Approved as Submitted: October 25, 2006

CITY OF MORGAN HILL
JOINT REGULAR CITY COUNCIL,
REGULAR REDEVELOPMENT AGENCY, AND
SPECIAL MORGAN HILL FINANCING AUTHORITY COMMISSION MEETING
MINUTES – SEPTEMBER 20, 2006

CALL TO ORDER

Mayor/Chairman Kennedy called the meeting to order at 7:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Grzan, Sellers, Tate and Mayor/Chairman Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PRESENTATION

Mayor Kennedy declared Monday, September 25, 2006 as "Family Day," a day in which everyone is encouraged to eat dinner with family/children. He said that it has been found that children in families who dine together four times a week or more are likely to perform better in school, and less likely to smoke, drink and/or use drugs. Further, frequent family dining reduces the risk of obesity and helps develop strong eating habits. He recommended individuals show their support of Family Day by pledging to share at least one meal with loved ones on September 25.

PROCLAMATIONS

RECOGNITIONS

CITY COUNCIL REPORT

Mayor Kennedy reported on a meeting to be held this Friday regarding flood control and the Upper Llagas Creek; specifically, at it relates to Morgan Hill. He indicated that a federal project began nearly 50-years ago to provide flood protection for communities adjacent to Llagas Creek and Upper Llagas Creek; including areas in Gilroy, Morgan Hill and San Martin. This project is called the PL566 project. He stated that in 1997, Morgan Hill experienced significant flooding because the flood control and storm drainage system in Morgan Hill were not adequate to cope with heavy rains. He said that Morgan Hill has been fighting for many years to get the PL566 project built. He noted the project was partially completed through the City of Gilroy, to Masten Avenue. The project stopped at this point as funding was depleted. In 1997, he invited several elected officials to a meeting; including Congresswoman Zoe Lofgren, Santa Clara County Board of Supervisor Don Gage, Morgan Hill's state assembly member and

state senator, the Water District Board representative, and flood control engineers to focus attention on getting the PL566 project finished. He indicated that meetings have been held quarterly since 1997 to keep pressure on elected officials; particularly at the federal level, to build the PL566 flood control project. If the City does not continue to apply pressure, he felt the project would stall for various reasons. He said the process has been slow and that the federal government has not adequately funded the project as it keeps getting cut from the President's budget. He stated that the Senate has included funds for the PL566 project, and the House of Representatives has included a certain amount of funds to keep the engineers working on the environmental process, and to take the project to the next level. He indicated that he would be leaving the Council the first meeting in December and requested the Council keep pressure on elected officials to keep the PL566 project moving forward. Doing so will provide flood control all the way up through San Martin and Morgan Hill. Completion of the PL566 project will provide much needed flood relief in Morgan Hill.

CITY COUNCIL COMMITTEE REPORT

CITY MANAGER REPORT

City Manager Tewes reported on the following: 1) implementation of one of the critical projects for downtown. He noted the Downtown Master Plan calls for the improvement of Third Street; one of the wider east/west streets that connects Railroad/Depot Streets with Monterey Road. He said that the Downtown Plan calls for Third Street to be a wide promenade where there will be safe and attractive pedestrian amenities that will encourage individuals to walk from the parking facilities to downtown businesses. He indicated that this project costs approximately $1.3 million and that the City applied for an MTC grant. He stated that he was pleased to hear the City was recommended for $1.7 million in funding by the grant reviewing committee, and all but approved by the MTC; one of the few projects that was recommended for funding. He indicated the City was counting on this funding source to move forward with this project. Assuming all paper work is completed and Caltrain reviews the project, it is anticipated the design will begin in January 2007, and the project go out to bid in a year or so. 2) He said that one of the complications with the PL566 project is that the City asked Congress for a budget, but that Congress has a procedure in which you must first receive project authorization at a certain level. He said that City staff has been working on two fronts: 1) getting a budget; and 2) getting the authorization for the project increased. He said that as time has passed, project costs have increased. He informed the Council that both the Senate and the House of Representatives have approved a version of the Water Resources Development Act; the authorizing bill. This bill has been sent to a conference committee; noting that there are only a few days of Congress left. He indicated that both Senator Boxer and Congressman Pombo serve on the conference committee. Therefore, the City may have a good chance of getting the authorization at a funding level that will give the City a fighting chance to win the budget battles in the future.

CITY ATTORNEY REPORT

City Attorney Kern stated that she did not have a report to present this evening.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Chuck Dillmann stated that on Saturday, a group from the Elks Lodge visited the Palo Alto Veterans Hospital, and provided a barbeque for veterans. He said that the Veterans Hospital received a large number of Iraq casualties and that most of the military personnel are not much older than those in attendance this evening (Live Oak High School students). He said that thought needs to be given as to what can be done for military personnel; not just the injured or the ones who have died and their families, but to those still in Iraq; giving them support and encouragement.

Theresa Kiernan introduced herself as the new Executive Director for the Morgan Hill Downtown Association.

No further comments were offered.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy indicated that an individual has requested to address the Council under Consent Item 9. Therefore, Item 9 will be removed from the Consent Calendar.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0)* ***Approved*** *Consent Calendar Items 1-8 and 10-13, as follows:*

1. RESIGNATION OF AN ARCHITECTURAL & SITE REVIEW BOARD MEMBER
Action: 1) ***Accepted*** *James D. Fruit's Resignation from the Architectural & Site Review Board; and* 2) ***Directed*** *the City Clerk to Commence Recruitment Efforts to Fill the Vacancy.*

2. NEW LIBRARY PROJECT – AUGUST CONSTRUCTION PROGRESS REPORT
Action: ***Information*** *only.*

3. CENTENNIAL RECREATION CENTER PROJECT – AUGUST CONSTRUCTION PROGRESS REPORT
Action: ***Information*** *only.*

4. ACCEPT THE BUTTERFIELD WELL PUMP STATION PROJECT
Action: *1)* ***Accepted*** *as Complete the Butterfield Well Pump Station Project in the Final Amount of $513,356; and 2)* ***Directed*** *the City Clerk to file a Notice of Completion with the County Recorder's Office.*

5. ACCEPTANCE OF WATERWISE DEMONSTRATION GARDENS PROJECT

Action: *1)* ***Accepted*** *as Complete the Waterwise Demonstration Gardens Project in the Final Amount of $148,050; and 2)* ***Directed*** *the City Clerk to File a Notice of Completion with the County Recorder's Office.*

6. AWARD OF PROFESSIONAL SERVICES CONTRACT FOR THE DESIGN OF TILTON AVENUE/UNION PACIFIC RAILROAD SAFETY (UPRR) IMPROVEMENT PROJECT

Action: ***Authorized*** *the City Manager to Execute a Consultant Agreement to Prepare Plans and Specifications for the Design of Tilton Avenue/UPRR Safety Improvement Project with HMH Engineers, Subject to Review and Approval by the City Attorney.*

7. PRODUCER RESPONSIBILITY FOR UNIVERSAL WASTES

Action: ***Adopted*** *Resolution No. 6052; Supporting Producer Responsibility for Universal Waste.*

8. CENTENNIAL RECREATION CENTER JANITORIAL SERVICES AGREEMENT

Action: *1)* ***Approved*** *Maintenance Agreement for Janitorial Services for the Centennial Recreation Center from October 1, 2006, until September 30, 2008, with Sunnyvale Building Maintenance in the Amount of $39,843; and 2)* ***Authorized*** *the City Manager to Execute the Agreement on Behalf of the City; Subject to Review and Approval by the City Attorney.*

10. CITY POSITION ON TELECOMMUNICATIONS LEGISLATION

Action: ***Directed*** *Staff to Draft a Letter of Opposition for the Mayor's Signature on the Advanced Telecommunications and Opportunity Reform Act (H.R. 5252).*

11. ADOPT ORDINANCE NO. 1790, NEW SERIES

Action: ***Waived*** *the Reading, and* ***Adopted*** *Ordinance No. 1790, New Series, and* ***Declared*** *That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows:* ***AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE ESTABLISHMENT OF AN R3/PLANNED UNIT DEVELOPMENT ZONE AND A PRECISE DEVELOPMENT PLAN FOR A 229-UNIT MULTI-FAMILY PROJECT LOCATED ON A 15.8-ACRE SITE AT THE SOUTHEAST CORNER OF COCHRANE ROAD AND MONTEREY ROAD (APNs 726-25-076 & -077)/(ZA-05-14: JARVIS – SOUTH VALLEY DEVELOPERS).***

12. ADOPT ORDINANCE NO. 1791, NEW SERIES

Action: ***Waived*** *the Reading, and* ***Adopted*** *Ordinance No. 1791, New Series, and* ***Declared*** *That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows:* ***AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MC-04-22: JARVIS – SOUTH VALLEY DEVELOPERS (APNs 726-25-076 & -077) (DA-05-13: JARVIS–SOUTH VALLEY DEVELOPERS).***

13. ADOPT ORDINANCE NO. 1792, NEW SERIES

Action: ***Waived*** *the Reading, and* ***Adopted*** *Ordinance No. 1792, New Series, and* ***Declared*** *That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows:* ***AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MC-05-02: JARVIS – SOUTH COUNTY HOUSING (APNs 726-25-076 & -077) (DA-06-03: JARVIS – SOUTH COUNTY HOUSING).***

9. PURCHASE OF PUBLIC WORKS VEHICLES

Director of Public Works Ashcraft informed the Council that the Public Works Department annually replaces its vehicles; using funds from the equipment replacement reserves. He indicated that 11 vehicles and a backhoe are proposed to be purchased for a total cost of $406,000. He clarified that there is funding in the replacement reserve account in the amount of $363,000. Staff is requesting the Council declare the vehicles as replacement vehicles; authorizing staff to surplus the vehicles in order to return monies into the equipment replacement fund.

Mayor Kennedy opened the floor to public comment.

Marby Lee noted that there is a small budget surplus this year; however, the City has been running deficits in the past. She inquired as to the age of the vehicles being replaced. She questioned whether the City can afford $400,000 to purchase new vehicles in lean budget times.

Mayor Kennedy noted that the 1998 Dodge Stratus has a mileage of 45,500 and that this is the typical mileage for the other vehicles being recommended to be surplused.

Mr. Ashcraft indicated that the mileage on the vehicles are from local trips, and that these are the worst kind of miles on a vehicle with the best mileage coming from long distance travel. He said that most of the City's sedans, small vehicles and utility trucks are scheduled to be replaced every 7-years. He noted that there are a couple of vehicles that have 67,000 miles. Although 42,000-49,000 may not seem like a lot of mileage, most of these vehicles are driven 8 hours a day, 5 days a week. He reiterated that short trips within the City are hard miles on vehicles. On the other hand, with the lower mileage, the City receives a better resale value when sold in surplus. Staff believes it to be in the best interest of the City to keep its fleet new and in the best shape possible. It is staff's belief that 7-years is as far as the City should extend the life of its vehicles. Otherwise, you start losing resale value and the cars are less dependable.

Ms. Lee stated that she realizes that driving in town is hard mileage, but that she has a car that has over 90,000 miles that she routinely drives around town. In budget times, such as ours, she recommended the City take a closer look and consider expenditures. She further recommended the City keep its expenditures as lean as possible and that the Council not routinely approve requested purchases/expenditures.

Mayor Kennedy noted that all vehicles are being funded from other funding sources, and not from the general fund. Nonetheless, he felt that Ms. Lee's question/concern is valid.

No further comments were offered.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0): 1)* ***Authorized*** *Vehicle Purchases Through the State of California General Services Procurement Process for the Vehicles Identified in this Report for a Total Cost of $406,007; and 2)* ***Declared*** *Vehicles on Spreadsheet as Surplus and Authorize Sale at Auction.*

City Council and Financing Authority Commission Action

PUBLIC HEARINGS:

14. ISSUANCE OF LIBRARY AND DEVELOPMENT CENTER BONDS – *Resolution Nos. 60513 and MHFA-7*

Finance Director Dilles indicated that staff is proposing the City sells bonds at a maximum amount of $6.5 million. Staff believes the amount would be $5,740,000 based upon current market conditions. He said that the maximum interest rate would be 6%, but that staff believes the interest rate will be well under this percentage. Staff would like to have some room just in case market conditions dictate the City work with its financial advisor to structure the bond/interest in a certain way. He said that it is intended to generate $3.6 million to assist with the construction of the library. He noted the cost to construct the library is at approximately $19 million and that the City needs approximately $3.6 million of this amount to be financed with bonds. He stated that this would be consistent with the current capital improvement program as well as the current budget for fiscal year 2006-07. Staff proposes to raise another $1.4 million which would go toward the "development center." He indicated that when the library moves from its current location, the City would remodel the existing library and turn the building this into a "development center" that would house engineering, planning and building staff as well as other departments. The cost to remodel the existing library facility for a development center would be approximately $2.3 million. However, $1.4 million of this cost would be generated through bonds. There would be a net $5 million in proceeds to be used for construction costs.

Mr. Dilles informed the Council/Commission that staff had discussions with two rating agencies in which the City received good ratings that will allow the City to purchase insurance. The insurance will, in turn, allow the City to sell its bonds at AAA, allowing the City to receive a low interest rate.

Mr. Dilles stated that Mayor Pro Tempore/Vice-president Grzan raised good questions about dependencies on future revenues in order to repay the bonds. He addressed the bond issue being addressed this evening as well as the last bond issued associated with the police facility. He identified the source of revenue that will be used to repay the library portion of the bond. He said the City would net approximately $5.7 million in today's dollars over the next 30-years and that the City would only need to repay approximately $3.9 million. Therefore, there will be an excess of approximately $1.8

million, over time, in terms of new financing, to repay a portion of the bond issued. He stated that staff intends to use the excess funding to set monies aside to assist the City replace components of the library; similar to what is done with the vehicle replacement account.

Mr. Dilles indicated that the City should be receiving approximately $2 million in library impact fees over the next 30 years, and approximately $3.5 million from the Santa Clara County Library Joint Powers Authority in rent for the use of the library facility.

Mr. Dilles stated that there would be the use of a portion of the debt for the development center. Staff believes that approximately $1.5 million would be generated in revenues over 30-years. He indicated the City would be collecting from other funds to pay back these funds (e.g., community development/engineering funds, revenues to be generated, etc.). However, the City plans to use future public facility impact fees to assist with the repayment of the debt. Therefore, there is a component that includes development impact fees. Whether or not the impact fees come in on time, staff intends to charge departments their share of the development center's rent based upon square footage occupied.

Mr. Dilles addressed ongoing obligations; indicating that there is a draft contract consistent with the expectations of the City and the Santa Clara County Library Joint Powers Authority. He stated that monies from the Joint Powers Authority would be solid. He indicated that payments from impact fees are based upon growth and development in the community and are uncertain. He indicated that fees are consistent with the adopted budget as well as the consultant studies that calculated the growth of future facilities and new growth/existing development.

Council Member/Commissioner Tate indicated that the City was going to investigate whether the County could also impose a similar library impact fee as the City is imposing. He inquired whether the County implemented the library impact fees.

City Manager Tewes responded that staff has asked the County to consider imposing the library impact fee, but that City staff does not have a definitive answer to date.

Mayor/President Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

City Manager Tewes noted that Finance Director Dilles mentioned staff's conversation with the rating agencies. He indicated the City received gratifying credit reports from the credit rating agencies. He said that the credit rating agencies gave the City high marks for the following: 1) a relative low level of debt in Morgan Hill, 2) a strong financial condition, 3) a credit financial management policy that meets the objectives of investors, and 4) the City funds its contingent liabilities outside of its general fund. He said that Morgan Hill uses a system of financing such that it sets aside monies as it uses the facilities for their replacement. Therefore, the facilities do not become a drain to the general fund. This was among the reasons the City received very good ratings from the credit rating agencies.

Council Member/Commissioner Sellers felt there were a couple of things to keep in mind; one being that the City has a high rating from the bonding agency. He indicated that this is not universally held by cities. He stated that there have been some cities in the area that had significant difficulties and ran into trouble. As a result, they are having difficulty financing projects. He said that sometimes it makes sense to save money to buy what you need. He said that it is rarely the case to save money to purchase real estate; including the purchase of public facilities. You need to have monies set aside and be in a prudent financial state in order to repay loans. He stated that the community has been living with an inadequate library facility for quite a few years, and that an opportunity has presented itself. He felt it made sense to use this financial strategy; knowing that the City will have a contractual arrangement with the County to assist in repayment of the debt. It is also important to keep in mind that it is not just the financial sense the Council/Financing Authority is making this evening. He noted that for years, the City had the public works facility located across town and that this resulted in inconvenience and difficult organization. It impacts customer service when it is difficult for an individual who has to drive across town. He felt that having the development center located at the civic center site would make development processing far more efficient/helpful for the organization and the community. He stated his support of staff's recommended action as the City has done well/been prudent, and that the numbers are conservative.

Acting as City Council:

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0)* ***Adopted*** *Resolution No. 6053; Making Finding of Significant Public Benefit, Authorizing Issuance of Bonds, and Approving Certain Documents.*

Acting as Financing Authority Commission:

Action: *On a motion by Commissioner Sellers and seconded by Commissioner Tate, the City Council unanimously (5-0)* ***Adopted*** *Resolution No. MHFA-7; Acknowledging Finding of Significant Public Benefit, Authorizing Sale, Issuance, and Delivery of Lease Revenue Bonds, and Approving Certain Documents.*

Acting as City Council:

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0)* ***Amend*** *the 2006-2007 Budget to Provide for Estimated $131,000 Debt Service in May 2007 and to Adjust Budget to Reflect Total $5 Million Construction Cost Funded with Bonds.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0)* ***Authorized*** *the City Manger, on Behalf of the City, to Enter into Agreements with Wedbush Morgan Securities for Financial Advisory Services and with Richards, Watson & Gershon for Bond Counsel/Disclosure Counsel Services, Subject to Review and Approval by the City Attorney.*

City Council Action

OTHER BUSINESS:

15. CIVIC CENTER PLAZA BENCHES

Special Assistant to the City Manager Spier presented the staff report; indicating that staff is requesting Council direction as far as the wording to be included on the Sister City benches. She indicated that six sister city benches were originally proposed to be located in the Civic Center plaza. This evolved to the plaza benches proposed this evening. She indicated that the Sister Cities Committee and the Library, Culture & Arts Commission are recommending 4 seat walls; leaving the remaining 2 spaces for future sister cities, as they evolve. The Sister Cities Committee will fundraise to incorporate additional seat walls at that time. She identified the language proposed to be included on the benches. Staff recommends the Council incorporate wording from each of the four sister cities' language. She indicated the City is on a critical path with the benches as cement will be poured in November. She stated that the library project is on time and schedule. Therefore, the Council needs to make a decision on the plaza benches. She informed the Council that she contacted everyone involved; inviting them to attend this evening's Council meeting in order to provide input. She noted that Mr. Dillmann and Mr. Nale were in attendance, should the Council have questions.

Mayor Kennedy opened the floor to public comment.

Chuck Dillmann confirmed that this project has been going on for a while. In the end, the item discussed at the Library, Culture & Arts Commission meeting, held last week, was a result of e-mail exchanges between John Foggiato of the Sister Cities Committee, Einar Anderson and he, as the Library, Culture & Arts Commission representatives. He said the proposal before the Council is better than they expected to achieve at the end of the meeting. He requested Council approval of the plaza benches as presented.

George Nale stated that he was delighted to see the approval of sister city benches. He stated that he spoke with John Foggiato the hour before the Council meeting. He said that Mr. Foggiato states that it was his hope the benches would reflect the City's sister cities. He stated his support of what has been presented to the Council and that the Sister Cities Committee is thankful for this consideration.

No further comments were offered.

Council Member Tate stated his support of moving forward with staff's recommended action this evening.

Council Member Sellers urged the Council to move forward with staff's recommended action this evening given all that has gone into this project. He has seen evidence of the importance of sister cities in civic settings in other cities. He indicated that there will be other opportunities to incorporate new sister cities in the future. He said that everyone recognizes the hard work the Sister Cities Committee has put into this effort.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0)* ***Confirmed*** *Wording on Benches Provided by Sister Cities Committee and the Library, Cultural, and Arts Commission, as recommended by staff.*

Redevelopment Agency Action

OTHER BUSINESS:

16. OUTDOOR SPORTS COMPLEX SCHEMATIC DESIGN AND OPERATIONAL PLAN

Executive Director Tewes said that staff would be presenting a series of alternatives for the outdoor sports complex. He indicated that several alternatives would be presented because there are several objectives that are trying to be accomplished within a limited budget. The Council will learn that it has different views from its various advisors (e.g., staff, boards and commissions, and potential users of the facilities) in terms of priorities. He indicated that approximately six years ago, the Redevelopment Agency acquired 38-acres on Condit Road, known as the soccer complex. The property was purchased for the purpose of converting the facility to a community use. The City has an adopted master plan for how the facility can be used in terms of providing a variety of sports fields. He said that as recently as February 2006, the Council adopted an objective that the City start a project with Phase I. The Council learned how the policies and objectives have been revised over the years to reach this point, and how staff tried to design a Phase I project that achieves the Council's objectives. He reminded the Council that funding for the purchase of land was from Redevelopment Agency funds. Funding for the construction of Phase I would come primarily from park development impact fees and a community recreation center impact fee. These fees establish a budget of $2.8 million for this project. He indicated that one of the important goals was to try to keep the youth soccer association, CYSA, as a part of the facility. He stated that the City would like to proceed with the construction of the outdoors sports complex without harming CYSA's ability to use the soccer fields.

Special Assistant to the City Manager Spier informed the Agency Board that this item relates to Phase I of the outdoor sports complex with a $2.8 million budget. She stated that a series of schematic design alternatives will be presented to the Agency Board. She indicated that the team working on this project include project architect Lee Steinmetz and Adit Pal with Bellinger, Foster and Steinmetz; Jim Dumas, senior project manager of design; Glen Ritter, senior project manager for construction; Steve Rymer, Director of Recreation and Community Services; Todd Capurso, Special Assistant to the City Manager on an interim basis, and Mori Struve, Deputy Director of Public Works. She informed the Agency Board that a Council action was taken on December 15, 2004. At that time, the Council/Agency Board approved the master conceptual plan, the Phase I plan, the program, and the cost estimates following a year long process; working with the sports group. Staff was directed to begin the design of the Phase I plan, and to start an RFP process for the private/public operator options.

Ms. Spier indicated that in February 2006, the Council/Agency Board came up with some goals for staff. The first one was a policy statement that stipulates that the 38-acres should be purchased for the purpose of using the facility to meet the community's recreational needs. She stated that alternatives focused on two fields as part of Phase I. There was also a policy statement regarding CYSA such that until

sufficient capital and operating funds could be identified, staff was asked to maintain a relationship with CYSA and to extend their lease. Further, that CYSA be encouraged to be an operating partner. She informed the Council that she has been in conversation with CYSA who state they are interested in continuing with the City and would like a 3-5 year extension of their lease. CYSA would agree to maintain the 9 remaining grass fields as long as they remain in control of this portion of the facility. The Agency further presented staff with another goal: Within 1 year, the City is to construct 1 or more fields in Phase I as an artificial field(s) for community use during the weekdays and for weekend use by CYSA. When not scheduled by the CYSA, the fields would be open to community use. She informed the Agency Board that CYSA operates the facilities approximately 40 weekends per year, and that they have determined that this number would not change.

Ms. Spier stated that the Agency Board gave staff a budget of $2.8 million with a goal that within the next year, the City would look at improvements to go with the field(s). This would include permanent parking, lights for the artificial field(s), a concession stand/restroom facility, and fencing to keep individuals off the grass area; maintaining control of the artificial turf area. Another policy stipulated that staff continue to work with partners. She indicated that staff continues to dialogue with CYSA for lease terms as their lease is up in December 2006. Staff has also been working with the non profit sports group.

Ms. Spier informed the Agency Board that a joint workshop was held by the Parks & Recreation Commission and the sports group to discuss what would be included in the Phase I plan. Also, discussed was the visitor serving segment of the local areas so that the complex continues to be a regional draw. She indicated that the Parks & Recreation Commission made a recommendation for Agency Board consideration last night. The Parks & Recreation Commission recommends the approval of Alternative 2B which consists of two basic fields with some considerations. She stated that the sports group also prefers alternative 2B; two basic fields that would include stubbed in lights, but no lighting, and no improvements to the parking lot. This alternative was chosen because it keeps the project within budget. She said that it is staff's recommendation the Agency Board approve Alternate 5; a basic artificial turf field and the building in order to stay within budget. The preferred choice, not within budget, would be a fully equipped artificial turf field that includes lighting and a building. It is staff's belief that a fully equipped field would increase/enhance community use and would assist with cost recovery. She presented an overview of the preferences regarding the scope of work for Phase I, within budget. She indicated that the Parks & Recreation Commission and youth sports groups feel that the first priority should be the installation of two fields, second priority - the building, concessions and restrooms; and third priority - having lights for the artificial turf fields. She stated that she spoke to Frank Marotto, General Manager for CYSA, who states support of anything that benefits the community's use. She indicated that staff's first priority would be an artificial turf with lights and a building. She requested the Council identify the project to be bid out in February 2007, with a May-September 2007 construction timeline in order to provide the least interference with the CYSA schedule. She indicated that the CYSA's prime operating time is January – April and that staff wanted to avoid construction during this time period.

Lee Steinmetz, project architect, addressed the overall master plan approved by the Council/Agency Board in December 2004 that accommodates the idea of ultimately dividing the area into two areas: one area would be used for soccer and football, and the other area for baseball and softball; avoiding overlapping fields. A primary area is proposed with a restroom/concession building and administrative office area with a center play area. Parking is proposed to be improved; connecting to the adjacent Aquatics Center with the idea of having overflow parking for both facilities. Also, designed is an open grass area for team staging. He indicated that both fields are multi use facilities. However, only one field is multi use for football. He clarified the numbers being discussed are project costs, not just construction costs. He informed the Council that the total cost for the project is $7.54 million and that this is over the budget allocated for the project.

Mr. Steinmetz said that it was recognized that the project would be over budget when you look at everything. The design team looked for staff direction; looking at one fully equipped synthetic turf field instead of two fields, as well as developing a building, and a staging area; while leaving the parking area as it exists today. He clarified that a fully equipped facility would include lighting, bleachers, an elevated score booth pad/score board, fencing, goal posts, and all items needed to play games on the fields. The budget for this proposal is at $3.35 million, still exceeding the Agency Board's budget. Based on the fact that this alterative includes all the bells & whistles and is over budget, the design team looked at a basic synthetic turf field that would include: fields, all items needed to play on the fields, fencing, and conduits for lighting, but would not include installation of lighting or score board(s) at this time. A pad would be set up where bleachers could be added in the future. This alterative would include a building and is within the Agency Board's budget; coming in at approximately $2.7 million.

Mr. Steinmetz informed the Council that a study session was held with the Parks & Recreation Commission and the sports groups. These groups were asked to come back and review where the City was in the process and seek their input once again. In talking with the sports group, they state that they would prefer seeing two basic fields rather than 1 field that includes lighting, bleachers and all the bells and whistles. The team went back to look at the alternative of developing 2 basic fields, without lights, but included the conduits for lights without a scoreboard/bleachers; including the building and the small staging area. The budget for this alternative was close to $3.7 million. Again, this is over the identified budget. In looking at this alternative, it was realized that 2 basic fields could be designed, but the building could not be accommodated within budget.

Mr. Steinmetz indicated that he worked with Paul Davis, architect, who was asked to design a building that would be compatible, and reflect the design of the aquatics center in order to give the appearance of one complex. The proposed building would include men/women restrooms; a couple of family changing/family restrooms as well as a concession/office space. He said that all sports groups felt that having concession space is important as it would generate revenue for the City and sports groups. He referred to the list of alternatives studied within budget. He noted that alternative 2b, two basic fields, is the alternative being recommended by the sports group and was recommended by the Parks & Recreation Commission. He indicated that alternative 5 is the preferred alternative for staff.

Mr. Steinmetz provided the Agency Board with the overall schedule. He pointed out a critical path deadline for completion of 50% construction documents as October 25, 2007. He stated that the design team needs Agency Board direction in order to meet the 50% submittal in order to stay on schedule, and have a bid package ready to bid by February 2007. He indicated that time is included for adequate city review and to support architectural review. He stated that the team does not want to short change these review times as this project goes through the process.

Agency Member Sellers noted that the 2004 master plan includes baseball fields. He inquired whether these fields would still be incorporated.

Mr. Steinmetz said that what is being shown are the existing soccer fields with the idea that until this phase is done, CYSA would be able to use all of the fields. They are setting up the design such that the baseball fields can be incorporated in the future. He indicated that the estimates do not include all of the infrastructures, undergrounding, stub outs, conduits for the lighting, etc., for future installation. However, it is the idea to install the minimum improvements of what is needed so that you do not need to go back and tear up the fields later to add lighting, communications for score boards, etc.

Mr. Pal stated that the parking lot is not being graded/re-graded because it would trigger offsite improvements along Condit Road; adding $1 million to the project.

Glenn Ritter addressed the triggers that necessitate offsite improvements. As the parking lot is not being changed, the existing use is not being changed. He clarified that reconstructing two existing natural fields to turf fields is not considered a change in use.

Vice-chair Grzan inquired as to the funding source for the project.

Executive Director Tewes responded that 95% of the project is being financed by park development impact fees, and a small portion is being financed by the community recreation center impact fee, a relatively new impact fee.

Vice-chair Grzan noted the proposal before the Agency Board includes additional costs. He inquired where the funds would come from to cover these additional costs.

Executive Director Tewes informed the Agency Board that staff is recommending options that fall within the budget because staff has not identified other resources beyond the approved budget. He stated that the architects and the project team wanted to walk the Agency Board through the phases; starting with the Council's goal. The goals include the construction of 1 or 2 fields, parking lot improvements, concessions, etc. Staff wanted to identify the costs associated with the Agency goals. However, the City is constrained by the budget. He said that the Agency Board can construct a variety of options/alternatives as has been done this evening. He stated that the Agency Board has elements associated with the project that have different perceived priorities by different individuals involved in the process. He said that staff is trying to find out the Agency Board's priority that fits the budget.

Agency Member Carr appreciated having all the alternatives laid out for the Agency Board so that it understands the progression. Also, the Agency Board can understand what the Parks & Recreation Commission and user groups have gone through. He noted that staff put together a project schedule and inquired whether there was a significant difference in the schedule based on the different alternatives and different recommendations.

Mr. Steinmetz stated that there are different sub consultants working on different items. For example, he has an architect working on the architectural drawings for the building. This does not influence the schedule working on the fields. What influences the schedule is the approval of the elements that do not include the building; only to find out at a later date the City wants to include a building. He indicated that the schedule is compressed because there are parallel sub consultants working together. Regardless of which alternative the Council approves, you are looking at a 20-month schedule, through construction.

Vice-chair Grzan inquired as to potential future funding sources.

Executive Director Tewes noted the land is owned by the Redevelopment Agency. If there are sufficient redevelopment funds, they could be allocated to this project. Use of park development impact fees is the existing funding source being used for Phase I. He indicated that this project is not included at a more expensive level in the development impact fee program. Therefore, it would not be likely to generate the extra million dollars necessary to accomplish the $7.5 million project.

Ms. Spier addressed the maintenance and operation costs; indicating that the project team reviewed the three preferred alternatives (2b, 5, and 1) that addressed the cost per hour to be 7% with a 70% usage. She indicated that staff used 7% because the Council/Agency Board recently approved this percentage as a cost recovery target. She said that a 7% cost recovery would be a charge to the community at $3.13, $4.17 or $3.02 per hour. She informed the Agency Board that the supplemental information presented this evening goes into detail about how the City could move up to 100% cost recovery using the fields 100% of the time. Using this aggressive number would result in fees going up to the $30-$40 per hour range.

Chairman Kennedy indicated that maintenance costs are important. He requested that staff walk the Agency Board through the operational sports complex schematic design operational plan/maintenance.

Executive Director Tewes informed the Agency Board that Todd Capurso has been assigned to the City of Morgan Hill for 3 months under a Management Exchange Program. He indicated that Mr. Capurso's assignment is the operations and maintenance manager for the City of San Jose's Parks & Recreation and Neighborhood Department. He asked Mr. Capurso to take a look at this item and that Mr. Capurso prepared the memorandum before the Agency Board.

Special Assistant to the City Manager Capurso informed the Council that the supplemental report addresses the annual costs associated with six areas: 1) turf maintenance of the synthetic field (does not address/include the natural turf fields); 2) grounds maintenance; 3) building maintenance; 4) future replacement (10 years); 5) temporary restrooms; and 6) lighting.

Chairman Kennedy inquired whether the regional study for the southeast quadrant would include recreational uses.

Executive Director Tewes informed the Agency Board that a consultant is moving forward with a study pursuant to the Council's Urban Growth Boundary discussions for the southeast area. The Council asked that staff look into the future and try to identify where future industrial parks might locate. Staff was also asked to look into commercial recreational opportunities at the southeast corridor. He indicated that the City's consultant is looking at the market potential for commercial recreational facilities in the southeast corridor to which this area is a part of. He indicated that this facility was purchased by the public for the community's use as a public recreation facility.

In response to Agency Member Tate's question, Mr. Rymer informed the Agency Board that Mr. Capurso completed the supplemental report today and that the Parks & Recreation Commission did not have benefit of reviewing the report. Therefore, the report was not factored into their recommendation, from a cost recovery stand point.

Agency Member Sellers inquired as to the difference in annual costs between the portable restrooms/facilities and the construction of a building.

Mr. Rymer indicated that annual costs have been identified to be approximately $25,000 per year. It would be approximately $8,000 in annual maintenance costs; working with a company to lease and maintain the portable restrooms.

Chairman Kennedy referred to the agreement with the CYSA organization and potential users. He noted that the alternatives presented builds a more usable facility. It was his belief the contract use/cost could go up because of the increased value. He inquired whether staff looked at renegotiating the agreement with CYSA to increase their cost.

Executive Director Tewes indicated that staff made inquiries with CYSA about the extension of the existing lease. He indicated that CYSA has not expressed the view that they would be willing to pay more, but that staff is still in negotiations with CYSA. He stated that he would not expect a significant increase in rental income to the City from CYSA, given the City is asking them to reduce their expectations at the same time the City is improving the fields. He said that if one of the options is a synthetic field and a grass field for the community, these fields would be taken out of their grass field inventory. He indicated that it is important to CYSA to allow the grass fields to rest. However, it is important to allow its use by the community's youth. He stated that CYSA prefers maintained grass fields to synthetic fields, but that they would appreciate the use of the synthetic field. He said that there are a lot of factors that need to be taken into consideration in terms of the City's and CYSA's objectives.

Chairman Kennedy felt that synthetic fields are usable at different times. If CYSA has an option of being able to obtain 1 or 2 artificial fields, he felt it would add value to the organization.

Vice-chair Grzan inquired as to the cost recovery associated with providing 2 fields and a building.

Mr. Rymer said that a 7% cost recovery was identified as a base line because this was the number used in the sports field rentals a few months back. He said that in an ideal world, the fields would be used 100% of the time. He stated that a cost of $36.50/hour would achieve community access and full cost recovery. In order to achieve 50% cost recovery, the City would need to charge $18.25/hour to the user group, and 25% cost recovery would result in a $9.13/hour charge. In order to achieve 7% cost recovery, it would result in a $2.55/hour charge. He said that reality dictates there would not be 100% usage of the fields. He said that 70% usage is realistic with sport teams having an opportunity to use the fields; working with CYSA. He said that this alternative would address community access versus the cost recovery goals. He informed the Agency Board that staff has not applied a rental rate for the restroom/concession building and its use. He said that an option would be to apply a rental rate for the building as would be applied for the use of the fields. Another alternative would be revenue sharing, but that this alternative takes more administrative work, and work on the users side to try to administer. He stated that you can achieve cost recovery with 2 fields and a concession/restroom building.

Mr. Steinmetz clarified the project would be constructed during the months of May through September. He acknowledged there would be differences in construction time; depending on whether the project proceeds with one field versus two fields, and whether a building is included. There could be some adjustments to the schedule; depending on the scope of the project at the construction end. He said that he would be hesitant to do much with the schedule at this time. He would hate to cut the construction schedule so short the City ends up in a panic mode to complete the project in order to allow the CYSA organization to use the facility by September. He indicated that he could take a look at the full construction schedule based on the scope decided upon this evening. Once the scope of work is identified, he might be able to adjust the schedule a little.

Agency Member Sellers noted the City would not have enough resources to complete two fields, a building and lighting. He inquired whether it would be prudent to design all components at this time; leaving the installation of some of the amenities to a future date, once funding becomes available.

Mr. Steinmetz informed the Agency Board that his contract includes the design of two fields, a building, lights and parking area. The Agency Board could decide to reduce the scope of work. He felt it to be a good idea to have a total project designed, and that the Agency Board could then decide what it wants to put out to bid. A total project design would give the City flexibility in the future.

Agency Member Carr inquired whether the building would add approximately $1.1 million to the project.

Mr. Pal said that a basic building cost would be approximately $600,000, and that there are some utility costs associated with the building. Adding a design contingency, construction contingency, bonds and mobilization, and project management costs, it adds approximately $1 million to the project budget.

Chairman Kennedy felt the concession facility could be a tremendous revenue source, and that its use should be included in the rental fees. As an alternative, the City could operate the concession stand to help offset operating costs. He inquired whether the concession stand would prove to be a significant source of revenue.

Ms. Spier said that the concession building would include a warming kitchen and would be dependent upon each group bringing in their kitchen equipment/supplies. She stated that CYSA has indicated that the concession facility is a perfect use for their needs. It is intended that CYSA would have first priority to rent the concession facility on weekends and that the concession facility would be made available to sports groups and community users Monday-Friday, with users bringing in their own equipment. She said the model being proposed is 1-2 artificial fields and a concession building to be rented on the weekends; negotiating with the CYSA organization. She indicated that the current contract with the CYSA organization is for the use of 9 grass fields. Staff is discussing how the 1-2 fields would affect the CYSA agreement. She informed the Agency Board that it would not be profitable for the City to run the concession stand at this time. She indicated that the Parks & Recreation Commission raised the question about the City charging a rental fee as well as a percentage of the take for the day. Staff has found that it is staff intensive to ask the groups to bring in their books and show their tickets, versus charging an hourly rate and be able to depend on the rental rate. This is the model to be proposed by staff.

Chairman Kennedy opened the floor to public comment.

Marby Lee said that in looking at the numbers presented, they are based on a 7% cost recovery. If the City is only recovering 7% of the fees toward the cost, how will the City pay for the long term maintenance of the facility (where is money coming from)? She inquired whether the rest of the fees to maintain the facility would be coming from the CYSA contract. How will the City maintain the facility, long term, if it is only achieving 7% cost recovery?

Chuck Dillmann felt that usage and potential income would come from providing lighting and not from a turf field. He suggested the City install lighting; providing the turf area at a later date. He felt that what is being proposed is a nice and sturdy/fancy building. He felt the building could be just as functional if the City installs a buffered-type building for the restrooms; entering into a contract with a concessionaire to provide their facility until the City can afford to build a permanent building. He recommended the City go after local businesses to provide some support in return for publicity (e.g., field naming rights).

Chairman Kennedy inquired as to the fee structure for the CYSA, should the city agree to install the artificial fields and whether this was a viable option. He inquired how much leverage the City would have in its rental charges for the use of the 9 fields before CYSA goes elsewhere. Is it important to have the concession stand built?

Mr. Mott stated that lighting is not important to CYSA because their tournaments normally end by 5-6 p.m. CYSA would have little usage past dark at any time during the year. It was his belief that CYSA would like the installation of artificial turf because it can be used on raining days, when the grass fields are not usable. Therefore, it was his belief artificial turf would be more important than lighting to CYSA. Because of this, he felt the City would have some leverage to gain by having artificial turf. He was not able to address the maximum rental fees that would be acceptable to CYSA. As far as the building is concerned, he recommended the City construct a first class building that will last a long time, and to have accoutrements that will last a long time; requiring the least number of replacement items (e.g., refrigerator, freezers, electrical equipment, plumbing equipment, etc.). He indicated that CYSA

does not have funds for such a building. He said that he would prefer two turf fields for football and soccer use. He also understands the logic of having a building in place of the second turf field. He personally would support one turf field and a building.

No further comments were offered.

Vice-chair Grzan stated that he could see where the Parks & Recreation Commission and the youth groups are coming from. It was his belief that two fields would provide more access/use to the community versus one field. Regarding the concession stand, he felt a tent or something else in this regard could be done. In terms of the restrooms, he did not believe kids care what type of restroom facility is provided as long as they get to play sports. He would like to see as many of the community's youth involved in sports; giving everyone access. He felt there would be competition associated with the use of one field, and many groups trying to use the same field at the same time. Constructing two fields would provide more options. He stated his support of the Parks & Recreation Commission's recommendation of having two fields and no building at this time; including the design of the infrastructure necessary to accommodate the amenities in the future, once it can be afforded. He felt it important to stay within budget as there are no other funding sources that can be used on this project. It was his belief that in time, the City can evaluate the sports complex usage, and may want to increase rental fees, adding amenities when appropriate. He felt that having two fields ready by next September would be ideal.

In response to Chairman Kennedy's question, Ms. Spier indicated that in 2004, build out was at $10.5 million, and did not include land. She clarified that this was not a cost estimate that included great detail. She stated that this cost estimate is no longer reliable. She stated that staff does not have an accurate estimate for total build out of the master plan.

Chairman Kennedy inquired whether there has been any thought given to anything beyond Phase I. Did the City include funding to build the sports complex in the proposed extension of the Redevelopment Agency?

Executive Director Tewes responded that in the proposed extension of the Redevelopment Agency that would extend the tax increment cap, the Council/Agency Board has not set aside money for any particular project. However, there is a list of eligible projects and that this project is included on the list. It was his belief the project cost would be at $20 million. He agreed that the installation of lights would provide for the greatest opportunity to expand community use and cost recovery potential. Regarding Ms. Lee's question, he stated that the remaining costs would be the responsibility of the general fund. He noted that the Council has adopted a budget in excess of $22 million; of which approximately $1.2 million is spent on community recreation facilities. He stated that the net cost, should it go into affect, would add 8%-9% more to this amount to be funded from general tax payer dollars. He stated that staff has provided the Council with a financial forecast based on current assumptions with future activities that suggest this kind of additional funding could be accommodated within the general fund and remain in balance.

Agency Member Tate said that the action taken by the Agency Board this evening would not be a decision on the level of cost recovery to be seen as this is an item that still needs to be decided upon at some point in time.

Vice-chair Grzan indicated that the Agency Board would look at what level the cost recovery is to be implemented at a future date.

Chairman Kennedy inquired whether the Agency Board would proceed with a decision that creates some additional costs without identifying a source of funding.

Agency Member Tate said that cost recovery could come from fees or from the general fund.

Chairman Kennedy said that the Agency Board is looking at a list of costs, including capital costs and construction costs, for various alternatives. There are also maintenance costs. He said that the decision on how much of the maintenance costs are to be recovered would be determined at a later date.

Ms. Lee expressed concern the City has built facilities in the past where cost recovery was put off to the future, and was not identified at the time of project approval. She did not believe that recreational facilities are paying for themselves. She inquired whether the City was planning to have a facility that once again is not paying for itself; taking monies from the general fund once again. She stated that she does not want to see another budget deficit because the City is taking fees from the general fund to pay for recreational facilities without any plan(s) on how they are to be paid for.

Agency Member Carr said the City will always be talking about the cost recovery percentage for this facility and any park in the City that does not have a fee structure; requiring general funds to be used to pay for maintenance costs. He agreed the Agency Board needs to continue to have the discussion about cost recovery. He felt that any park that is open for general use by the public should be paid from the general fund. However, should the City fence off a field and allow it to be used by a particular group who has a contract with the City, it was his belief the group should pay 100% for the cost of the fields as possible. He said that 100% cost recovery may not be reasonable, but that it was his belief that CYSA would gain a significant benefit when the City improves the fields. He felt that CYSA's contract should reflect this benefit and achieve as close to 100% cost recovery as possible, at least with the 1-2 new fields.

Agency Member Carr agreed that two fields would give the City the most usage possible. At looking at the Agency Board's policies and goals, they were about creating more capacity for community use. He felt this is best done by providing two non lighted fields. He noted that alternative 2B includes temporary restroom facilities and satisfies this need. In looking at the available annual usage, alternative 2B would provide the most hours that can be achieved based on the amount of funding available for the community.

Vice-chair Grzan noted the City has a finite dollar amount to deal with. Therefore, he did not believe the Agency Board can look/approve alternatives that exceed this dollar amount. He recommended the Agency Board stay within budget. He inquired what would happen to CYSA's use of the turf field with the construction of 1 or 2 synthetic fields.

Ms. Spier clarified that CYSA is maintaining 11 grass fields at this time. The design of 1 or 2 fields would not impact CYSA's playing fields. She indicated that CYSA will have priority scheduling/rental use, on an annual basis, for the use of the two new artificial fields for weekend use only.

Vice-chair Grzan stated that he does not want the two synthetic fields to be a part of the CYSA contract as it would not allow community use of the fields. He recommended the Recreation & Community Services Department oversee the use of these two fields.

Executive Director Tewes referred the Agency Board to the Council adopted goal that stipulates that within the next year, the City should construct 1 or more artificial fields for community use on weekdays and on weekends, when not needed by CYSA. He stated that this goal led staff to have discussions with CYSA that they would have priority of the new fields on the weekends. He said that CYSA has indicated to staff that they need a number of fields in order to hold tournaments. CYSA wants to make sure they have access to the fields. He stated that CYSA was pleased with the Council goal that they would still have priority use of the community fields on the weekends as two of their fields would be replaced by artificial turf fields.

Chairman Kennedy inquired whether the City would be negotiating a contract for 9 fields or for the entire complex.

Executive Director Tewes responded that it would be staff's intention to negotiate an agreement that would give CYSA exclusive use of 9 turf fields and the parking facilities for 40 weekends per year. The City will be constructing and operating the two community use fields; giving CYSA the first right to use the community fields on weekends, via contract, as staff thought this was consistent with the adopted Council goal.

Chairman Kennedy said that if the City is giving CYSA priority rights to the use of the two community fields, he would expect to negotiate that CYSA pay full cost recovery for the additional maintenance cost for these two fields.

Executive Director Tewes said that synthetic fields are desired by the CYSA, but their greatest preference would be grass fields. Should the City construct one artificial field and one grass field, it would not be great because the field would not be resting during the week, and would be used extensively by community groups. He said that the options being considered by the Agency Board have implications for CYSA's interest and the City's ability to achieve a community goal.

Agency Member Tate felt the purpose of this project was to provide some amenities to the community, and provide the community with playing fields. The City can achieve cost recovery with operations and maintenance from the CYSA if the City keeps these options open. He felt the City has to be flexible in

order to accommodate everyone. He recommended the City try to obtain more from CYSA if the City is providing better amenities. He noted the City went out to the community, and that the Parks & Recreation Commission represents the community. There are also user groups that represent the community who are coming before the City making a recommendation on the installation of two fields. He felt the user groups' alternatives would afford more opportunity for community use. Two fields would require twice the maintenance, and result in greater cost recovery. He felt the City needs to look at a higher level of cost recovery based on where the City finds itself. He stated that he could support moving forward with the construction of two fields as being recommended as it meets the Council's basic goal of providing amenities to the community.

Agency Member Sellers said that it sounds as though there is a building consensus to go along with the Parks & Recreation Commission's recommendation. However, he is leaning toward staff's recommendation because it provides the City with a higher cost recovery, and includes the construction of a building. It was his belief the City needs to design the entire Phase I at one time. If designed all at one time, looking at alternative 2B, the project could be scaled down appropriately. He faulted the Council/Agency Board for not spending enough time on cost recovery, the degree to which a public facility should be paid for with public tax payer dollars, and the degree to which it is to be paid for by individual users. If all the City cared about was 100% cost recovery, the City would charge more for traffic tickets and other items. He said the City is in the business of appropriately using tax dollars; balancing the needs of the community. He felt the City would be doing a disserve to the community every time the Council/Agency Board does not adequately explain what it is looking at in terms of cost recovery. He indicated that cost recovery is an issue that will be deferred. The City could look at a higher rate of recovery. However, it was his belief the City needs to stop stating that all facilities would achieve 100% cost recovery. What you are looking at, in real terms, is that out of every dollar spent, the City is spending approximately 6 cents for recreation. This facility would increase this amount to 6.4 cents. It would be his preference to support staff's recommended action because it would provide a permanent building, and have a higher degree of cost recovery potential. However, if there is an Agency Board consensus on alternative 2B, he recommended the Agency Board move forward with this alternative.

In response to Agency Member Carr's question, Mr. Steinmetz indicated that the landscape plaza consists of the paved area around the building that includes some planting area; creating a sense of entry around the building.

Mr. Pal said that the cost of the landscape plaza would be approximately $60,000; not a major item.

Agency Member Carr said that should the building not be included, a landscape plaza would not be necessary. He suggested that these dollars be reprogrammed to a lighted field(s) that would add playing time/use of the fields. As an alternative, these dollars can be put into something else that would make the fields more usable to community members.

Mr. Pal said that the landscape plaza costs are tied to building costs. Therefore, if the building does not proceed, the costs go away with the building. He stated that the landscape plaza would be excluded from Alternative 2B.

Agency Member Tate supported moving forward with Alternative 2B, but expressed concern that the Parks & Recreation Commission did not have benefit of reviewing the supplemental staff report. However, he hears the users still backing the construction of 2 fields.

Action: *On a motion by Agency Member Carr and seconded by Agency Member Tate, the Agency Board unanimously (5-0) Agreed to accept the Parks & Recreation Commission recommendation of Alternative 2B.*

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Tate, the Agency Board unanimously (5-0)* ***Authorized*** *Staff to Proceed to the Construction Document Phase with the Preferred Option; proceeding with the design of the entire facility as contained within the existing agreement.*

Chairman Kennedy concurred that sometimes the City gets caught up with cost recovery and loses sight of the bigger picture. He noted that it costs money to provide recreational services to the community. If placed in the appropriate priority, public safety would be number one in priority. Recreation is also high in priority. He felt that providing good recreational facilities is a public safety crime prevention action. He felt that a City subsidy is appropriate to offset some of the costs in order to provide good recreational facilities to the community. However, the City needs to be prudent and fiscally responsible in how it approaches its operating costs; particularly in the contract negotiations with CYSA and others. However, it does not mean the City will not need to subsidize the use of some of the fields. He felt it was acceptable not to achieve 100% cost recovery, especially in this case.

Vice-chair Grzan said that there is a desire, on the part of the Council/Agency Board, to achieve as much cost recovery as possible. However, achieving full cost recovery at a higher level may exclude/preclude members of the public from participating in public recreational programs. He felt the City needs to provide recreational services to its youth and seniors. The Agency Board is deciding on an alternative, within budget, and is receiving public input; providing services for children, youth and seniors. He felt this facility will be a significant benefit to the community. He does not know of any recreational program that achieves 100% cost recovery anywhere in the County. However, the City will try to achieve full cost recovery. He felt that focus needs to be given to balancing the needs of the community's youth and seniors, and that this is what the Agency Board is doing this evening.

Agency Member Carr said that when the City enters into contracts for the exclusive use of recreational facilities by an outside entity, such as the CYSA that is not exclusively serving Morgan Hill youth/residents, the City should be seeking a higher cost recovery. An organization having exclusive right of a field(s) should be required to pay a premium for exclusive use. He felt that an organization receiving priority 40 weekends out of the year for the exclusive use of fields should be required to pay a premium for the priority right. He indicated that a local program cannot be run based upon availability of the fields the other 12 weekends, therefore, these 12 weekends go without use. He felt there would be value to the exclusive use that would get the City closer to 100% cost recovery.

Action: *The Agency Board* ***Provided*** *Staff with the above Direction on the Draft Operations and Maintenance Plan and Cost Recovery Goals.*

Action: *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0)* ***Allocated*** *an Additional $30,000 from the Community Center Impact Fund (AB 1600).*

City Council and Redevelopment Agency Action

OTHER BUSINESS:

17. REQUEST FOR RELIEF FROM TRAFFIC AND SEWER IMPACT FEES FOR 18181 BUTTERFIELD BOULEVARD, SUITE 160

Director of Public Works Ashcraft presented the staff report; indicating that there is a request by Mayor/Chairman Kennedy to consider an appeal of impact fees already paid for sewer and wastewater at 18181 Butterfield Boulevard, Suite 160. He indicated that 5 out of 16 spaces of the condominium medical office building have been occupied or occupants are in the process of providing tenant improvements. He said that Dr. Moulthrop, who has an existing business in town, has purchased one of the condominiums, and is relocating his current business; paying a total of $33,000 in traffic impact fees, and $14,000 in sewer impact fees. He said that a letter addressed to the Mayor, from Mr. Moulthrop, states that he believes the fees to be excessive. He said that should Dr. Moulthrop relocate his existing business of approximately 1,200 square feet into a 2,600 square foot new facility, staff believes the space would be under utilized. Therefore, staff believes the fees calculated are more than Dr. Moulthrop believes he would generate. However, staff calculates fees based on AB1600, and that staff would need to have a nexus in methodology as to how impacts from new businesses can be translated into costs. He indicated that fees cannot be based on individual businesses, and that staff calculates fees based on averages associated with businesses. Therefore, certain groups of occupancies generate certain types of traffic, peak hour trips, or sewer flows in terms of gallons per day. Staff does not look at individual businesses, but looks at building types. Therefore, staff calculates the fees based upon the ultimate use of the building.

Mr. Ashcraft indicated that several years ago, the City entered into an agreement with GMP, a metal plater who paid $142,000 in sewer impact fees. The owner of GMP believed the City would be assessing him too high on the sewer impact fees, but that the fees were based on the existing business he had in San Jose at the time. The owner of GMP indicated that he was going to use technology that would reduce his water use. With Council approval, the City entered into an agreement for a two-year period, with staff monitoring flow, because you can equate wastewater with usage. Overtime, it was found this business used less water. Therefore, there is one precedent which the City entered into an agreement where staff monitored use over time.

Mr. Ashcraft indicated that the City Manager, the Mayor and Dr. Moulthrop discussed a concept on how fees might be deferred by recording an agreement against the property. The City could enter into an agreement to monitor water usage over a one year period, and that if the wastewater flow was less than calculated, Dr. Moulthrop would be provided with a rebate. If the wastewater flow was more than calculated, Dr. Moulthrop would pay additional fees. Regarding traffic fees, Dr. Moulthrop could be given credit from the 9.7 peak hour trips he paid versus his current 7 peak hour trips, if an agreement is

reached. The difference would equate to $8,316. However, the agreement would also include a statement that stipulates that should the business add employees, resulting in additional peak hour trips, the City would revisit the traffic impact fees. Also, should the business be sold to a new business, the City would revisit the impact fees. He indicated that staff would not recommend this approach, but that it is an approach that can be considered by the Council/Agency Board.

City Attorney/Agency Counsel Kern said that there is a concern about a precedent being set anytime there is an exception made (e.g., concern about fairness, equal protection, etc.). She said that in addition to a prior accommodation as described by Mr. Ashcraft, the Council allowed Kiddy Academy to allow less children than they would have been allowed in the space, reducing fees. The City recorded a document against the property such that if there was ever to be an increase in the number of children, they would have to pay additional fees. She recommended that care be taken to considering special conditions, and that it be done in a fair manner such that others may have the same opportunity. In response to Mayor Pro Tempore/Vice-chair Grzan's question, she indicated that anyone can come back and approach the Council/Agency Board for the same consideration/accommodation, should the Council/Agency Board approve Dr. Moulthrop's request.

Council/Agency Member Sellers said that the establishment of a precedent is obviously the biggest issue the Council/Agency Board has to deal with in this regard. He felt that to some degree this situation is unprecedented because it is a unique situation associated with the condominiums in the way they were developed and structured; noting that impact fees were not paid upfront by the developer. He inquired whether any of the adjacent buildings have existing businesses that relocated into the facility.

Mr. Ashcraft stated that he did not know if there were any other businesses that relocated into the condo facility.

Mayor/Chairman Kennedy opened the floor to public comment.

Dan Ehrler said that everyone is sensitive to fairness and the appropriate application of regulations on behalf of the community; including businesses paying appropriate fees to be a part of this community. He felt there is a uniqueness to this situation in terms of Dr. Moulthrop's operation, the number of hours, employees, commitment, and a demonstration of what he has done and will be doing. He said that Dr. Moulthrop is committed to continuing with the same type of practice. He understands the challenge about the precedent that may be set, but felt this to be a unique situation. He recommended the Council/Agency Board treat this situation as completely and fairly as possible. If there are others in this situation, he recommended that they be considered as well.

Dr. Moulthrop stated that he was not asking the City to revamp the entire system for him, but does not believe the system is equal or fair. He stated that for the past 20-years, he has served patients 4-days a week, and that it would be reasonable and fair to request that he be assessed on 4-days of treating patients; not 5. This would amount to just over $6,000. He indicated that City Manager Tewes has agreed to review his water/sewer impact fees following 6 months of occupancy. It was his belief 6 months was plenty of time to assess his sewer/water usage. He stated that he purchased the office space in October 2005. Since his fees are based solely on square footage, it was his belief that his fees need to

reflect the 2005 fees. He calculates his peak hour trips at 7 with his current staff and method of operation. It was his belief it would be simpler to accept his recommendation with the idea of a 20% reduction based on a 4-day work week with a revisit of the water/sewer impact after six months.

No further comments were offered.

Mayor/Chairman Kennedy indicated that he brought this item forward to the Council/Agency Board after meeting with Dr. and Mrs. Moulthrop. Council/Agency Member Tate and staff were also in attendance at this meeting to address the concerns. He felt the facility is one that the developer is trying to set up as a medical facility. He said that there are other doctors who would like to locate in this facility. However, it is difficult to locate in the facility based on the way the condominium structure was set up as it shifts the impact fees to tenants. He did not believe tenants were notified of the impact fees and that this causes a problem. He suggested moving forward with Dr. Moulthrop's request. He noted that staff has mentioned a possibility of a sewer flow rate/water usage as well as trip reductions with provisions that should circumstances change, the rates and the fees would change. It was his belief there is an exception in this case, and that other situations can be evaluated as they present themselves. He does not expect there will be many other similar requests, but that the Council could deal with them appropriately, in fairness. He recommended the Council move forward with the suggested relief.

Council/Agency Member Tate confirmed that he was in attendance at the meeting held by Mayor/Chairman Kennedy and Dr. and Mrs. Moulthrop. He indicated that he subsequently met with Dr. Moulthrop last Friday; having the opportunity to tour his current facility and the new facility. The uniqueness of the circumstances are that Dr. Moulthrop is moving his current 20-year facility to a new facility, and would not be changing his operations or bringing in additional personnel. The dental office is moving from a fairly constricted environment to a brand new environment with a luxurious set up with five bays. The new facility will include a private consultation area that Dr. Moulthrop does not currently have, and a larger staff area for the existing staff. He felt that Dr. Moulthrop has demonstrated the need; clarifying that he is not expanding the operation. He indicated that Dr. Moulthrop is simply transferring an existing operation to another facility. He will not generate more trips; therefore, trips and water usage would not increase. He concurred with Mayor/Chairman Kennedy that this is a special case as this relocation is not for the purpose of expansion.

Council/Agency Member Carr inquired whether the Medical Foundation has been contacted/brought into this request. He noted the City has put a significant amount of tax payer resources into a Medical Foundation to help keep and bring new doctors to Morgan Hill. This appears to be a perfect example of the use for this Foundation in keeping an existing practice in town.

Mayor/Chairman Kennedy indicated that he contacted the Medical Foundation not about Dr. Moulthrop's situation, but about another doctor who wants to come to Morgan Hill who is experiencing the same problem. The other doctor has not moved in, and is being held back because of the high fees. He contacted Joe Mueller, the Executive Director for the Medical Foundation, the Chair, and a Board Member to request that they meet with the other doctor; requesting that they pick up some of the fees. This contact was made approximately 2 months ago. He indicated that he has not been successful in getting the Board to meet. Therefore, a major problem exists that needs to be addressed. The City could

withdraw its funding and redirect the funds to a more worthy cause. He did not know whether the Foundation would consider support for dental offices as the Foundation was founded to assist primary care physicians/specialists, and did not include dental services. He did not believe the Foundation could address Dr. Moulthrop's needs, but could address the other doctor's needs.

City Manager/Executive Director Tewes indicated that staff is not recommending the approval of Dr. Moulthrop's request. However, staff outlined an approach the Council/Agency Board could use. He noted the City Attorney/Agency Counsel has advised the Council/Agency Board to be cautious in making these types of exceptions. He stated that in the outlined approach, it is exactly as conveyed by Dr. Moulthrop. He noted that Dr. Moulthrop has suggested a six month review of water usage and that this suggestion would be included in an agreement. He further noted that Dr. Moulthrop has added a new element that was not included in his letter or discussed in the meeting. He referred to page 312 of the agenda packet. He noted that Dr. Moulthrop identified the potential impacts of going from 9.7 trips to 7 trips, with a refund of $8,316. He indicated that Dr. Moulthrop is requesting that fees be based on the October 2005 acquisition date instead of the 2006 building permit date. He did not recommend the Council approve the 2005 fees as it was his belief this would violate the City's Municipal Code that states when fees are to be paid; based upon a building permit.

Action: *Council/Agency Member Tate made a motion, seconded by Mayor Pro Tempore/Vice-chair Grzan,* ***to approve*** *an alternative relief at 18181 Butterfield Boulevard, Suite 160 relating to the sewer impact fee as indicated in the staff report, and agreed to reduce the 9.7 peak hour trips to the 7 peak hour trips; resulting in a refund of $8,316.*

Council/Agency Member Sellers noted there are two potential precedents: 1) the individual precedent in this project. He wanted to make sure the Council does not open the door so that every individual can return to the City requesting reevaluation of their situation. He noted the Council has talked about an existing business in Morgan Hill moving to another facility in Morgan Hill with no expansion being proposed. 2) The City allowed a building that was largely speculative to defer fees until such time the developer was able to find tenants. He said that deferral of fees made sense at the time, but has proven to be ill advised primarily because potential tenants were not provided with adequate information about these fees. He felt this was an unfair business practice. He recommended the Council/Agency Board make sure that should developers come to the City with a proposal for a spec building, the City require the developer to identify its tenants and/or require fees be paid at time of construction. He did not believe the deferral of fees being passed on to Dr. Moulthrop and others to be fair. He acknowledged the fees are not exorbitant, and that the fees could have been paid by other means. He felt it was important to make this statement so the City does not have the same situation in the future.

Council/Agency Member Carr concurred with the comments as expressed by Council/Agency Member Sellers. He stated his support of following up with the Medical Foundation. It could be that this particular request does not fit their criteria, but that he would like the Medical Foundation to consider this request and respond to the Council/Agency Board.

Council/Agency Member Tate indicated that Mayor/Chairman Kennedy asked that he follow up with the Medical Foundation. He stated that he contacted Joe Mueller, but that he has not received a response. He said that he has not had the opportunity to contact Bill Brown, but that he would make this contact tomorrow.

Council/Agency Member Carr recommended the Council/Agency Board take official action and request the Medical Foundation consider this request. He was not suggesting the Medical Foundation pay all fees, but to make up the difference the Council/Agency Board is considering.

Vote: *The motion carried unanimously (5-0).*

City Manager/Executive Director Tewes stated that it was his hope that he and Council/Agency Member Tate were not duplicating efforts. He informed the Council/Agency Board that last week, it directed him to contact the Medical Foundation. He indicated that he has written the Medical Foundation a letter requesting that within the next 30-days, they identify when they can come before the Council and present a full report on the achievements of their objectives, to the extent to which they have met the medical objectives, and the financial stewardship of the $495,000 provided.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:13 p.m.

MINUTES RECORDED AND PREPARED BY:

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IRMA TORREZ, CITY CLERK/AGENCY SECRETARY