

**TOWN OF MORAGA
GEOLOGIC HAZARD ABATEMENT DISTRICT (GHAD)**

**September 9, 2020
MINUTES**

6:00 P.M. Special Meeting

TELECONFERENCED MEETING LOCATIONS ONLY

*** COVID-19 NOTICE ***

THIS MEETING WAS CONDUCTED PURSUANT TO THE PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20, WHICH SUSPENDED CERTAIN REQUIREMENTS OF THE BROWN ACT, AND PURSUANT TO THE SHELTER IN PLACE ORDERS OF THE HEALTH OFFICER OF CONTRA COSTA COUNTY, INCLUDING THE MOST RECENT ORDER DATED AUGUST 26, 2020 WHICH PERMITTED THE TOWN TO CONDUCT ESSENTIAL BUSINESS UNDER THE ORDER AS AN ESSENTIAL GOVERNMENTAL FUNCTION

Consistent with Executive Orders Nos. N-25-20 and N-29-20 from Governor Gavin Newsom and the Contra Costa County Health Officer Shelter in Place Orders including the most recent Order dated August 26, 2020, the September 9, 2020 GHAD meeting was not physically open to the public.

All GHAD Board Members and Town staff participated in this meeting via teleconference (Zoom webinar)

1. CALL TO ORDER

The special meeting was called to order at 6:00 p.m. by **Chair Kimberleigh Korpus**.

ROLL CALL

Board Members present: Chair Kimberleigh Korpus, Vice Chair Mike McCluer, and Board Members Renata Sos, Steve Woehleke and Roger Wykle

Board Members absent: None

2. PUBLIC COMMENTS AND SUGGESTIONS

Town Clerk Marty McInturf, acting as the Moraga Geologic Hazard Abatement District (GHAD) Clerk, reported no comments had been received via Zoom webinar attendees or via e-mail for this item.

3. ADOPTION OF MEETING AGENDA

PUBLIC COMMENTS OPENED

Ms. McInturf reported no comments had been received for this item.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Woehleke/McCluer) to adopt the meeting agenda as presented. Roll Call Vote: 5-0.

4. ADOPTION OF CONSENT AGENDA

A. Approval of Consent Items

PUBLIC COMMENTS OPENED

Ms. McInturf reported no comments had been received for this item.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (McCluer/Sos) to adopt the Consent Agenda, as shown. Roll Call Vote: 5-0.

1. Approve Minutes for the Moraga GHAD Meeting on July 8, 2020 Approved

B. Consideration of Consent Item(s) Removed for Discussion

No items were removed from consent.

5. DISCUSSION

A. Consider Moraga GHAD Legal Services Alternatives and Provide Direction to Staff Regarding GHAD Attorney Staffing Summary and Sample Scope of Services Provided

GHAD Manager Eric Harrell, with ENGE0, presented the staff report and asked the GHAD Board to provide staff with recommendations regarding appointment of a GHAD Attorney.

Responding to the GHAD Board, Mr. Harrell explained that now and until the time of transfer of GHAD responsibilities from the developer to the GHAD, the developers were supporting all GHAD activities as listed in the plan of control. The balance in the GHAD account was currently about \$4,000 because one home had been assessed for one year. Until the transfer occurred, the GHAD would be supported by the developer and at the time of transfer there would need to be a minimum of \$237,000 in the GHAD account to provide for services. All homes had been built out and would be assessed at the close of escrow. He noted there were a significant number under this year's assessment roll.

Mr. Harrell commented that given the minimum account balance required, the developer would either have to hold on to maintenance responsibilities until the time the account had been built up to that amount through assessments, or the developer may write a

check to the GHAD to meet the initial requirement. A combination of the two could also be an option. SummerHill Homes, the developer of the Bella Vista project, had offered to transfer responsibilities to the GHAD, had met the timing conditions, and were going through the GHAD punch list which comprised the account balance and other physical improvements that needed to be corrected. The Town of Moraga must accept all GHAD maintained improvements prior to the GHAD taking maintenance responsibility and ownership of the two open space parcels, which was occurring. Staff was of the opinion it would be prudent to bring the item to the GHAD Board at this time to allow discussion and feedback to staff.

Mr. Harrell understood that SummerHill Homes was working on the punch list items simultaneously with the Town of Moraga's acceptance. He noted if a landslide or something else occurred prior to the GHAD obtaining maintenance responsibilities, the responsibility would be squarely with the developer. Some developers waited for assessments to accumulate but there was also a potential risk if there was an El Niño year or some other large event that was not a GHAD expense.

Mr. Harrell stated he was aware of other GHAD Boards that had elected to have Directors and Officers (D&O) Liability Insurance for their public agency boards, two in the City of Oakland and one in the City of Anaheim, and he knew of other GHAD Boards which had not elected to have liability insurance to date. In terms of the number of hours that could be required for legal services, he noted they would be tied to the tasks needed. For small GHADs depending on the hourly rates, it could run between 350 and 450 hours, with the budgets for small GHADs running anywhere from \$4,000 to \$5,000 a year, and \$12,000 to \$15,000 for larger GHADs. It would depend on the newly formed GHAD Board when to retain legal services.

At this stage, Mr. Harrell was unaware of any GHADs that did not have legal services available to them whether an appointed position or a consultation/hourly response. In his opinion, it would be prudent for the GHAD Board to have access to legal counsel. He added that the cost of this process of hiring and securing legal counsel would be borne by the developers until the transfer had occurred. Presently, there had been no attorney time involved for the Moraga GHAD other than some review involved in the GHAD Board meeting of July 8, 2020 for the developer's submittal.

Mr. Harrell stated that most GHAD Boards had gone through an appointment process for securing legal services based on known attorneys with GHAD experience, rather than through a Request for Proposal (RFP) process. Exhibit A of Attachment A that had been included in the September 9, 2020 staff report included a summary of selected GHAD attorney positions that were currently serving GHADs or had GHAD experience forming or annexing GHADs. The only law firm he was aware of that served as legal counsel and as the GHAD Clerk was Wendel Rosen LLP, who served as the attorney and GHAD Clerk for the City of Oakland's GHADs and for the City of Hayward. They also prepared the meeting minutes. The cost for GHAD Clerk services had been included in the staff report for Agenda Item 5. B.

Mr. Harrell explained that the GHAD Board would hire the attorney and it would involve a contract between the GHAD Board and the attorney, to be facilitated by ENGE0, with examples from other GHADs able to be provided as part of public records. He noted that

the GHAD Attorney and GHAD Clerk would serve similar functions as any Town Clerk and Town Attorney.

PUBLIC COMMENTS OPENED

Ms. McInturf reported no comments had been received for this item.

PUBLIC COMMENTS CLOSED

Board Member Sos thought an attorney should be retained for the GHAD Board and the GHAD Clerk status would be discussed further, and whether that position should also serve as the same entity was part of the discussion for Item 5.B. She did not believe the GHAD Board would benefit from an RFP. She wanted to consider firms that had GHAD experience, as listed in Exhibit A of Attachment A to the staff report. She was also in favor of setting up the process in a way that the GHAD Board could make the selection and move forward in a relatively short time frame with action to hopefully be taken at the next meeting of the GHAD Board.

Chair Korpus agreed an attorney was needed for the GHAD and there was no need for an RFP. She stated there could be a competitive process to identify someone who met the GHAD's needs and she would like to move forward with it sooner rather than later.

Board Member Woehleke agreed with the comments.

ACTION: It was M/S (McCluer/Sos) to recommend an informal letter with scope of services process based upon the list of firms attached to the staff report, to be done sooner rather than later. Roll Call Vote: 5-0.

- B. Consider Moraga GHAD Clerk Services Alternatives and Provide Direction to Staff Regarding GHAD Clerk Staffing Summary, Scope, and Fees Provided

Mr. Harrell presented the staff report and asked the GHAD Board to provide staff with recommendations regarding appointment of the GHAD Clerk.

Responding to the GHAD Board, Mr. Harrell clarified Exhibit A in Attachment A to the staff report included a summary of selected GHAD Clerk positions. He clarified that EN GEO had served as the GHAD Clerk and Operating Manager since 2008 for the Wiedemann and Wendt Ranch GHADs, and since the GHADs typically only met once a year there were no additional administration fees for clerk services. Most GHAD services had contemplated a fixed fee amount to ensure that the administration fee, regardless of the time taken, was a fixed fee so it could be well structured within the GHAD budget.

As to whether the Town Clerk was compensated for her work on behalf of the GHAD, and whether there had been a documented compensation arrangement, Mr. Harrell noted as part of the July 8, 2020 GHAD Board meeting, a contract between the Town of Moraga and the GHAD for Clerk Services had been scheduled to be presented, with staff having received direction those should be separate discussions. If the Town Clerk was chosen to provide the clerk services for the GHAD Board, staff would bring back a contract or Joint Powers Agreement (JPA) depending on the original resolution to define that the

GHAD Clerk was not acting as the Town Clerk when acting as the GHAD Clerk, and the fee structure would be detailed. Given the GHAD Board had not met for five years, this was a clean-up item for staff services. Staff could work with the Town Attorney on an agreement if the GHAD Board decided that the Town Clerk would continue to serve as the GHAD Clerk until a decision had been made one way or another to ensure that the duties of the GHAD Clerk were well documented and structured.

Town Manager Cynthia Battenberg advised there was a draft agreement for professional services between the GHAD and the Town of Moraga for the GHAD Clerk, which agreement had not been executed and which had assumed the Town Clerk would serve as the GHAD Clerk permanently, but which could be modified to a limited scope if that was the desire of the GHAD Board. Or, it could be modified to include compensation for meetings where the Town Clerk had already provided assistance. The meeting minutes for the July 8, 2020 GHAD Board meeting had been prepared by the same firm that prepared Town Council meeting minutes and an invoice had been forwarded to ENGE0, which operation should be documented in the agreement.

PUBLIC COMMENTS OPENED

Ms. McInturf reported no comments had been received for this item.

PUBLIC COMMENTS CLOSED

Vice Chair McCluer stated that given the small size of the Moraga GHAD, it was appropriate in the short term for the Town Clerk to continue to act as the GHAD Clerk with the appropriate agreement between the GHAD and the Town recognizing that at some point that may change.

Responding to Board Member Woehleke, Ms. Battenberg explained that the Vice Chair's recommendation could be difficult but staff was willing to help and if the GHAD Board wanted to wait to have the other positions settled, the Town Clerk could continue to serve as the GHAD Clerk in the interim for however long the GHAD Board decided.

Board Member Sos supported the adoption of the theory that there was no time like the present and she suggested as they were getting organized and setting up to annex the property at Bella Vista and others, she would be in favor of having the GHAD Clerk position finalized to the GHAD Board's satisfaction. She supported not having the Town Clerk serve as the GHAD Clerk because she had more than enough to do for the Town and she favored to the extent possible the creation of separation between the GHAD and the Town as legal entities. At the next meeting, she would like to see a comparison of the pros and cons of having ENGE0 serve as both the GHAD Clerk and GHAD Manager, and having the firm provide the lawyer to the GHAD to serve as the GHAD Clerk.

Board Member Wykle agreed with Board Member Sos' comments and suggested that a scoping letter be sent to the GHAD attorneys and include the GHAD Clerk duties as well, with ENGE0 to respond to the scope letter and with the Town Clerk as the third backup.

Board Member Woehleke concurred.

Chair Korpus also concurred and suggested the GHAD Board should make the move now and she would be interested in pairing the GHAD Clerk role with the attorney role given the legal requirements and formalities to be observed, and would be happy to leave that up to attorneys and engineers with respect to details. She sought a recommendation from Mr. Harrell on a list of attorneys that could serve both roles and if someone was very good but not interested in also serving as the GHAD Clerk that should also be included. She wanted to see a recommendation at the next meeting of the GHAD and that the GHAD Board meet within the next month to get it done.

Chair Korpus asked the Town Clerk to document when she had been acting as the GHAD Clerk, separate, distinct and isolated from the Town, with the draft agreement the Town Manager had to be back-dated to cover all of the meetings the Town Clerk had assisted in and identify an end date to that agreement, such as the end of October 2020, in order to move the matter forward and find an attorney within a short period of time.

Chair Korpus emphasized she would like to see Mr. Harrell speak with the legal firms and let them know the GHAD Board was looking for a legal firm to fill both roles and provide some information on their willingness and cost comparisons.

Ms. Bazzano confirmed with Chair Korpus the direction to seek a professional services agreement for the GHAD Clerk services through the Town rather than a JPA agreement, as discussed in the GHAD resolution establishing the GHAD.

Ms. Battenberg commented that the professional services agreement could run for one year through 2020, or until the GHAD Board had found another GHAD Clerk and that would also go to the Town Council.

Mr. Harrell explained that he would reach out to the attorneys on the list and determine the willingness of providing both services (legal and Clerk), and conduct an introductory phone call prior to sending a letter, asking for both services and fee estimates for both to allow the GHAD Board to compare. He clarified with the Chair that based on the discussion, the preference was for a single legal firm to take on both roles, legal services and GHAD Clerk.

Vice Chair McCluer was not opposed to all options including one firm providing legal services, ENGEO serving as the GHAD Manager and GHAD Clerk, and the option for the Town Clerk to continue to serve as the GHAD Clerk.

Mr. Harrell confirmed he would return with options and would work with the Town Attorney on the existing draft agreement to ensure that the existing clerk position was covered.

6. REQUESTS FOR ACTION AND OTHER BUSINESS

A. Agreements for GHAD Treasurer, Inc. and GHAD Manager Services

1. Consider Resolution 01-2020 Approving the Change in GHAD Treasurer Designation from Watermark Asset Management, Inc. to GHAD Treasurer, Inc. and Authorizing the Board Chair to Execute a Contract with GHAD Treasurer, Inc.; and

2. Consider Resolution ___-2020 Approving Agreement between the Moraga GHAD and ENGEIO Incorporated to provide GHAD Manager Services and Authorizing the Board Chair to Execute the Agreement

Mr. Harrell presented the staff report and asked the GHAD Board to consider the adoption of the resolutions as contained in Attachment A and C of the staff report. Responding to the GHAD Board, he explained with respect to Item 6. A. that the contracts had been prepared based on what other GHADs had used and accepted but had not gone through GHAD attorney review.

PUBLIC COMMENTS OPENED

Dave Fernandez, representing GHAD Treasurer, Inc., introduced himself and was present to respond to questions from the GHAD Board.

PUBLIC COMMENTS CLOSED

Board Member Woehleke asked whether or not the GHAD Board could move forward with the item absent legal review.

Board Member Wykle clarified with Mr. Harrell that ENGEIO had prepared the contract forms for other entities which had involved some form of legal review.

Board Member Sos asked whether deferring the item was a possibility and whether the item was time sensitive, to which Mr. Harrell explained that the GHAD Treasurer had changed names, ENGEIO had wanted to verify the change in GHAD Treasurer designation given that the entity that had been appointed in 2015 no longer existed. There was some time sensitivity involved.

Chair Korpus asked whether it would be possible for the GHAD Board to authorize the change in the name without executing the contract until the GHAD Board had retained a lawyer to review it, and Mr. Harrell confirmed the GHAD Board had already provided direction on retaining legal services which would dovetail into this item.

Chair Korpus agreed with Board Member Woehleke and would rather have retained an attorney to look at the contract prior to the GHAD Board moving forward.

Board Member Sos agreed.

Board Member Wykle noted they were speaking of a page long contract, but if there was no hurry, he was not opposed to waiting for an attorney to review the contract.

Chair Korpus supported the approval of Item 6. A. for the name change without authorizing a contract and requested a motion to achieve that direction.

ACTION: It was M/S (Korpus/Woehleke) to adopt Resolution 01-2020, approving the Change in GHAD Treasurer Designation from Watermark Asset Management, Inc. to GHAD Treasurer, Inc. as requested by the GHAD Manager but not yet approving an agreement. Roll Call Vote: 5-0.

The public comment period for Item 6. A. (2) was opened at this time.

PUBLIC COMMENTS OPENED

Chair Korpus reported no comments had been received for this item.

PUBLIC COMMENTS CLOSED

Chair Korpus offered a motion, seconded by **Vice Chair McCluer** for the GHAD Board to not accept at this time the recommendation by the GHAD Manager approving agreement between the Moraga GHAD and ENGEIO Incorporated to provide GHAD Manager Services and to continue the remainder of the item to the next meeting of the GHAD Board.

On the motion, **Board Member Woehleke** clarified with Mr. Harrell the recommended action would have no impact on ENGEIO, which was funded through the developer and such action would not affect ENGEIO's work.

Chair Korpus amended her motion for the GHAD Board to not accept at this time the recommendation by the GHAD Manager approving agreement between the Moraga GHAD and ENGEIO Incorporated to provide GHAD Manager Services and authorizing the Board Chair to execute the agreement, continuing the remainder of the item until after the GHAD Board had hired an attorney.

Vice Chair McCluer as the second to the original motion, accepted the amendment to the motion.

ACTION: It was M/S (Korpus/McCluer) the GHAD Board did not accept at this time the recommendation by the GHAD Manager approving agreement between the Moraga GHAD and ENGEIO Incorporated to provide GHAD Manager Services and authorizing the Board Chair to execute the agreement, continuing the remainder of the item until after the GHAD Board had hired an attorney. Roll Call Vote: 5-0.

7. GHAD BOARD REQUESTS FOR FUTURE AGENDA ITEMS

There were no GHAD Board requests for future agenda items.

8. COMMUNICATIONS

There were no communications.


9. ADJOURNMENT

ACTION: It was M/S (Sos/McCluer) to adjourn the GHAD Board meeting at 7:01 P.M. Roll Call Vote: 5-0.

Respectfully submitted by:


Marty C. McInturf, GHAD Clerk

Approved by the GHAD Chair:


Kimberleigh N. Korpus, Chair