

bring to the facility per month to Martinez. She then noted that the Contra Costa Sun and the Oakland Tribune had front-page articles of their efforts. Also, the California Integrated Waste Management Board gave them an award in their Take-it-Back campaign.

Myrto Petreas, member, Sustainable Moraga, believed the effort is worthwhile. She explained that according to the EPA there are three billion batteries sold annually in the United States and of those less than 1% is recycled properly. She learned that people would recycle if it is convenient and they will not recycle if it is not. Central locations, such as Safeway, are most used according to the chart provided to Council. Also, curbside collection would be the most convenient and therefore most effective.

Robin Flowers, member, Sustainable Moraga, indicated that Palo Alto and Sunnyvale have curbside battery collection. San Francisco partnered with Walgreens for battery disposal. In King's County the Waste and Recycling Authority picks up e-waste and universal waste is brought to the cities corporate yards. San Ramon collects and brings residents batteries to the HHW facility. They urged Moraga to help facilitate with the law because this is a huge opportunity to make an impact and to keep batteries out of the landfill.

Barbara Ocurta, member, Sustainable Moraga, asked that this be on an Agenda in the near future. She requested that the Town enter into negotiations with either the Solid Waste Authority or Central Contra Costa Sanitary District.

Ellen Beans, member, Sustainable Moraga, noted that this Town is doing fabulous and what is needed is to have the Town's voice to support the pick up the batteries. They need Town support and she believed it is worthy of consideration.

Councilmember Bird announced that she along with Councilmember Deschambault are on the Solid Waste Board and they will relay this discussion. She further believed there is an interest about this subject.

VIII. **SPECIAL ORDERS**

- A. Public hearing on an appeal from the City of Lafayette regarding the adoption of a resolution by the Moraga Planning Commission confirming the Moraga Planning Director's discretionary decision to process the revised 123-lot Palos Colorados project without the golf course as a General Development Plan and vesting Tentative Subdivision Map Application, which is consistent with the Settlement Agreement. The Palos Colorados project is located off of Moraga Road on a 460-acre site in the Town of Moraga just south of the Sky Hy housing development in Lafayette**

Lori Salamack, Planning Director, summarized the staff report and recommended that the Council deny the appeal and uphold the decision of the Planning Commission and

Moraga staff in accordance with the Settlement Agreement and in accordance with the Moraga Municipal Code.

Steven Falk, City Manager of Lafayette, noted that Lafayette reluctantly appeals Moraga's Planning Commission's decision that the new Palos Colorados application conforms to the settlement agreement because the City of Lafayette believes it is premature to make that determination. The new application is inadequate and incomplete. It did not address the conditions required by the settlement agreement and it is therefore not consistent with the Agreement that Lafayette and Moraga spent countless hours negotiating. The developer has failed to provide a substitute plan for the golf course mitigation fee. This is the \$5 per round fee that would generate tens of millions of dollars for improving Lamorinda roads and purchasing open space. The City's position is simple, before the Town of Moraga agrees to eliminate the golf course and the golf course fee, the developer should reach an Agreement with the two cities regarding how the project will be mitigated. Until the developer reaches an Agreement with both cities any determination or decision to eliminate the golf course is premature and cannot be supported. The developer has an obligation to mitigate this project and should inform both Lafayette and Moraga in clear and measurable terms how it plans to do so. A vague promise to make the cities whole is not informative and not acceptable. Until the developer reaches an Agreement with Lafayette and Moraga, the Town of Moraga cannot know whether it is appropriate to process a General or Conceptual Development Plan. Lafayette therefore requests that the Town Council postpone a determination until the developer creates a mitigation plan that is satisfactory to both Lafayette and Moraga. He then asked the following questions: 1) Is there a compelling reason why Moraga must act at this meeting? 2) Alternatively, can they table this matter and ask staff or a couple of Councilmembers from each City to negotiate a mitigation plan that is mutually acceptable to all three parties? They respectfully suggest that the Town should at the very least seek to exhaust all opportunities to reach a mutually acceptable Agreement before upholding the Planning Commission's decision. If the Town Council is compelled to make an up or down determination at this time, Lafayette requests that the Town determine that elimination of the golf course is inconsistent with the Settlement Agreement for the reasons stated in their letter of appeal.

Rick Sabella representing, Richfield Investment, stated that this is 17 years in the making and in the last five years they have spent a considerable amount of resources trying to receive approval for the golf course. When the opportunity was given to them that they could abandon the idea of a golf course, they studied the issue and gave it serious consideration. Realizing that the impact on the environment as well as life and safety, as a developer they were eager to remove those constraints on any development. The golf course's existence was for recreational use and for revenue stream to be used to mitigate the traffic impact that the golf course would generate. They are prepared as far as the recreational component to give \$14 million to the Town of Moraga to be used for recreation and any other use deemed necessary, not just for recreation. The second component is the revenue stream, which they are honoring. In the Settlement Agreement it is very clear that both the Town of Moraga and City of Lafayette will receive \$5 for every round of golf played. If they assume that there is about 50,000 rounds a year they

are looking at approximately \$250,000 of revenue every year and when split there is approximately \$125,000 for each City. In this case, they would calculate backwards and look at how much of that money could they invest to generate revenue that will be used to pay for whatever money that was spent by Lafayette to purchase some open space. For them, the only reason they are not continuing with the golf course approach is because it will add more time and resources that they feel are not necessary. This is an opportunity to have a win/win situation. He noted that Lafayette's argument against this project from the very beginning was the traffic that would be generated. They are removing 50,000 trips to the City, and yet they will still honor the \$5 per round to be used at will. He further hoped the Town Council would agree with staff and the Planning Commission's decision that this is consistent with the Settlement Agreement.

Don Johnson, City Council Member of Lafayette, stated that in areas that are critical to Lafayette, the information that the developer provided about the project without a golf course deviates at a significant manner from the provisions of the Settlement Agreement and renders Lafayette unable to indicate that it is consistent at this time. The developer has the capability to correct these omissions, but to date has not chosen to do so other than provide non specific statements of little comfort that are not included in their applications. Therefore they reluctantly as a Council felt it was necessary to appeal the Planning Director's initial determination and now also to appeal the decision of the Planning Commission. They request that the Council make no decision until the applicant has specifically addressed the points raised in their correspondence in a manner consistent with the development agreement and incorporate those points in the proposal to be processed. The reason for appeal is that Lafayette feels it is necessary to reserve their rights while they simultaneously work cooperatively with Moraga to allow a development to proceed that complies with the Settlement Agreement.

Councilmember Majchrzak clarified that the bottom line is that Lafayette wanted a definition as to "*what will make the cities whole.*" Lafayette Councilmember Johnson responded in the affirmative. Also, issues related to trails and location of certain lots, which is connected to the general layout, but are not shown in the revised project.

Councilmember Majchrzak pointed out that Lafayette desired a definition as to what will make the cities whole before any decision is made along with other issues associated with trails, but in order to evaluate whether the golf course can be removed is making the cities whole and desired a response from the applicant. He asked how do they achieve what Lafayette is looking for at this point in time without delaying the process. Alicia Guerra, Attorney, representing the developer, indicated that at the Planning Commission meeting and subsequently indicated in their letter to Lafayette City Council dated May 18th, Richfield's position is that they are preceding as if the golf course is still in place, even though the golf course has been eliminated from the project under the revised application based on the new information and new significant impacts, Richfield still intends to pay the golf course fee and deposit that into the golf course fund. At this point, based on the language of the Settlement Agreement that means \$5 per round of play and based on tracking the information from the history of the development of the approvals, it appears that there were 50,000 rounds of play contemplated for this golf course. Richfield

indicated that they will deposit 50,000 rounds of play times \$5 for the golf course fee into a fund and make that available at \$250,000 per year until the two purposes of the Settlement Agreement have been satisfied. The idea was to have a perpetual fund of \$250,000 per year. Also, they believe there is substantial evidence to support the determination of the Planning Commission that the revised plan without the golf course is in fact in substantial compliance with the settlement agreement.

Mayor Karney believed that the equation is not outlined in the May 18th letter to the City of Lafayette, so it is missing that very specific formula. Attorney Guerra responded that the formula was included in a letter dated May 1st to the Planning Director of Lafayette, so Richfield would pay in accordance with Section 11 of the Settlement Agreement, so the idea was to continue to pay into this fund each year as if the golf course were in place. She understands that Lafayette wanted some assurance that they are entitled to \$7.7 million of improvements, and they indicated to both Lafayette and Moraga that the money would be deposited as part of the golf course fund until the cost of those roadway improvements have been reimbursed to Lafayette. They do not know the exact amount because they do not have any information indicating that amount, but the dollar amount would still be made available.

Councilmember Majchrzak pointed out that it is defined and asked Lafayette to respond. City Manager Falk believed this could become a fairly technical calculation and he is not sure if this is the proper forum to decide that matter. He explained that the Settlement Agreement indicated that there would be a \$5 per round golf course fee that is paid into a fund overseen by the two cities. Also, it indicated that the fee will increase with inflation and it defines inflation, "*as golf rounds increase, then the \$5 fee will increase at the same percent.*" For the developer to place \$250,000 into the bank each year did not recognize the inflationary effect. The Settlement Agreement did not anticipate that this fee ever ends, so the challenge before them is to calculate what is the value of that perpetual cash flow. The tool is called "*net present value,*" which is "*the current value of a series of future cash flows that will result from an investment. Future stream of benefits or costs converted into an equivalent lump sum value in today's dollars.*" It is a very standard financial tool. If the golf fee is \$5 per round, 50,000 rounds per year increasing at a modest inflation of 5%, the net present value of that over 100 years is \$19.9 million. He asked if 5% is the right inflator to use in the net present value calculation, he did not know, but found that in the last 11 years from the US pro golf tour, golf fees have increased 67%, so 5% is conservative. He added that there is a difference between putting \$19.9 million into a bank to be divided equally between Lafayette and Moraga and putting \$250,000 a year into a bank as a flat fee with a value that diminishes in real terms over time. He further believed this would be better negotiated with a couple of Councilmembers between both jurisdictions. Mayor Karney pointed out that the applicant did provide the formula to Lafayette, but Lafayette did not agree with the information.

Mayor Karney asked the Town Attorney if there is an escalator in the Settlement Agreement and is there a time limit for payment. Michelle Kenyon, Town Attorney, pointed out that what is before the Council tonight is whether or not the elimination of the golf course itself is consistent with Paragraph 20D of the Settlement Agreement, which

allows for changes in the project for certain reasons. To make that determination the Council did not need to determine what the actual figure needs to be for mitigation of elimination of the golf course. Also, Exhibit 2 of the Settlement Agreement on page 6 under Paragraph 6E refers to language that Lafayette is making its case on and that is *“following the initial payments, if there is a percentage increase in any particular year in the weighted average weekend green fee charged for a 18-hole round compared to weighted average weekend green fee charged for a 18-hole round in the year of operation when annual payments first commence, then the payments for that particular year shall be increased by the same percentage.”* She noted that the word *“inflation”* is not provided, but the language states, *“if there is a percentage increase, then the same percentage increase will be applied to the Municipal Golf Course Fund.”* She explained that it is not an automatic increase and that must be discussed further, but she would not call this an inflationary indexing in this particular exhibit.

Councilmember Majchrzak asked the Town Attorney if the issue is reimbursement for removal of the golf course, how do they include that information. He asked if approved tonight, is the Council accepting that, and if not, how do they condition the approval so they can still have potential negotiations. Town Attorney Kenyon responded that tonight solely would determine how this application would be processed. There still needs to be a determination following this decision tonight whether or not the General Development Plan application is complete. That determination can be made either at the time the Planning Director makes determination as to completeness to the application, which would still have to be done after this decision tonight or at the time of approval or denial of the project. If approved, there will be conditions imposed, one condition will relate to compliance with Paragraph 6E under Exhibit 2 of the Settlement Agreement, so there are at least two subsequent areas in the processing of this application where that particular issue should be addressed, but it should not be addressed tonight.

Councilmember Deschambault stated that it is her understanding that in order to move forward with either of those as discussed by the Town Attorney, this decision tonight must be made because the submittal requirements are different on the two. Town Attorney Kenyon responded that they cannot determine whether or not the applicant's compliance with Paragraph 6E of Exhibit 2 in general is made until they determine whether or not they are processing as a Conceptual Development Plan or General Development Plan.

Mayor Karney asked for public comment on this item.

Jeff Peacock, Chair, Parks and Trails Commission in Lafayette, stated that the statement in the revised application is that trails have a potential to disrupt restoration activities and pointed out that this area is surrounded on all sides by residences and the way to prevent environmental damage is not elimination of trails, but to add trails to guide individuals and keep individuals from wondering all over. He then encouraged the Council to restore the language from the original Agreement that included trails and that the developer work with the Lafayette Parks and Trails Recreation Commission to ensure that those trails link with the trails on the Lafayette side in order to have trails that benefit both communities.

Mike Amaro, Lafayette resident, asked the Town Attorney if the negotiated settlement becomes void if they have to start over again with the conceptual plan. Town Attorney Kenyon responded that there would be no need for the Settlement Agreement because it would be a brand new application and they would be starting from square one.

Mr. Amaro asked the Town Attorney if approved, is there the ability to negotiate the current Settlement Agreement. Town Attorney Kenyon responded that if processed as a General Development Plan, through either the determination of completeness or final approval of the project there would be an interpretation of what the requirements were of the existing Settlement Agreement. She believed negotiation on how to interpret the Settlement Agreement would occur.

Bob Duca, Sky Hy resident, indicated that his community is most impacted by this project and he understands all issues and recommended that the Council accept the request to allow the project to move forward under the General Development Plan without a golf course.

Phyllis Schultz, Moraga resident, wondered if this project would be redesigned without the golf course and how would that effect the traffic in terms of development. She objected to homes being built on fill. Also, she asked how many years would these monies be donated to the City of Lafayette and Town of Moraga if the golf course is not built. She further asked if Fish and Game accepted this project. Planning Director Salamack responded that they do not have a complete application at this time. The indication that staff has seen is that the location of the homes would be effectively in the same location as the golf course project. Also, the Town must make a determination that the revised layout is in substantial compliance with the Settlement Agreement if they operate under the Settlement Agreement, so while there are some contemplated adjustments the plan must still be found in substantial compliance with Exhibit 1 from the Settlement Agreement. In terms of Fish and Game, they have not made a determination with respect to this project yet. She then noted that the golf course was designed in perpetuity, so there was no ending date in the Settlement Agreement. In regard to points of egress and ingress, there is only one point of ingress and egress, which is on Moraga Road just south of Sky Hy. Also, there are some emergency vehicle accesses to adjacent neighborhoods, but none of that would change or is proposed to change from Exhibit 1 of the Settlement agreement if processed as a General Development Plan.

Jason Evans, member, Moraga Planning Commission, stated that the point before the Commission that they addressed was very specific and technical and it was based on what they felt met Judge Richard Patsy's Agreement that there was in fact a demonstration of substantial evidence that a substantial change needed to be made to the project. They looked at the Settlement Agreement as it is stated and they felt as a group that the demonstration had been provided by both Moraga staff and also the applicant that it was very quantitative and did demonstrate substantial evidence that this needed to be done based on the response in a very detailed manner from multiple agencies of the government. It was an extremely lengthy sentence that matched the Settlement

Agreement that Judge Richard Patsy carefully prepared with all the cities. He believed a golf course would be great in this Town, merchants would benefit from it, but the agencies made it so difficult and almost impossible to pursue. In regard to the net present value, at some future time they must discuss. Also, there is a tremendous amount in the Settlement Agreement that must be discussed in regard to specific elements such as trails, public access, recreation and net present value, which will be followed through if this continues as a General Development Plan as submitted.

Attorney Guerra clarified a few points and if Richfield is faced with going back to the beginning and processing its application without a golf course as a Conceptual Development Plan, they could keep the golf course in the project and keep processing under the Settlement Agreement to be denied by the agencies and come back 16 years from now or start over and address all issues with this revised plan. If in fact the Council finds that the revised plan is allowed to be processed because there is substantial evidence in the record as the Planning Commission has indicated, then they believe this can go forward and all of the detailed questions and issues including the dollar concerns can be addressed because they have a framework to operate under. In regard to Fish and Game, they have essentially instructed the applicant not to come back until the project changed because they are tired of reviewing a project with a golf course. Until they know what the project looks like and until they know that they can actually process the project going forward without a golf course under the settlement agreement with a General Development Plan, they have a viable project to take forward through the permitting process with the Corp of Engineers, Regional Water Quality Control Board, Fish and Wildlife Services and Fish and Game, so they wanted to find out what works for the Town of Moraga before they start that process again. In terms of trails, they will be included and it will follow exactly as in the Settlement Agreement. The homes will be located in the same area as in the Settlement Agreement. She further explained that it is the same project with 123-lots in the area proposed for residential development with open space, just the open space is not an active golf course, but trails with a passive use.

There being no further public comment on this item, Mayor Karney brought the matter back to Council for discussion and action.

Councilmember Majchrzak believed staff's recommendation is the correct approach. He understands Lafayette's appeal, but there will be other opportunities in order to discuss those issues. As a result, he is leaning toward denying the appeal and upholding the Planning Commission's decision. He stated that no one had changes in terms of assessment other than the trails and money issues, so no one else is questioning any other assessment and as a result of no new information presented relative to that in his opinion he would go along with staff.

Councilmember Deschambault reviewed the technical review of compliance with Section 20D and three letters from various agencies that showed a clear abundance of new information for health, safety, mitigations and CEQA compliance. Working out other determinations is an issue, so they must be clear and figure out how to work with

Lafayette. The financial issue is significant, but from the very specific technical review of Section 20D, she would uphold staff's position and the Planning Commission's position.

Councilmember Bird stated that based on facts presented she would be prepared to uphold the Planning Director's position and strongly encouraged the applicant and the City of Lafayette to work together.

Mayor Karney concurred with comments to uphold the Planning Director's position and the Planning Commission's position.

Mayor Karney asked for a motion.

Councilmember Majchrzak moved and Councilmember Bird seconded, to adopt the Resolution, denying the appeal and upholding the Planning Commission and Planning Director's position. Motion carried unanimously by the Council Members present (4 ayes).

The Town Council took a short recess at 9:00 p.m.

B. 316 Calle La Montana Nuisance Abatement Public Hearing

Phil Vince, Town Manager, summarized the staff report and recommended that Council continue the matter to the June 14th Town Council hearing.

Planning Director Salamack reported that a representative of the property owner is present this evening and work to abate the nuisance has commenced on the property. In the last week a large dumpster has been delivered to the property; the roof in need of repair has been removed; arrangements are being made to replace the roof; and to otherwise satisfy the directive of the Town with respect to nuisance abatement. She added that because progress has been made with regard to nuisance abatement, staff recommends continuing the hearing to June 14th in the hope that the work will be substantially completed by that time, and if not, then the Town could proceed with the directive to abate the nuisance.

Mark McGlaphan, Attorney, representing the owners, apologized on behalf of the owners that the property has deteriorated. He noted that Jamal is the son of the owner who returned from Kuwait this month and has hired contractors to remove the roof; remove the sheetrock that apparently had mold; and is looking to hire a contractor to replace the roof. Also, they will be removing the vehicles and weed abatement will occur shortly. He is making progress and this home is a significant asset to the family, so the family has an interest in fixing the property. He did not believe the Council needed to order abatement at this point because the family is taking steps. In terms of timing, there was a real estate developer outside that he spoke with tonight who felt it would take more than two months to complete, but the owner is making an effort and hopefully by June 14th the Town will be satisfied and further action will not be necessary.