

**TOWN OF MORAGA  
TOWN COUNCIL REGULAR MEETING**

**May 13, 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 7:05 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**

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

**III. SPECIAL ANNOUNCEMENTS**

**Mayor Wykle** reported that the Town Council had met in Closed Session and there was no reportable action.

**IV. PROCLAMATIONS AND PRESENTATIONS**

- A. Proclamation Declaring National Public Works Week to be May 17 through 23, 2015

**Mayor Wykle** read into the record a proclamation declaring National Public Works Week to be May 17 through 23, 2015, and presented the proclamation to Public Works Director/Town Engineer Edric Kwan who thanked the Town Council for the important recognition of the Public Works Department.

**PUBLIC COMMENTS OPENED**

There were no comments from the public.

**PUBLIC COMMENTS CLOSED**

**V. PUBLIC COMMENTS**

Kathe Nelson, Moraga Chamber of Commerce, reported that the Town Council had been provided with a guide for new businesses in Moraga, the result of a collaboration between the Planning Department and the Chamber of Commerce, with copies of the guide available on the Chamber's website, and with physical copies at the Town and Chamber offices. The guide had

also been distributed to commercial realtors in Town. In addition, it was reported that Moraga resident Graig Crossley had been named Citizen of the Year, with a dinner in his honor on Saturday, May 16, at Saint Mary's College (SMC).

## VI. ADOPTION OF CONSENT AGENDA

### A. Approval of Consent Items

No items were removed from the Consent Agenda.

#### PUBLIC COMMENTS OPENED

There were no comments from the public.

#### PUBLIC COMMENTS CLOSED

<b>ACTION: It was M/S (Trotter/Arth) to adopt Consent Agenda Items 1, 2, 3, 4, 5, 6, 7 and 8, as shown. Vote: 5-0.</b>
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|----|--|----------|
| 1) | Accounts Payable Claims for: 4/17/15 (\$279,295.39); 4/17/15 (\$18.05); 5/1/15 (\$389.75); 5/1/15 (\$255,656.81)   | Approved |
| 2) | Approve Minutes for the Special and Regular Meetings on March 11, 2015   | Approved |
| 3) | Approve Minutes for the Regular Meeting on March 25, 2015  | Approved |
| 4) | Proclamation Honoring Graig Crossley - Moraga Citizen of the Year 2015   | Approved |
| 5) | Consider Resolution 43-2015 Approving Engineer's Report for the Town of Moraga Street Lighting Assessment District 1979-1; and Consider Resolution 44-2015 Declaring the Town of Moraga's Intention to Levy and Collect Assessments Under Assessment District No. 1979-1, Town of Moraga Street Lighting in Fiscal Year 2015/16 and Setting a Public Hearing Date of June 10, 2015 | Approved |
| 6) | Review and Accept the Third Quarter Year-to-Date Revenue and Expenditure Report for Fiscal Year 2014/15 (July 1, 2014 to March 31, 2015)   | Approved |
| 7) | Accept the 329 Rheem Boulevard Exterior Repainting Project (CIP No. 14-303) and Authorize the Town Manager to File the Certificate of Completion with the County   | Approved |
| 8) | Accept the 335 Rheem Boulevard (formerly 331 Rheem Boulevard) Sidewalk Project (CIP No. 08-101) and Authorize the Town Manager to File the Certificate of Completion with the County   | Approved |

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

No Consent Items were removed for discussion.

## VII. ADOPTION OF MEETING AGENDA

### PUBLIC COMMENTS OPENED

There were no comments from the public.

### PUBLIC COMMENTS CLOSED

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

## VIII. REPORTS

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

**Mayor Wykle** – Reported that he had attended the Town Board, Commission and Committee Training Session on April 28; the Recycle Smart (formerly the Central Contra Costa Solid Waste Authority) Board of Directors meeting on April 30; the Mayors' Conference in the City of Pittsburg on May 7; and the Moraga Community Faire on May 9.

**Vice Mayor Metcalf** – No report.

**Councilmember Arth** – Reported that he and Councilmember Onoda, Town Manager Keimach, Parks and Recreation Director Ingram, and Police Chief Priebe had attended the Town Gown Subcommittee meeting at SMC on April 28; and a Chamber of Commerce Board meeting on May 6.

**Councilmember Onoda** – Reported that she had attended the General Assembly meeting of the Association of Bay Area Governments (ABAG) on April 23; the Town Gown Subcommittee meeting at SMC on April 28; the Cinco de Mayo celebration on May 3; the Grand Opening for DBK, a new business in Moraga, on May 5; the Community Faire on May 9; and the SMC Chorus performance on May 10.

**Councilmember Trotter** – Reported that he had attended the Board of Directors meeting for Recycle Smart on April 30; the Mayors' Conference in the City of Pittsburg on May 7; the Moraga Community Faire on May 9; and the Mother's Day Brunch at Terzetto's Restaurant on May 10.

- B. Town Manager Update** – Town Manager Jill Keimach reported that the Moraga Rotary had recognized Town Clerk Marty McInturf as Employee of the Month; she commended the Parks and Recreation Director for facilitating the effort. She also reported that the Second Annual Moraga Community-Wide Garage Sale would be held on Saturday, May 16.

## IX. DISCUSSION ITEMS

There were no discussion items.

## X. PUBLIC HEARINGS

### A. Moraga Town Center Homes Project (City Ventures)

Conduct a Public Hearing and Consider Continued Appeal of Planning Commission Decision to Approve the Conceptual Development Plan for the

Moraga Town Center Homes project; a 36-Unit Attached Single-Family Residential Development and an Associated Zoning Amendment, Including Consideration of:

1. Introducing and Waiving the First Reading of an Ordinance Amending Moraga Municipal Code 8.48.040 to Add 12-DUA-PD Land Use Classification, and Amending the Zoning Map for the Moraga Town Center Homes Property (APNs: 257-180-082-6 and 257-190-057-6) from Suburban Office (SO) to 12-DUA Planned Development (12-DUA-MC-PD); and
2. Resolution 45-2015 Denying the Appeal, Upholding the Planning Commission's Decision, Adopting CEQA Findings and Approving the Conceptual Development Plan for the Moraga Town Center Homes Project with Modifications (*Continued from January 28 and April 8, 2015*)

**Mayor Wykle** identified the public hearing procedure for the benefit of the audience.

#### APPELLANTS:

Richard J. Olsen, Moraga, identified himself as one of the appellants of the City Ventures project, and read into the record written comments dated May 13, 2015. He suggested the project was in violation of the Town's General Plan in numerous ways, as detailed in the initial appeal; and suggested the same failings applied to the City Ventures newly-revised plan, as shared in a letter that had been transmitted to the Town Council on May 12, 2015. He noted the appellants had been advised that the landmark Napa County case was legally controlling making it clear that the Moraga Center Specific Plan (MCSP) was invalid since it violated the General Plan; the General Plan was the sole final legal basis for analyzing, approving, or rejecting any development proposal. He suggested the Town Council had no legal choice but to reject the City Ventures proposal.

Mr. Olsen thanked the Town Council for granting an extension to allow the appellants to review the City Ventures revised plans although the revisions failed to effectively address any of the major concerns. The proposal would continue to create a walled effect in violation of the General Plan's scenic corridor standards; the project would significantly impact the Moraga Way scenic viewshed in violation of the General Plan's scenic corridor standards; the revised plans remained out of character with the Moraga Country Club townhomes; additional setbacks along Country Club Drive were not comparable to the setbacks of the Moraga Country Club townhomes; the project was not consistent with the widely spaced, well set back adjoining office buildings; and the project was the wrong concept in the wrong place.

Mr. Olsen referenced the history of the incorporation of the Town of Moraga of which he had been involved, to preserve the Town's semi-rural environment, prevent extreme traffic congestion for roads in and out of Moraga, and stop the County's effort to force upon the Town condo/cluster development which would rapidly change the Town's character. He suggested the City Ventures project would take the Town back to where it was prior to incorporation, and he urged the Town Council not to take such action.

Scott Bowhay, Moraga, emphasized that the City Ventures project did not represent the character desired by the citizenry in that it was a high-density project. He expressed his hope that the MCSP would be brought closer to the vision of the General Plan.

Denise Coane, Moraga, stated that while the three appellants had been the face of the appeal, 25 families had supported the funding for the appeal, and she expressed her appreciation to

those families. At this time, she read a letter from an unidentified citizen in support of the appeal.

#### APPLICANTS:

Phil Kerr, City Ventures Chief Executive Officer (CEO), explained that he had been involved with the project over the past three years; described the background of the project; and stated it had been developed within the confines of the MCSP. He emphasized the input from three different Planning Directors and Planning staff, meetings with the Planning Commission, Design Review Board (DRB), Moraga Country Club, the Moraga-Orinda Fire District (MOFD), and the public who had all provided input that had been incorporated into the plans. Input from the Town Council had also resulted in revised plans, which were now being submitted to the Town Council. He stated the project would offer great homes; the Town would be proud of the community; the homes would be different from those typically found in Moraga; and the approval of the Conceptual Development Plan (CDP) would lock in the lowest density allowed under the MCSP. He emphasized that submittals for the General Development Plan (GDP) and Precise Development Plan (PDP) would follow and would require additional public hearings.

Charity Wagner, Director of Development, City Ventures, provided an overview of the project evolution since the initial concept, with different iterations involving over 15 separate application submittals to Town staff, from a project high of 61 units to the current plan for 36 units. Throughout all iterations, there had been a consistent theme of comments and concerns with the building height, the scenic corridor, building setbacks, and with the treatment of Moraga Way and Country Club Drive. She described the project approved by the Planning Commission; the plan presented to the Town Council on January 28, 2015; the Town Council's direction to consider additional setbacks on Moraga Way and Country Club Drive; the visual impacts and corridor design guidelines; and reducing massing along the scenic corridor.

Ms. Wagner presented the latest revised plan which removed the third story elements from buildings C and D. All cottages on Country Club Drive had been reduced in size to be able to accommodate a 10-foot setback across the board, with the exception of two areas where there was less than 10 feet because of the angle of the homes and a driveway in the back; and all setbacks on Moraga Way had been increased to a minimum of 15 feet, with a maximum of 25 feet from the property line, not including landscaping within the right-of-way (ROW). There would be no garages along Country Club Drive, and no additional curb cuts. She presented revised plans and offered an animation video of the drive-by views of the proposed project. She added that if the Town Council approved the project, at least four more public hearings would be required before the DRB and the Planning Commission.

Associate Planner Ella Samonsky presented the staff report and reiterated that the appeal had been continued from the Town Council meetings of January 28 and April 8, 2015. She identified the actions requested of the Town Council including consideration of the appeal, and the requested approvals as detailed in the staff report. She added that the Town Council and the public had been provided suggested measures for design quality that could be used in one of the conditions in the proposed resolution.

#### PUBLIC COMMENTS OPENED

Fritz Stoop, Moraga, suggested City Ventures was a venture capitalist that built infill development contrary to the rules of the scenic corridor standards and the MCSP. He emphasized the project was contrary to the Moraga lifestyle and he questioned allowing such a development which would create an eyesore at the main entrance to the Town.

Steve Huxley, Moraga, stated the project was in the wrong place given Moraga's semi-rural environment. While he appreciated the steps taken to reduce the number of units in the project, he opposed the development and expressed concern with the potential future consequences.

Mike Wilson, Moraga, supported the project and spoke on behalf of many of his neighbors who had been unable to attend the meeting. He suggested City Ventures had already proven to be a good neighbor in Moraga and had donated lumber to the Campolindo Music Theater, significantly benefiting the community. He supported the ability of private property owners to develop their land and add value, and suggested the Town Council had heard and seen everything possible to take positive action on the project.

Patrick Arnold, Moraga, owner of Filice Insurance, also supported the project. He suggested the property had been an eyesore and he found the architectural renderings to have been tastefully done. He suggested the developer had listened to the major issues, including traffic, and had scaled back the project to 36 units, which he found to be sensible and which would add scenically to the area.

Seth Freeman, Moraga, asked staff to clarify the actions before the Town Council, asked that the long-term effects of approving the project be taken into consideration, and suggested the current proposal at 36 units was too dense. He questioned the comparison of the project to the setbacks in the Moraga Country Club since the development was legal non-conforming. He suggested the developer was not willing to make revisions the residents desired and that Units 10 and 12 remained too close to the sidewalk. He asked that the Town Council uphold the appeal and allow City Ventures to return with a new project concept that would be more acceptable and more in line with Moraga. He also asked that the Town Attorney opine on the potential threat of lawsuits which could help the Town Council on how to respond.

Mario Gosalvez, an employee of Filice Insurance, directly adjacent to the project, also supported the project. He referenced his background as an SMC graduate, as a former Moraga resident, and the things that were important when choosing a community in which to reside. He suggested the City Ventures project would provide those desired qualities. He understood the project would consist of 36 high-end townhomes, to be equipped with solar panels and charges for electric cars, on a currently undeveloped vacant lot. He also understood the proposed market prices for the units would bring affluent buyers to Moraga. He asked that the Town Council allow the potential residents of the units the ability to contribute to the community.

Lori Boettler, Moraga, opposed a change in zoning; expressed concern with the traffic study and whether it included deliveries for various services; questioned allowing an outsider to set a precedent in Moraga; objected to the proposal for 36 units; and questioned the wisdom of building more homes given the current drought conditions.

Margaret (no last name given), questioned why no environmental review had been done for the project. She suggested the project was too dense, the developer had not listened to the community, the project did not meet the setback requirements, and the project would require a left turn lane in and out the project as well as a common turn lane. She added that concerns had been raised as to whether all of the meetings related to the project had been open to the public, whether the Brown Act had been violated, and whether the inclusion of barbecues would be a fire hazard. She asked the Town Council to deny the appeal given that the project was too large and in violation of the General Plan and MCSP.

Gerry Tanner, Moraga, suggested the property had been a junk lot and an eyesore with the objective to turn it into something that was better and not worse. He had attended meetings on the project over the past 18 months, and while he supported the developer's ability to develop the lot, he suggested the project could change the character of the Town. He spoke to the

reasons, from the DRB and the Planning Commission, for project approval, asked that the Town Council state whether it supported the project, and suggested the number of units for the project should be reduced.

Michelle Ross, Moraga, questioned whether impacts on schools, traffic and increased taxes had been considered. While she was not concerned with impacts to the scenic corridor, she was concerned about changing the existing zoning designation to allow residential development which would impact the turnover of existing homes.

Suzy Sparacio, Moraga, as a current renter, supported the project given that she would like to purchase a home in Moraga but could not do so currently. She suggested that higher density housing would be appropriate adjacent to the MOFD facility, the next generation needed housing, and high density housing would protect the Town's ridgelines and hillsides. She otherwise offered an invitation to anyone interested in attending a class she taught on environmental science.

Charles Coane, Moraga, described the project site as a small area with a lot of activity around it, close to Moraga Way, all a potential safety hazard and too close to Country Club Drive. He understood there had been some discussion to remove some of the median on Country Club Drive to allow diagonal parking since only guest parking and two car garages would be provided in the development. He suggested the site was too close to the office building and the MOFD, which he understood would require the installation of an eight-foot wall, as well as a deed restriction identifying the MOFD facility. While he liked the design of the project, he suggested it was not in the right place and would be better anywhere else.

Maggie Diamantidis, Moraga, agreed that the property had been a junk lot. While a resident of Moraga, her children had been unable to attend Moraga School District (MSD) schools since the programs were impacted. Since her children attended Orinda schools, they required a long commute. She suggested that none of the traffic impacts had been addressed, nor had she seen any plans for emergency evacuation out of the Town in the event of a catastrophe. She objected to the situation where the Association of Bay Area Governments (ABAG) had been allowed to force communities to do their share of addressing Bay Area population growth under the guise of global warming mitigation.

Joe Polichio, Moraga, liked the project; suggested the site was suitable for the project; recognized it was difficult for the developer to make changes; but found the project to be reasonable, attractive, and understood that anyone who purchased a unit would be aware of the proximity of the MOFD facility regardless of whether it was identified in a deed.

David Ricketts, Moraga, acknowledged that the project had a beautiful design and that the initial size of the project had been reduced, but asked what the project would have to look like to ensure no waiver of Town policies.

PUBLIC COMMENTS CLOSED

REBUTTAL:

Mr. Olsen commented that the proximity to the MOFD training facility involved additional potential impacts compared to a fire station. He read into the record a portion of a letter the appellants had submitted to the Town on May 12, 2015 which quoted the first paragraph of the MCSP. He suggested the project would result in overcrowded sidewalks and streets as residents vied for on-street parking; children would be overcrowded in the outdoor space; there would be negative impacts from the MOFD training facility; and the MOFD could be pressured to scale back or limit its training operations.

Mr. Kerr explained that City Ventures had other residential projects adjacent to fire district training facilities located in the cities of Concord and Campbell, and had other projects adjacent to railroad tracks and freeways, with impacts that could be mitigated. City Ventures had worked with the MOFD to provide mitigations from the MOFD training facility and did not see that residents would be able to force the MOFD to cease or restrict operations. Although the proposed homes would be adjacent to the MOFD training facility, he suggested the development would be a great place to live. He pointed out that Country Club residents were also close to the MOFD training facility.

Mr. Kerr saw the project as part of the vision foreseen in the MCSP of the downtown, with the residents of the project able to walk to shopping and amenities. The project would be small in terms of the overall long-term growth of the Town and would provide a more affordable place for younger families. He again asked the Town Council to allow the project to move forward, to lock in the minimum density allowed in the MCSP, and to approve the CDP. He emphasized the amount of time and work the developer had spent with everyone during the process to reach a viable solution.

Planning Director Ellen Clark explained that modifications to some of the dimensional standards provided in the MCSP were being requested with the CDP. She explained the standards in the MCSP were not zoning regulation, but guidance, allowing the Town discretion to modify the standards.

Mr. Bowhay suggested there should be a good reason to modify the policies that had been put into place in the MCSP.

Ms. Clark reported that a comprehensive traffic study had been included in the Environmental Impact Report (EIR) for the MCSP, which had evaluated the development of the MCSP Area, and the cumulative development in the Town and in the Lamorinda area. The traffic impacts had been thoroughly investigated at the time the MCSP had been adopted, and the EIR had made findings that the benefits of the MCSP outweighed the significant and unavoidable impacts found in the MCSP and other developments in the Town.

Town Attorney Michelle Kenyon clarified that from a legal standpoint, the project had not requested any waiver or variance in terms of the land use terminology. In terms of the zoning, what had been requested was that the property be zoned to be consistent with the existing MCSP designations, which was the General Plan designations. Pursuant to State law, all zoning must be consistent with the General Plan and Specific Plan. The request for zoning was an act in which the Town Council had an obligation irrespective of the project.

Ms. Kenyon explained that the General Plan for the Town was a general guide for the land use planning, and the Town had adopted a specific plan for the area, in conformance with the General Plan, which encompassed more than the City Ventures project area. When the Town Council adopted the MCSP in 2010, the MCSP had been found to be consistent with the General Plan. At the time the MCSP had been adopted, the Town Council did not amend the zoning to match the MCSP and General Plan designations. The Town Council was being asked to make the zoning for the project site consistent with the MCSP designation, and tailor the CDP specifically to the project proposed by City Ventures.

Ms. Kenyon reiterated that the actions being asked of the Town Council were to approve the rezoning to make the Zoning Map consistent with the MCSP; and to approve, modify, or deny the request by the applicant to have a CDP for the project site. She again noted that in 2010, the Town Council had to adopt a Program EIR which had considered all potential environmental impacts of the development of the entire specific plan area, and once certified and approved by the Town, the Town Council had been able to adopt the MCSP. Projects considered

subsequent to that approval, such as City Ventures, must go through its own environmental review to determine whether the project created any new and significant impacts that had not been considered in the original MCSP EIR. That process had been undertaken for the City Ventures project and it had been determined that the project, as proposed, did not create any new significant environmental impacts that had not been considered in the original EIR. She understood that SummerHill Homes had gone through the same process for the Camino Ricardo project.

Ms. Clark clarified that the project had included some changes to the ROW, at the request of the Town, to provide additional landscaping outside of the project property. The Town had requested an undulated path and landscape, and the applicant would construct and pay for those improvements which would remain public property. The Town may choose to do something different with that area if other improvements were needed in the future. The same applied to Country Club Drive where the median was being adjusted to allow parking and travel lanes to be widened, with those improvements to be undertaken by the applicant. In terms of the potential for a left turn pocket into the project along Moraga Way, the Town may redevelop that area in the future. She noted that when the MCSP had been developed, the intersection had been analyzed and a conceptual entrance had been shown at the intersection into the orchard property.

Ms. Clark added that the methodology used for the traffic study had not considered demographics, although a school study would have done so. She described the standard methodology used for traffic studies.

Ms. Wagner identified the size of the initial concept that had been proposed by City Ventures, with units ranging between 1,500 and 1,900 square feet, with single- and two-car garages, and with solar panels as a standard feature for all City Ventures homes.

**Mayor Wykle** reported that the Town Council had received correspondence from the MOFD dated May 7, 2015.

Stephen Healy, MOFD Fire Chief, identified the location where most of the MOFD training occurred on the MOFD property, and those buildings of the proposed project which could be most affected by noise from the MOFD training facility.

Ms. Samonsky advised that Buildings A1, A2, I, J, and K would have sound rated windows.

Fire Chief Healy stated, as indicated in the letter from the MOFD, that the MOFD was not opposed to residential development but did have concerns with the CDP in its present form, and believed the current design and siting of the project was incompatible with the existing MOFD training facility operations.

**Councilmember Trotter** commented that he had been closely involved in the writing and adoption of the MCSP. Speaking to the first paragraph of the MCSP and the area of School Street, the future center of the Town, he suggested it was unfair to use that language in the MCSP to characterize the City Ventures development. He also suggested this site was not an open space area of the Town, as suggested by letters and comments, and the site was an infill project. The General Plan encouraged infill development and development near the downtown core, and the MCSP had been developed to implement that policy guidance from the 2002 General Plan.

**Councilmember Trotter** noted that the densities identified in the MCSP were at the low end of the density range, which he suggested should not be disturbed; however, the MCSP also included development standards, and he suggested the project did not sufficiently adhere to

building separations along Country Club Drive. He referenced the language in Table 4-9 of the MCSP with respect to development standards in the Mixed Office/Mixed Residential areas, with two-story buildings to have a building separation of 25 feet. Given that the site was constrained, he suggested the most recent redesign had gone a long way to address that issue. He was of the opinion that a better job could be done on Country Club Drive to avoid a walled effect and to reduce the size of the cottages to allow more separation between them, which would be consistent with the density standards in the MCSP. He recommended a reduction of the size of the units along Country Club Drive between 300 and 500 square feet to provide a better looking project along that frontage; to address the concerns of those residing on the other side of Country Club Drive; and to better meet the letter, spirit and intent of the MCSP.

**Councilmember Arth** was not inclined to make the homes any smaller to achieve additional separation, and suggested a 25-foot separation could be achieved by merging three of the buildings, although that would result in a walled effect. He would rather see the proposed separations when passing by as opposed to a walled effect. As stated during the January Town Council meeting, he generally liked the project and liked it even better now with the increased setbacks, splitting Building A into two triplexes, and reducing the height and footprints of some buildings and the cumulative effects on the ridgeline views. He expressed his gratitude to the appellants and the 25 families who, with the appeal, were responsible for the improved revisions. He also liked the drive-by simulations and hoped the representation of the articulation of the facades meant there would be good quality construction. He expressed concern that further limitations on the project could affect the quality of the project. He supported the development and would vote to deny the appeal.

**Councilmember Onoda** thanked everyone for their input; she too found the current property to be unattractive, but stated that if the MOFD had a problem with the project she too had a problem. She also referenced Table 4-9 of the MCSP which called for 25 feet between the two-story buildings and agreed that the current separation of 10 feet did not follow the guidelines. She found the Town Council was obliged to follow the terms of the MCSP. She also pointed out that Buildings A1 and A2 were three-story buildings, with a required 35-foot separation, not 11 feet as shown on the plans. Also, Buildings A through B should be 35, not 25 feet, and Buildings B through C could be 35 rather than 26 feet. She suggested more modifications would be required to comply with the MCSP.

**Vice Mayor Metcalf** noted that the MCSP provided guidelines to guide the Town Council. He spoke to the background of the development of the MCSP, which had started in 1999, and which had been clear that development not occur in the greenfield areas of the Town but in the Town core. The General Plan had included a policy for the development of specific plans for both the Moraga Center and consideration of a specific plan for the Rheem area. The formation of the MCSP involved numerous public meetings and the MCSP had received final approval in 2010. He commented that the first project to be implemented in the MCSP Area had been the SummerHill Homes development, which had some issues along the way but had involved the same process. He noted City Ventures was not being given any special treatment.

**Vice Mayor Metcalf** stated the MCSP included a set of standards which would fit a range of situations, but in this case, some things had not worked out, specifically the separation of the buildings, which was why the Council had discussed the footprint size. He suggested the developer had done a nice job on the frontages, and he was not bothered by the building separations, although he would be bothered if the design resulted in several larger buildings, which was the reason he disliked the triplex depicted in Drawing SP-4.

**Vice Mayor Metcalf** suggested the project would attract new homeowners, which were needed in the Town, and there was a need for new housing stock in the community. He wanted

assurance the project would be built to the standards that staff had provided the Town Council and would like to see those standards included as conditions of approval for the project.

**Mayor Wykle** agreed with much of what had been said. In general, he supported infill, as opposed to greenfield and open space development, on empty lots to bring the property to its highest and best use. He found the project to be in conformance with the MCSP in spirit, although also referencing Table 4-9 of the MCSP, he recognized it was difficult to make that table fit on all areas of the MCSP. He read into the record the maximum residential area density, building heights, setbacks, building separations as contained in the MCSP, and as compared to the project. He recognized that if meeting the building separations in the MCSP, it would result in large buildings with all units all together, and therefore it would meet the standards but would not meet the spirit of the MCSP. He agreed that 25 feet was the separation requirement, and agreed with a recommendation to consider a smaller home size with greater separation along Country Club Drive. He also recognized the concerns with the project's proximity to the MOFD training facility but suggested that could be mitigated.

In response to Councilmember Trotter, Ms. Clark affirmed that the design standards just provided to the Town Council had not been seen by the applicant prior to the meeting but had been provided to the applicant at the meeting, with additional copies provided to the public.

**Councilmember Trotter** referenced Attachment B, the draft resolution, and specifically Condition 10, and recommended an additional sentence to that condition to read: *All of the homes built would reflect high quality design and materials and be consistent with the renderings (dated January 28, 2015), included in the proposed Conceptual Development Plan.*

Ms. Clark proposed language to be inserted into the first sentence of Condition 10, to read:

*Final architecture and home designs for all homes shall include varied materials, articulation, and high quality building materials that substantially conform to the conceptual plans and elevations provided at the January 28, 2015 meeting reflecting the modifications to the site plan approved by the Town Council on May 13, 2015, and as they may be modified based on final Design Review Board review approval.*

On the question of building separation, Ms. Kenyon recommended that the Town Council deliberate more on what the unit size or square footage should be, with some discussion with the applicant as to the unit size that would effectuate the separation the Town Council desired. She affirmed the Town Council had the planning discretion to direct the unit size and could choose a target for separation distances; however, she recommended that the Town Council receive input from the applicant on what separation would work with the design standards that had been discussed. She also affirmed that if the units were downsized to provide better separation, the Council could still require the fit and finish discussed in the renderings.

**Councilmember Trotter** reiterated his opinions on the building separation, suggested there could be a greater separation for a more attractive project, and suggested a 17.5 foot separation, but was uncertain how that would affect the square footage. He wanted the Town Council to have a dialogue with respect to the Moraga Way orientation, and found the three-story elements located in the interior of the project where they were not as visible off-site to be an acceptable adjustment to the MCSP guidelines.

**Councilmember Onoda** preferred to see a 35-foot as opposed to a 25-foot separation; something that was more representative of the guidelines.

**Vice Mayor Metcalf** suggested that staff be allowed to work out something with the applicant that would be reasonable while also increasing the separation. He had no problem with the

project, as it was, did not want to make revisions to the front side, although the back side caused some problems and if the size was adjusted, suggested it be adjusted on the back side.

**Mayor Wykle** was uncertain a 17.5 foot separation would work, and uncertain of a strict compliance with the guidelines given that could result in large buildings, which could possibly result in unintended consequences.

Mr. Kerr stated it was impossible at this time to state whether a 17.5-foot separation would be possible. He emphasized that the developer had worked on a number of compromises and reiterated that initially townhomes had been proposed on the site which complied with the requirements. He suggested that buildings A1 and A2 could be reattached to be in compliance with the guidelines. He emphasized that the developer had been asked to expand all setbacks to 15 feet and had worked hard to do that, making compromises not required by the guidelines. The width of the buildings had been set by the two-car garages and to make that smaller would take out the articulation. He emphasized the challenges responding to the recommendation for greater separation without knowing what that would mean for the project, and stated that making the units smaller would affect the interior of the units. He would rather combine the buildings to meet the letter of the law and submit an application accordingly with the intent to work with the community to find something that worked.

Mr. Kerr further commented that additional elements of design review would come up in the future, and they would continue to work with Town staff, the DRB and the Planning Commission on any list of recommended materials. He expressed a desire to continue to work with the process and adjust the design elements as needed.

Ms. Clark recognized that the project had gone through several iterations over time, and in this last round of changes staff had seen the site was constrained. She agreed that if the units were smaller in size, the floor plan and building footprint could be compromised, and emphasized that staff had worked with the applicant on some of the trade-offs in response to what the community and the Town Council had requested.

**Councilmember Trotter** expressed his hope the developer would agree to reconsider the cottages along Country Club Drive given the concern with that element of the design, and requested staff work with the applicant on that element without eliminating a building or reducing the number of units. He suggested that was the most logical way to move the project forward.

Mr. Kerr requested a recess to allow a discussion of the recommended direction.

**Mayor Wykle** declared a recess at 10:12 p.m. The Town Council meeting reconvened at 10:22 p.m. with all Councilmembers present.

Mr. Kerr reiterated his concerns with the unintended consequences and expressed concern with a never-ending process. As a result, he had requested the recess to allow a discussion with the Project Architect to see what could be done. He reported that the developer did not want a continuance. He suggested that the duplexes could be shifted approximately six feet while still preserving the park area, which would result in 12 feet each between the homes on the ground floor. The developer also requested that the ground floor not be reduced in size given that would affect the livability of the design, and had recommended a varied step back for all to achieve a 15-foot setback separation on the second floor. The developer would also continue to work through the design review process and would work with the architect to make that viable.

Mr. Kerr clarified his recommendation for two feet more between Buildings H and I, between Buildings I and J, and between Buildings J and K on the ground floor, and a 15-foot separation on the second floor for all of those buildings with a stepped effect on the side elevation, and

identified the area where they would like to maintain the 10-foot separation and 15 feet on the second floor.

**Councilmember Onoda** suggested that would still not comply with the requirement in the MCSP.

Mr. Kerr noted the buildings could be connected which would not create a walled effect, which would create a four-plex, and which would double the space and also meet the MCSP.

**Councilmember Onoda** suggested that revision would create a walled effect and would be something she would have to see visually.

**Councilmember Trotter** could accept the proposed revisions south of the driveway but would like to see more discussion for a four-plex as opposed to cottages to the northwest.

**Mayor Wykle** preferred separate as opposed to combined buildings and was not opposed to the proposal to add more separation on the second floor level, but suggested that would still not meet the guidelines.

**Councilmember Onoda** suggested the City Ventures project, not the SummerHill Homes project, represented the first test for the MCSP Area. She noted that the development located across the street included an orchard and a hill, and anything allowed on the subject site would have to fit into the existing neighborhood. She expressed concern a precedent could be set for something that was too dense on the hillside in violation of the MCSP guidelines.

**Mayor Wykle** noted that zero setbacks were allowed in residential developments.

**Councilmember Trotter** commented that since the property was transitional in nature to an existing residential area, and also with site constraints, he had less concern with the property across the street. Once reaching the site standards for the village in the MCSP, he suggested the Town would have the ability to apply the standards more vigorously since there would be land and space to do so.

**Vice Mayor Metcalf** noted that what Mr. Kerr had suggested was a reasonable step towards what Councilmember Trotter had proposed. He suggested that direction could be considered for adoption. He did not want to see a combination of buildings which would appear like a Motel 6. He liked the idea of stepping the second story back which had been done in other communities like the City of Carmel.

**Councilmember Arth** concurred that the developer's recommendation was reasonable.

**Councilmember Onoda** asked why the developer was opposed to making the cottages smaller in size, to which Mr. Kerr reiterated that once the ground floor was compressed it would impact the livability of the homes and the building articulation making it difficult to meet all of the other design parameters.

On the discussion, Ms. Kenyon read into the record a modification to the first sentence of Condition 10, as follows:

*Final architecture and home designs for all homes shall include varied materials, articulation, and high quality building materials that substantially conform to the conceptual plans and elevations provided at the January 28, 2015 hearing on the Conceptual Development Plan, reflecting the modifications to the site plan approved by*

Town Council on May 13, 2015, and as may be modified based on final Design Review Board review and approval.

Ms. Kenyon added a new Condition 10 b, to read:

*The project design and construction shall reflect high quality design and materials, consistent with the renderings submitted in conjunction with the January 28, 2015 Town Council hearing for the Conceptual Development Plan. Design Review of the project shall include consideration of materials, finishes and detailing incorporating to the greatest extent possible, as determined by the Town, elements such as the following:*

- i. *All windows should be recessed a minimum of 2.5 inches measured from the window glass surface to the exterior (windows surround thickness shall not count towards the recessed dimension).*
- ii. *Divided lite windows may use true or simulated divided lites, Muntins should project at least 3/8" inch from the glass surface. Sandwich muntins (muntin located between two panes), roll on or taped muntins should not be used. For simulated divided lights spacers should be used between panes.*
- iii. *Roof overhangs should be a minimum of 18 inches.*
- iv. *Eave overhangs may be 'open' using exposed rafters or 'boxed' using concealed rafters. Open eave overhangs should be terminated with a fascia, decorative gutters or shaped rafter tails.*
- v. *Bay windows should have windows on all projecting surfaces.*
- vi. *Roofline of bay windows should be treated with a roof form, parapet, trim or moulding.*
- vii. *Roof materials should be of high quality.*
- viii. *Window surrounds should not project more than two inches from the wall surface.*
- ix. *Window surrounds should be of a high quality material such as wood, smooth stone or pre-cast concrete. Stucco, exterior insulation and finish systems, or other foam products should not be used for window surrounds.*
- x. *Window sills should be wood, stone, brick, metal, smooth stucco, or of other similar quality approved by the Town and shall project between one and two inches.*
- xi. *Vinyl or fiberglass windows should be integrally colored. Wood, aluminum or steel may be painted.*
- xii. *Entry doors and garage door should be made of high quality, durable material that complements the architectural style.*
- xiii. *Garage doors should be recessed a minimum of 6 inches from the wall surface.*

Ms. Clark added that the last sentence of Condition 16 should be revised, to read:

*Photovoltaic panels approved by the Town shall be included on all units.*

Ms. Clark also recommended a revision to the Table under Condition 18 under Development Standards, as follows:

- Interior Side Setbacks for the Southeastern Property Line (Creek) to read: 84 feet;
- Minimum Building Separation:
  - Buildings A, B, C and D, 25 feet
  - Buildings A1 and A2, 11 feet
  - Buildings E, F, and G, 10 feet first floor, 15 feet second floor
  - Buildings H and I, 12 feet first floor, 15 feet second floor
  - Buildings I and J, 13 feet first floor, 15 feet second floor
  - Buildings J and K, 12.2 feet first floor, and 15 feet second floor

**Councilmember Trotter** recommended that the minimum separation for the units fronting Country Club Drive be 12 feet or greater, as shown on the CDP approved by the Town Council.

Ms. Clark clarified that Buildings I and J would be 13 feet, and Buildings J and K would be 12 feet, 2 inches.

**Councilmember Trotter** noted the Town Council would have to approve a CDP that conformed to the proposal that the applicant had made this evening. On the discussion, Ms. Clark stated that Table 18 should be revised to read: Between Buildings I and J, 13 feet; between Buildings J and K, 12 feet, 2 inches; between Buildings H and I, 10 feet; between Buildings E and F, 10 feet; between Buildings F and G, 10 feet, with all buildings having a 15-foot separation on the second floor.

**ACTION: It was M/S (Trotter/Wykle) to Introduce and Waive the First Reading of an Ordinance Amending Moraga Municipal Code 8.48.040 to Add 12-DUA-PD Land Use Classification, and Amending the Zoning Map for the Moraga Town Center Homes Property (APNs 257-180-082-6 and 257-190-057-6) from Suburban Office (SO) to 12-DUA-Planned Development (12-DUA-MC-PD). Roll Call Vote: 5-0.**

**Councilmember Trotter** offered a motion, seconded by **Councilmember Arth** to adopt Resolution 45-2015, as amended May 13, 2015, Denying the Appeal, Upholding the Planning Commission's Decision, Adopting CEQA Findings and Approving the Conceptual Development Plan for the Moraga Town Center Homes Project with Modifications; and subject to additional modifications proposed by the applicant May 13, 2015 with respect to the separation distances and locations of the cottages fronting onto Country Club Drive; and other modifications discussed at this time to be made to Conditions of Approval 10, 16, and 18.

On the motion, **Vice Mayor Metcalf** requested further modification to include the adoption of the CEQA findings, to which **Councilmember Trotter** stated his motion was to adopt the resolution in the form provided by staff which included those findings. As to the CDP, he questioned which iteration was being approved and affirmed with the Town Attorney that it was SP3, as modified.

**ACTION: It was M/S (Trotter/Arth) to adopt Resolution 45-2015, as amended May 13, 2015, Denying the Appeal, Upholding the Planning Commission's Decision, Adopting CEQA Findings and Approving the Conceptual Development Plan (SP3 as modified) for the Moraga Town Center Homes Project with Modifications; and subject to additional modifications proposed by the applicant May 13, 2015 with respect to the separation distances and locations of the cottages fronting onto Country Club Drive; and other modifications discussed at this time to be made to Conditions of Approval 10, 16, and 18. Vote: 4-1. Noes: Onoda.**

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

## **XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION**

### **A. MOSO Zoning Text Amendment to Allow "For Profit" Recreational Uses**

Study Session on a Zoning Text Amendment Regarding 'Non-Profit' Recreational Facilities within the Moraga Open Space Ordinance (MOSO), as requested by Adventure Day Camp at 1161 Larch Avenue (former Moraga Tennis and Swim Club) (*Initial Study Session held on March 25, 2015*)

Ms. Clark presented the staff report for a study session on a zoning text amendment regarding 'non-profit' recreational facilities within the Moraga Open Space Ordinance (MOSO), as requested by Adventure Day Camp at 1161 Larch Avenue (former Moraga Tennis and Swim Club), and asked that the Town Council conduct the study session and provide direction on the proposed zoning text amendment. She affirmed that correspondence the Town had received on the item had been provided to the Town Council and the public.

In response to Councilmember Trotter, Ms. Clark affirmed that there could be an option to add an additional subparagraph that would authorize in MOSO lands, a 'for-profit' recreational use of recreational facilities that had been constructed prior to the adoption of MOSO, provided that the 'for-profit' recreational use would not result in any increase or change in the development footprint on the property that existed at the time of the adoption of MOSO.

#### **PUBLIC COMMENTS OPENED**

Donna Ward, Moraga, read into the record written comments, and asked the Town Council to reject the application for Adventure Day Camp, a 'for-profit' business, given the language in MOSO that open space was to be used for 'non-profit' activities. She noted that property adjacent to the project site was currently for sale and questioned whether it could also be used for a 'for-profit' business. She urged the Town Council to retain the text of MOSO as is and not allow Adventure Day Camp to open its business.

Andrew Baxter, Moraga, reported that during the March 25, 2015 Town Council meeting, he had expressed concern with the parking needs that Adventure Day Camp would create for its activities. At that time, he had been informed there were no plans for swim meets and that children would be bused to the site, although he believed information available online had contradicted that information. He asked that the applicant's Walnut Creek facility be studied in terms of the traffic impacts, sought input from local realtors on the potential negative impacts to property values, and questioned the potential for liability on the part of the Town if property values were negatively impacted.

Steve Huxley, Moraga, pointed out that Larch Avenue did not have a sidewalk which raised concerns with children walking along the street within close proximity to vehicular traffic. He questioned the precedent that could be set if the zoning text of MOSO was amended to allow 'for-profit' recreational uses.

Suzanne Jones, representing Preserve Lamorinda Open Space (PLOS), stated PLOS had no objection to Adventure Day Camp as long as there was no expansion into the undeveloped portion of the parcel. PLOS did have concern with the outright elimination of the current policy requiring recreational facilities to be operated by a non-profit. She supported a solution that any approval be made in such a manner that would not expose other undeveloped open spaces in MOSO land to increased development pressure.

Linda Gong, Moraga, 1161 Larch Avenue, detailed her family's background in the community and the purchase of the former Moraga Tennis and Swim Club (MTSC) in 1981. She acknowledged the property had been vacant for some time, and that the Welch's proposal had been chosen since they already operated a successful business in Walnut Creek. She cited the numerous programs offered by Adventure Day Camp, which would be able to tailor its activities to the subject site in order to serve the needs of the Town and its families. She referenced the activities provided as part of the former MTSC and noted that swim team activities had the greatest impact on the neighborhood; however, she clarified that would not be part of the Adventure Day Camp proposal.

Ms. Gong commented that speeding on Larch Avenue was not a result of MTSC since its patrons slowed down to enter the site; disagreed with a statement that MTSC had operated without valid permits, clarified MTSC had been a 'for-profit' business prior to her family's purchase; MTSC had not been a problem in the Town or along Larch Avenue, as evidenced by Police Department records; MTSC operated from 1973 to 2008 but due to needed improvements it had become too difficult to continue the operations; and suggested a privately-owned recreational business could provide many benefits to the Town without the use of public funds. She asked that Adventure Day Camp be given the opportunity to unveil its operations, particularly since traffic, noise, and lights would be studied as part of a submitted application.

Dave Schnayer, Moraga, a real estate broker working with both the Gong and Welch families, spoke to the differences between 'non' and 'for-profit' businesses, with all potential impacts to be evaluated as part of a formal application process, and at which time the applicant would work with the neighbors to come up with something that would work for everyone. He spoke to the history of the Gong's operation of the former MTSC and the Welch's operation of Adventure Day Camp, and suggested there was no difference between a 'non' versus 'for-profit' business in the operation of a recreational facility. He supported Councilmember Trotter's recommendation on how to deal with the issue but noted that some of the specific uses on the impervious surfaces may change. He emphasized the intent to take an underutilized space and return it to a functional state to serve the community.

<b>ACTION: It was M/S (Wykle/Trotter) to extend the Town Council meeting to 11:45 P.M. Vote: 5-0.</b>
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Nina Vora, Moraga, noted she had offered written comments on her speaker card, which had been read into the record by the Mayor. She referenced the property located adjacent to 1161 Larch Avenue, which was for sale, and expressed her hope that would not be developed as well. She also understood that Adventure Day Camp proposed activities every day, year round, and which would impact the residential neighborhood.

The following individual did not speak but asked that his written comments on the speaker card be part of the record:

Ken Towers, Moraga, *I have lived on Larch Avenue for 32.5 years and my kids swam at "MTSC" for about 16 years. I think having Adventure Day Camp use this property would be an excellent idea for our youth. More recreation opportunities is a good thing. Not bad. I am not concerned about excess traffic on Larch Avenue.*

#### PUBLIC COMMENTS CLOSED

**Councilmember Trotter** commented that the property in question could potentially be redeveloped with homes with a larger footprint, which he wanted to avoid. He pointed out the proposal for Adventure Day Camp involved a separate use permit application which was not being considered by the Town Council at this time, and would only be considered by the Town

Council if the Planning Commission approved the project and its decision was appealed. The Town Council had asked to review the text of MOSO as adopted in 1986 which did not speak to recreational facilities in terms of 'non' versus 'for-profit' businesses. He recommended the addition of a subparagraph to authorize in MOSO lands, a 'for-profit' recreational use of recreational facilities that had been constructed prior to the adoption of MOSO, provided that the 'for-profit' recreational use did not result in any increase or change in the development footprint that existed at the time of the adoption of MOSO, which would address the 'non' versus 'for' profit question.

**Councilmember Trotter** suggested that staff consider a new Subsection C in Section 8.52.110, Conditional uses, of the Moraga Municipal Code (MMC) to read:

8.52.110 – Conditional uses.

In this district, each of the following uses is permitted on the issuance of a conditional use permit, provided such use is in compliance with the Moraga Open Space Ordinance:

- A. Single-family residential dwelling;
- B. Public or private park or nonprofit recreational facility, playground, trail and related facility;
- C. For-profit use of recreational facilities that were constructed prior to the adoption of MOSO, provided that there is no expansion or increase in the development footprint of the facility that existed prior to the adoption of MOSO;
- D. Public or private school;
- E. Accessory uses and structures incidental to conditional uses.

**Councilmember Onoda** liked that approach for a targeted proposal.

**Vice Mayor Metcalf** referenced property near Rancho Laguna II, which was located in MOSO lands, and questioned whether a 'non-profit' casino, as an example, could be developed, which was a concern of potential unintended consequences. He recommended an approach to specifically spell out the uses that could be acceptable.

Ms. Clark recommended that the Town Council work on a focused amendment that would allow the Adventure Day Camp application to move forward to the conditional use permit process, and consider as part of the Hillside and Ridgeline study, a look at potential permitted recreational uses in MOSO.

**Councilmember Trotter** suggested that approach was not necessary in that his amendment would address a particular issue.

**Mayor Wykle** understood that staff's recommendation was for a focused amendment now, and as part of the Hillside and Ridgeline Subcommittee effort, a discussion of permitted recreational uses in MOSO.

**Councilmember Arth** also liked the approach for a targeted proposal, and rather than directing staff to consider another approach and identify other potential permitted uses, he preferred to restrict staff's efforts to the Adventure Day Camp application.

Assistant Town Attorney Karen Murphy advised that the next step would be for staff to draft something that would go through the typical process for a zoning amendment through the Planning Commission with a recommendation to the Town Council.

## **B. Asset Replacement and Capital Improvement Program**

Consider and Provide Direction Regarding Funding the Asset Replacement Projects in the Capital Improvement Program and Receive Initial Overview of Draft Five-Year (Fiscal Years 2015/16 to 2019/20) Capital Improvement Program

The item was continued to the Town Council meeting of May 27, 2015.

**C. Letter of Support for Proposed New Local Street and Road Funding**

Consider a Letter of Support for Senator Beall's SB 16 to Create the Road Maintenance and Rehabilitation Program to Address Deferred Maintenance on the State Highway System and the Local Street and Road System

Public Works Director/Town Engineer Edric Kwan presented the staff report and asked that the Town Council send a letter to Senator Beall supporting SB 16 to Create the Road Maintenance and Rehabilitation Program to Address Deferred Maintenance on the State Highway System and the Local Street and Road System.

Ms. Keimach explained that she had received an e-mail from the League of California Cities about SB 16; the item had been forwarded to Mr. Kwan who had taken the lead and placed it on the agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Metcalf/Onoda) to authorize the Mayor to Sign a Letter of Support for Proposed New Local Street and Road Funding for Senator Beall's SB 16 to Create the Road Maintenance and Rehabilitation Program to Address Deferred Maintenance on the State Highway System and the Local Street and Road System. Vote: 5-0.**

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

Ms. Keimach identified the various agenda items scheduled for the Town Council meetings of May 20 and May 27, 2015.

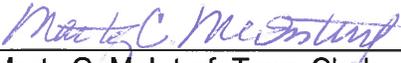
**XIII. COMMUNICATIONS**

There were no communications.

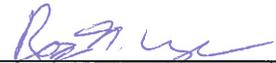
**XIV. ADJOURNMENT**

**ACTION: It was M/S (Trotter/Onoda) to adjourn the meeting at 11:44 P.M. Vote: 5-0.**

Respectfully submitted by:

  
Marty C. McInturf, Town Clerk

Approved by the Town Council

  
Roger N. Wykle, Mayor

