by the Captain winery was safe and had not impacted its neighbors. She encouraged the resolution of any problems and urged the celebration of winemaking and winegrowing in the community.

Eero Teerikorpi, Moraga, commented that his property had a vineyard and was located adjacent to the Captain property, and while he hoped someday to supply and produce wine, the original intent was to improve his property, make the neighborhood better, and increase the overall value of the property.

Mr. Captain referenced his background in engineering and, after extensive research and education, his intention when retired to become a farmer and plant vineyards on his property. He described the process of sustainable wine growing, and described the green practices used for the business. He too explained the differences between a winery and a vineyard and expressed concern the staff report could lead to improper rules and regulations. He referenced information from other ordinances, citations, and sources from the California Civil Code related to the discussion; and noted the average winery in California produced 65,000 cases of wine each year while the Town of Moraga wineries produced approximately 1,600 cases each year. He supported regulations for water usage and spraying of fertilizers.

Jan Blumer, Moraga, lived between two of the largest vineyards in Moraga and one of the bonded wineries. He referenced his background in biochemistry; identified himself as an amateur wine maker with experience in the industry; was pleased with the staff report which had shown a balance between providing an interest in vineyards and winery operations and protection of the neighborhoods; and recognized the challenges between developing agricultural

and residential areas and operating a business in a residential area. He urged the Town Council to take a balanced view of providing for vineyards and wineries while protecting neighbors, and he looked forward to working with staff on any future activity related to the issue.

Susan Captain, Moraga, a member and previous President of the Lamorinda Winegrowers Association, explained that she had approached the Town to request a permit to install her vineyard, and had met with her neighbors to discuss the vineyard and her intention to grow and produce quality grapes in a sustainable manner. To date there had been no specific recorded complaints about the business. She urged all parties to come together to resolve issues in an environment of cooperation, good communication, and good will.

Carol Haag, Moraga, Vice President of the Lamorinda Winegrowers Association, a hobbyist winegrower, and former Chair of the Economic Development Committee (EDC) who had worked on a report encouraging Moraga to become a wine destination, suggested her winegrowing partners had done a good job highlighting the issues in the staff report. She had also provided the Town Council with a recent report from the Association which welcomed the opportunity to open a constructive dialogue with the Town Council, Town staff, and neighbors about wine growing in the Lamorinda area. She advised that the Association was willing to provide assistance to correct the terms and some of the assumptions in the staff report; recommended the formation of a group to see what could be done to address the issues; urged the Town Council not to make a decision at the current time; and supported a return at some future date to allow everyone to work together and ensure the accuracy of the staff report.

PUBLIC COMMENTS CLOSED

Vice Mayor Metcalf explained that the Town Council was making no decision at the current time in that the item was a study session. Familiar with the wine business and involved with many wineries in the Russian River area, he found Sonoma County to be a good model, similar to Moraga, and a better model than Napa County. He commented that there were different types of enterprises involved in the production of wines and recommended that staff look at what had been done in Sonoma County, particularly the Russian River Valley. He acknowledged the concerns with the staff report; urged staff to look at the other regulations; and encouraged a complaint management system that made sense and was enforceable.

Mayor Wykle agreed with many of the comments made by the Vice Mayor; clarified with Mr. Noble that the definitions of wineries and vineyards would be critical when moving forward; and verified with Ms. Clark that meetings with the various winegrowers and neighbors should occur along with formal meetings with the Planning Commission and Town Council to discuss draft regulations. He suggested there was likely an issue with the larger wineries, although he could not see a lot of regulation required other than protections for residential neighborhoods.

Mr. Noble suggested there was the possibility there would be no need for new regulations for certain types of winemaking activities.

Councilmember Arth was encouraged by the staff report which he found to be well balanced but which could use some wordsmithing. He suggested that the groups should meet to discuss the issues; he did not see a distinction between a winery and a vineyard since the entire operation was to start out with grapes and end up with wine; agreed with the staff recommendation that staff work with local winemakers and neighbors to prepare new winery regulations; and suggested the Town's ordinance regarding home-based businesses was inconsistent in relation to a winemaking operation and should be reconciled and amended to include safeguards for neighbors. He urged staff to work with the interested parties and return to the Town Council.

In response to Councilmember Trotter, Ms. Clark reiterated that in 2012 a similar start-up process had occurred when staff had met with neighbors and local winegrowers, and the next step was to have brought that group and stakeholders together. While she had not been involved in that effort, the previous documentation from stakeholders which had concepts and ideas from the different winegrowers had been seen by staff but had not been provided to the Town Council since it had not been vetted. She suggested that staff had some work to do, including clarifying the distinction between the different types of activities that could occur, to ensure regulations that were useful and enforceable.

Councilmember Trotter was not certain that regulations were needed. He agreed that more dialogue needed to occur between the neighbors and the operators of vineyards or wineries; agreed there was a fundamental difference between vineyards and wineries; and commented that many people saw the backyard wineries selling wine and creating a brand for the Lamorinda area, Moraga in particular, which he supported as positive.

Councilmember Onoda was pleased that neighbors and winegrowers were part of the conversation. She too wanted to see everyone communicate with each other and address the issues of concern; agreed that neighbors should be notified at least 72 hours before property was sprayed given the potential impacts to people, animals, and wildlife; encouraged a continued dialogue between the neighbors and the winegrowers; agreed there could be different terminology used in the regulations; and suggested they were on the right track.

Mayor Wykle advised that the consensus of the Town Council was to continue the discussion.

- B. Adventure Day Camp Requests for Former Moraga Tennis and Swim Club**
Study Session Regarding 1) Adventure Day Camp's Request for Permit Fee Waiver; and 2) Zoning Ordinance Text Amendment to Moraga Municipal Code Section 8.52.110, "Conditional Uses" within Moraga Open Space District (OS-M) for Proposed Recreation Facility at 1161 Larch Avenue (former Moraga Tennis and Swim Club)

Associate Planner Brian Horn presented the staff report for the study session regarding Adventure Day Camp's request for permit fee waiver; and Zoning Ordinance text amendment to MMC Section 8.52.110, "Conditional Uses" within Moraga Open Space District (OS-M) for Proposed Recreation Facility at the former Moraga Tennis and Swim Club (MTSC).

Mr. Horn asked that the Town Council provide feedback to the applicant on the requested fee waiver; potentially allow the applicants to return to the Town Council at a future date with the understanding that some portion of the fees paid could be reimbursed if an agreement on the specific details of the partnership could be reached with the Town; and provide feedback to the applicant and staff on the potential amendment to MMC Section 8.52.040 B to delete the term "non-profit" before recreational facilities within Moraga Open space Ordinance (MOSO) and non-MOSO lands.

Responding to Council, Mr. Horn described the background of the former MTSC facility which began initially as a local club for the surrounding neighborhood. The use changed after the Town's incorporation and became a for-profit organization, with the use then becoming legal, non-conforming. The physical use of the facility had been built in its current footprint prior to 1979 and before the MMC used the term non-profit. He understood that Adventure Day Camp proposed an amphitheater on the hillside and a ropes course, but suggested the applicant clarify all proposed improvements. He explained that the uses permitted under the MTSC operation had been primarily swimming and tennis. Since MTSC had been out of operation for more than 120 days, Adventure Day Camp would be considered a new use and the applicant was required to apply for a new use permit.

Assistant Town Attorney Karen Murphy affirmed that since the site had been out of operation it had lost its legal non-conforming use status and would have to start over.

Ms. Clark further clarified that the text of MOSO could not be changed and in review of that ordinance there was no specific reference to this use description in MOSO. The ordinance had generally covered a statement that open space lands were intended for a range of purposes, one of which was recreational passive enjoyment, including trails. After the adoption of MOSO, the non-profit language had been carried over into MOSO to implement the measure with an open space zoning including permitted uses with a required use permit. She agreed that both the MOSO text and MOSO Ordinance should have been provided to the Town Council and included in the staff report.

PUBLIC COMMENTS OPENED

Andrew Baxter, Moraga, commented that he lived near the entrance to the MTSC. He expressed concern with the proposed new use for Adventure Day Camp, the potential for an increase in vehicular traffic and speed into the Larch Avenue neighborhood, and the lack of clarity on the parking accommodations for the activities planned for the facility. He asked that parking be prohibited along Larch Avenue.

Kevin Welch, owner, Adventure Day Camp, described the plans for the former MTSC property. He commented that the proposed amendment to the MOSO text was a big issue and he was still considering whether to proceed. He thanked staff for its assistance in helping him reach this point, noted that he was in the process of applying for the use permit, but commented that the process was costly and an expense he had not anticipated. He described the proposed recreational programs for children and adults, with the potential for a partnership with the Town to include space for rental. He also planned to build a synthetic turf field. He did not see the difference between for-profit and non-profit in terms of the use permit application, stated the business would not change its programming for-profit, would have similar uses that had been provided in the past as part of the MTSC, and suggested a lot could be done with the property in partnership with the Town to address community needs.

Mr. Welch added that parking would not be permitted along Larch Avenue, the activities would be self-contained on the property, and transportation would be provided. Adventure Day Camp campers primarily traveled to the facility on buses and there was little parking needed given that the participants would be dropped off. Responding to Council, Mr. Welch suggested there would be 70 to 80 parking spaces on-site with the looped driveway able to accommodate additional parking spaces. Presenting an unofficial plan for the facility, he explained that additional renovations would be minimal with some of the existing tennis courts to be converted to a synthetic turf field and multipurpose court, the existing sand volleyball and picnic table area to require some renovation, and the amphitheater and ropes course had been added to the plan. The amphitheater and rope course were not a priority and could be eliminated from the initial plan to be revisited in the future but were intended to be built within the property limit. He did not see those improvements to be outside of the existing footprint.

Mr. Welch also clarified that he was under contract with a lease-to-own agreement with the current property owner for a five-year period. If the agreement was not successful at the end of the five-year period, he expected the agreement could be extended, or renegotiated. He added it was not his intention to use the amphitheater for loud concerts and music but to have songs and skits as part of the summer camp, to be designed to blend into the hillside.

Karen Mendonca, Moraga, a Larch Avenue resident, detailed the history of the original MTSC facility as a private club which had gone into foreclosure in the 1980s, and which had subsequently been owned and operated by the current property owner offering tennis and

swimming activities through private club membership only. The former MTSC had been out of operation for the past several years. She suggested a modification to MOSO to include language of for-profit businesses would be ill-advised since it would affect all MOSO properties in Moraga and forever change the character and traditional use of the property at 1161 Larch Avenue, which was located in the middle of a quiet neighborhood. She urged the Town Council to deny the request to change the language in MOSO, and suggested the Town should only consider a fee waiver if the Town would benefit in a specific and well-defined manner, which should be quantifiable and transparent to the public.

Clay Serrahn, Moraga, a Larch Avenue resident, also opposed the request to change the current language in MOSO to include language of for-profit businesses since it would apply to all MOSO properties in the Town. He also suggested the fee waiver request was a barter arrangement between the operator and the Town; a fee waiver would be good for the operator but bad for the immediate neighborhood given the negative impacts that could result from the operation; and overflow parking, speed of traffic, and sight distance issues along Larch Avenue could be dangerous and disruptive to the neighborhood. Given the operator's proposed activities, he suggested the parking needs would be more than the site could provide; the Lamorinda area might not be able to manage the public transport needs envisioned by the operator; Town rentals of the facility would further exacerbate the parking problem; and overflow parking on Larch Avenue would be unacceptable to the immediate neighborhood. For those reasons, he urged the Town Council to deny the text amendment and fee waiver.

Edy Schwartz, Moraga, commented that as a business person she was excited with the background, experience, and success of the business operator, and noted that the applicant planned to provide activities to a limited age group. Since the Town had limited recreational activities, the proposed programs would broaden the scope for Moraga citizens to stay in Moraga. In terms of the parking, she pointed out that parking had always been a problem for the former MTSC and the applicant would be adding parking spaces to alleviate that problem. In response to the proposed text amendment, and referencing the staff report specifically Attachment C, a memo to Jay Tashiro dated April 24, 1998, she read some of the statements from the memo into the record as related to MOSO. She agreed that some of the regulations needed to be tightened. She supported consideration of a fee waiver given the proposed use of the property, and the ability for the Town to possibly share expenses for doing improvements to the property.

Dave Schnayer, Moraga, explained that there were no plans to build any new impervious areas with the intent to re-purpose what existed on-site. He stated the operator had a good track record. In terms of the parking, a complete application would address parking, traffic, and lighting. He emphasized the costs of required surveys for the use of the property, recognized the property had been vacant for some years with no traffic or noise, and acknowledged that with a re-use there would be some impacts although the operator had proposed a plan for transportation to ameliorate some of the parking issues. He emphasized that the operator had been proactive, and had met with the Town Manager, Parks and Recreation Director, and had conducted outreach to various community groups and sports and recreational groups in the community to solicit feedback for a facility that would work for the community. He suggested the zoning text amendment would make no difference whether the operation was a non-profit or for-profit business; and suggested the fee waiver should be supported given that the use would be beneficial to the community and the operator was willing to spend monies for the various consultant reports.

PUBLIC COMMENTS CLOSED

Councilmember Trotter commented that in order to provide direction to staff on whether to consider changes to the zoning text, he would need to see the text of MOSO in order to

determine whether the proposed change to the zoning text would be inconsistent with the letter and spirit of the MOSO Ordinance. Absent that information, it would be premature to give direction on the proposed text amendment.

Councilmember Trotter suggested in terms of the fee waiver request that if it could be demonstrated the Town would receive value for the waiver, the fee waiver should be seriously considered; however, the staff report had suggested that a decision on the fee waiver was still premature since the calculation was unknown. He might be able to support a fee waiver in the future if defined benefits were clearly equal to or greater than the fee waiver. He otherwise did not see that there would be a problem approving a project within the existing footprint of the former MTSC facility.

Councilmember Trotter also clarified with Ms. Clark that the parking requirements were not part of MOSO, would be addressed as part of the Zoning Ordinance, and that the property was a unique use combining indoor square footage for various sports facilities and densities. Staff would need to understand the programming and how the timing could overlap to ensure the required parking could be accommodated. He recognized that staff was still working with the applicant to clarify those details which would be part of a parking study.

In response to Vice Mayor Metcalf, Ms. Murphy explained that the former MTSC had been a legal non-conforming use at some point. She was not aware that the former MTSC had an approved use permit for the facility. Since the site had been abandoned, the applicant must go through the use permit process, and a zoning code amendment was required to allow the application for a new use permit for the site. Currently, a for-profit recreational facility was not listed as a permitted conditional use, which required a public hearing before the Planning Commission and Town Council for the zoning text amendment. She clarified that if the zoning text amendment was approved by the Town Council, the applicant could apply for the use permit application under those provisions even though the property was within MOSO.

Vice Mayor Metcalf referenced a past proposal to subdivide the property into ten lots which had not been allowed since the property was located in MOSO and which would have required a vote of the people. He questioned whether the property was locked into recreational uses in MOSO.

Ms. Murphy advised that the property would be governed by the regulations of MOSO and the conditional permitted uses in MOSO.

Ms. Clark explained that the only permitted uses currently were agriculture, single-family residential development, and classes of recreational facilities subject to a use permit and the MOSO requirements. She also affirmed that even if the operators planned to use the site as it had been used previously by the MTSC, the operation would still have to comply with the MOSO regulations.

Mayor Wykle suggested that anything was better than the abandoned property, and the proposed facility would be a benefit to the Town. He did have concerns with the zoning text amendment which required further review. As to the fee waiver, he expressed concern setting a precedent but was informed by Councilmember Trotter of a former Town Council decision to allow fee waivers during the recession a few years ago to assist in filling some of the commercial vacancies in the Town. As a result, he suggested if there was some benefit to the Town and no gifting of public funds, he could support a fee waiver although he agreed that further details would need to be provided.

Councilmember Trotter questioned whether the cost for the effort to determine whether a zoning text amendment would be consistent or inconsistent with MOSO would be borne by the applicant.

Ms. Murphy stated that if the Town Council wished to process the zoning text amendment on its own that cost would be borne by the Town.

Councilmember Onoda suggested that the facility would likely be an asset to the Town, although given the lack of details, she agreed it was premature to determine whether or not the zoning text amendment or fee waiver should be supported.

Councilmember Arth encouraged the applicant to move forward with the project. He suggested the fee waiver was too speculative at this time to satisfy the Town's scrutiny and sought more information on both the fee waiver and the proposed zoning text amendment.

In response to the Vice Mayor's concern as to what could be required to obtain an approved use permit to operate the facility given MOSO, Ms. Murphy explained that the first step would be the zoning text amendment to allow the applicant to apply for a use permit.

Ms. Clark added that findings must be made to approve the use permit. When asked, she did not expect the need for an Environmental Impact Report (EIR) given the plans to reuse an existing facility without ground disturbing activities, or disruption of habitat. The impacts she foresaw would be addressed through traffic and parking management, and property lighting.

Ms. Murphy added that staff would have to analyze the application pursuant to the requirements of the California Environmental Quality Act (CEQA) with the preparation of an Initial Study to determine any impacts. Through that analysis, any required environmental document would be identified. It was premature to guess what document would be needed at the current time.

By consensus, the Town Council agreed that the item should return at a date to be determined; and that the Town should take up the issue of the zoning text amendment on its own, if legally allowed.

Ms. Murphy clarified that any issues with lighting, as an example, would be part of the use permit process and would be analyzed through that process and through the CEQA requirements.

Mayor Wykle declared a recess at 10:01 p.m. The Town Council meeting reconvened at 10:08 p.m. with all Councilmembers present.

C. Community Meeting Room Park Dedication Funds

Consider Resolution 35-2015 Supporting an Application for Contra Costa County Park Dedication Funds in an Amount of \$80,900 for the Community Meeting Room Park Area Adjacent to the Future Council Chambers/Community Room Project (CIP 08-302) and if Awarded, Accepting and Appropriating the Funds to the Project.

Mr. Kwan presented the staff report for consideration of a resolution to support an application for Contra Costa County Park Dedication Funds in an amount of \$80,900 for the Community Meeting Room Park Area adjacent to the future Council Chambers/Community Room Project (CIP 08-302) and if awarded, asked the Town Council to accept and appropriate the funds to the project. He introduced the Project Manager, who had additional information.

Responding to Council, Mr. Kwan stated he had spoken with a representative from Contra Costa County Supervisor Candace Andersen's Office who had suggested the Town would likely receive the funds. He suggested the funds from the County offered a good opportunity to fund the project.

Councilmember Onoda expressed her hope that the space would allow a public art program (sculpture) in the future.

Mr. Kwan advised that the landscape plans for the project had been presented to the Design Review Board (DRB) and other committees, and based on his recollection of the concept plans, there would be significant grass space that would fall within the character of the building and the scenic corridor.

PUBLIC COMMENTS OPENED

There were no comments from the public

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Metcalf) to adopt Resolution 35-2015 Supporting an Application for Contra Costa County Park Dedication Funds in an Amount of \$80,900 for the Community Meeting Room Park Area Adjacent to the Future Council Chambers/Community Room Project (CIP 08-302) and if Awarded, Accepting and Appropriating the Funds to the Project. Vote: 5-0.

D. CalPERS Risk Pool Changes

Discuss Informational Report on California Public Employees' Retirement System (CalPERS) Risk Pool Changes

Ms. Hom presented the staff report and highlighted the recently adopted changes as contained in the report "California Public Employees' Retirement System (CalPERS) Risk Pool Changes." The report had previously been presented to the Audit and Finance Committee (AFC). She reported that the Town had fared well in the CalPERS restructuring. She highlighted the tables in the staff report and identified the rates to participate in CalPERS as of FY 2014/15 as 11 percent of payroll to support Miscellaneous members and 20 percent of payroll to support Safety members, which percentages would be expected to increase slightly and gradually in future years to address unfunded liabilities.

Responding to Council, Ms. Hom explained in detail the information in the tables she had prepared and included in the staff report which had outlined the effective employer rates for FY 2015/16 relative to FY 2014/15, given the fact that starting on July 1, 2015, the unfunded liability would be isolated and paid separately. In FY 2017/18, she expected a one to two percent increase due to demographic changes, and dealing with the loss of market values from 2008; and stated in general the Safety plans would be higher in terms of increases over time versus Miscellaneous plans.

Ms. Hom also clarified that the annual unfunded liability payments were intended to pay down the total number over a 20-year time period and if the Town determined to pay it off faster that could be done. She reported that the City of Saratoga's City Council in late February 2015, for instance, had taken action to pay half of that city's unfunded liability. If the Town of Moraga paid down its unfunded liability the Town would receive credit for doing so, although if it were to pay off the total unfunded liability, for instance, and the market improved, the Town would be overfunded and could not get that money back.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Vice Mayor Metcalf requested that during the upcoming budget report the numbers for the entire staff be identified for pension costs, how it might change over previous years, and to the extent possible to project out what could be paid in the future.

Councilmember Trotter stated as long as the unfunded liability numbers were in the range shown, the Town should budget for them and pay it down over the 20 years unless there was a catastrophe requiring another approach.

Vice Mayor Metcalf pointed out that increases over the years would continue and the Town might not have the money to cover the costs.

Councilmember Trotter recommended that in the annual budgeting the Council should monitor the numbers carefully and keep them in mind during future collective bargaining.

Ms. Hom affirmed, in response to Councilmember Arth, that CalPERS charged an interest rate of 7.5 percent on the unfunded liability while the Town was earning less than a quarter percent on the Town's General Fund.

The Town Council received the report and thanked Ms. Hom for a clear and concise report.

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

Responding to the concerns raised during public comment and a request for a Party Ordinance, Chief of Police Robert Priebe stated the Town Council had adopted a Noise Ordinance in 2008.

Councilmember Trotter recalled that the Police Department had been asked to enforce the ordinance in response to past complaints, and he asked Chief Priebe to respond to the effectiveness of the ordinance.

Ms. Murphy cautioned that the item had not been agendaized and the issue was whether to agendaize a Party Ordinance as a future agenda item.

Chief Priebe suggested the current ordinance provided a great deal more ability to handle problems than prior to the adoption of that ordinance. He referenced a property which had been successfully addressed through the enforcement of the ordinance although the Town had not received the same cooperation from absentee property owners of other properties. He found the ordinance to be a great tool although he acknowledged there were problems that had to be addressed regarding the Wandel Drive property. He agreed that the current ordinance could be enhanced to help the Police Department address the property on Wandel Drive.

Mayor Wykle recommended a future agenda item consider future enhancements to the existing Noise Ordinance.

Councilmember Trotter emphasized that the current Noise Ordinance should be enforced, and Chief Priebe agreed.

Vice Mayor Metcalf asked that any enhancements to the current ordinance also address whether it would be possible to make it difficult to rent to SMC students. He asked that the item be a high priority and be in place prior to the next school year.

Councilmember Trotter agreed but noted that restricting the number of unrelated people living in a home would be problematic given Supreme Court case law.

Ms. Murphy advised that all issues for a Party Ordinance would be addressed and the item would be agendized as a future agenda item.

Councilmember Trotter also asked that staff reach out to the President of SMC, pointing out that SMC was in the process of updating its student handbook in response to another matter, and this could be another issue where there could be Town and SMC collaboration.

XIII. COMMUNICATIONS

The Town Council acknowledged receipt of the following correspondence:

Letter from the State of California Department of Housing and Community Development to Town of Moraga Finding *Moraga's 5th Cycle (2015-2023) Adopted Housing Element* in Full Compliance with State Housing Element Law

XIV. ADJOURNMENT

ACTION: It was M/S (Arth/Onoda) to adjourn the meeting at 10:49 P.M. Vote: 5-0.

Respectfully submitted by:


Marty C. McInturf, Town Clerk

Approved by the Town Council:


Roger N. Wykle, Mayor

