

## Town Takes Over This Summer's Concerts from Foundation Future of Next Year's Concerts Remains Uncertain

By Steve Angelides



Concert at the Moraga Commons

Photo by Andy Scheck

The Town Council unanimously agreed that the Town of Moraga would take over the supervision of the popular summer concerts for the rest of this season from the Moraga Park & Recreation Foundation.

The Foundation requested the Council action because of liability concerns. "The last thing in the world the Foundation wants to do is take the money it has in the bank and spend it on defending another lawsuit," the Foundation's attorney, George Juarez, explained to the Council.

Town resident Joyce Beachem had previously sued both the Town and the Foundation claiming that the concerts were a nuisance. Beachem dismissed her suit last year "because the town agreed to actively work on a resolution to the noise transfer issue," she explained later in a letter to the Council.

During this summer's concerts the Town has required all sound to go through a single sound board and has been monitoring sound. In April the Town began the process of revising its noise ordinance to exempt the concerts and other town-authorized events from nuisance claims.

But the nuisance exemption was sidetracked after Beachem's attorney claimed it would require a full environmental impact report, and Town Manager Phil Vince told the Council the Town would hire a consultant to prepare an environmental analysis. After several months without a consultant's report, Vince told the Council the Town's Planning Department was working on an environmental "negative declaration" which would be finished by September.

Vince told the Lamorinda Weekly he decided to address the environmental issue in-house to save money. Foundation sources cited other factors which may also have been involved, including differences of opinion regarding the environmental issue and the difficulty of finding a consultant to do the work.

With the nuisance exemption stalled and the concerts continuing, the Foundation brought the issue to a head by requesting that the Town agree to defend the Foundation and hold it harmless from any future lawsuits. The Town's liability attorney rejected that proposal on the theory that the Foundation, not the Town, controlled the concerts. The Foundation responded by offering to assign the band contracts, the sound equipment, and the supervision of the concerts for the rest of the season to the Town, except that the Foundation would continue to operate the snack bar.

The Council unanimously accepted the Foundation's assignment agreement with several amendments proposed by Councilmember Dave Trotter, including requiring the Foundation to pay the Town \$5,000 for the assignment. Trotter said the money would cover the remaining payments due to the bands plus \$750 for additional costs the Town would incur to supervise the concerts.

Foundation President Howard Harpham said after the meeting that he was happy with the outcome and that the Foundation would accept

the amendments, including the \$5,000 payment. Foundation representatives told the Council that the Foundation would be happy to resume supervising the concerts if the nuisance exemption is adopted. Without that exemption, however, the future of next year's concerts remains uncertain.



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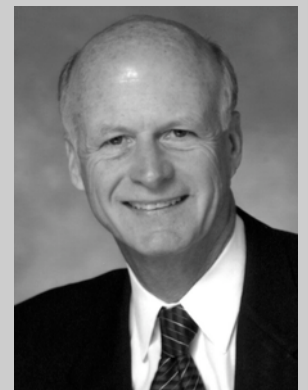
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