

In the September 23, 1995 issue of the Lamorinda Weekly there were three articles regarding the finances, and therefore the services, of Lamorinda's fire departments (MOFD and ConFire). The topics discussed, information imparted and statements made (and not made), impact every resident of Lamorinda. These three articles are replicated here.

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## MOFD and ConFire to Go Separate Ways

*By Nick Marnell*

It may be just as well that fire station 46 never got off the ground.

Contra Costa County Fire Protection District chief Jeff Carman told his board Sept. 15 that he received a second opinion from a contractor concurring the feasibility of rebuilding station 16 in Lafayette, and that he awaits a report later in September from a structural engineer. The chief earlier presented to the board his desire to reopen station 16, scuttling plans with the Moraga-Orinda Fire District to combine station 16 with MOFD station 43 into a new station 46. MOFD chief Stephen Healy then recommended that his board memorialize the station 46 program.

"After listening to some of the comments from (the MOFD) board meeting, I think we made the right decision to move ahead on our own," said Carman. "The differences in the two organizations would have been problematic, so I'm happy that fire station 16 presented itself as an opportunity." MOFD director Fred Weil had commented that he did not want the district to hold on to the property it purchased as a site for station 46 in hopes that ConFire may come back to MOFD to reignite the partnership. "If the county came back next month and said, Yeah, let's go on with 46, it would just be more evidence that they are an unreliable partner," he said.

With the approval of the repairs to station 16 a near certainty, MOFD turned its attention to its own dilapidated station 43 in north Orinda.

"We need to get moving with this," said Weil at the Sept. 16 district meeting.

Healy confirmed that the current location of station 43 was the best site available for a fire station in the north Orinda area. He noted that four houses are for sale within a mile of station 43, and that the district geographic information system model showed that the station 43 site won out over the other four. "It would be hard to find a better location," said Healy.

Architect Alan Kawasaki estimated that the remodel of the station will cost \$4 million. "Nothing about station 43 meets any standard of a fire code," he said. The district has invested more than \$320,000 in the fire station remodel since 2011.

Board president Alex Evans said he was unsure that the district could afford sinking so much money into the station 43 project. "I don't want to have a nice fire station, and down the road, I can't afford the firefighters," he said.

MOFD union representative Mark DeWeese also questioned the proposed spending on station 43.

"The union's base salaries have lagged inflation and are only around 5 percent greater than they were in 2006," he said. "Before our board spends \$4 million to totally rebuild a station that is currently functioning, and has been for decades, we feel they should save the money for more pressing needs. The board's priority should be toward investing and restoring the district's most important asset, its human capital."

Healy plans to deliver to the board in October his specific recommendations for the station 43 rebuild, including contract details, financing options and the project timeline.

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## Former MOFD Chief Stripped of \$1.2 Million

*By Nick Marnell*

The Contra Costa County Employees' Retirement Association board Sept. 9 lowered former fire chief Peter Nowicki's pension by \$1.2 million after it established that his retirement benefit was improperly increased by his own actions. The board determined that the former chief of the Moraga-Orinda Fire District engineered retroactive changes to his contract that resulted in improper retirement benefits and the district board, knowing Nowicki was soon going out the door, went along with the changes.

Nowicki signed on as MOFD fire chief in July 2006, and the district added amendments to his contract in February 2008 and December 2008, allowing the chief to sell back vacation leave, administrative leave and holiday pay. The chief retired Jan. 30, 2009, and according to CCCERA, the cashed-out perks granted in 2008 improperly inflated - "spiked" - his retirement benefit. "That was not the intent," said Nowicki, who spoke to and answered questions from the CCCERA board members for nearly three hours. "It was not my decision to grab and run out the door. It looks bad from your side, but from my side, I needed to get out."

Harvey Leiderman, fiduciary attorney for CCCERA, saw it otherwise. "We have the authority to correct errors if the member improperly caused the benefit to be increased or overstated at the time of retirement," he said. "There is no question the member actively engineered these retroactive benefits." Leiderman also said that the fire district board conducted the Nowicki negotiations in closed sessions, in violation of the Brown Act, and he blamed the MOFD board for being slow to respond to a records request for the hearing.

"This is between CCCERA and Nowicki," said MOFD board president Alex Evans. The district did not send a representative to the hearing.

"As to Brown Act issues, I should note that the agreements with Mr. Nowicki were presented and approved in open sessions so I have to disagree with suggestions that the MOFD board operated without openness," said Fred Weil, the only current MOFD director also on the board in 2008. "Mr. Leiderman, whose theories are based on suppositions, never attended any of those meetings, so it is difficult to understand how he can properly comment on what went on, who attended what meetings, what was said, or what the MOFD board should have done."

Former MOFD director Brook Mancinelli attended his first district meeting as a board member in December 2008. "I was assured by members of the board that Nowicki's contract was a long time in the works," he told the CCCERA board. "I don't agree with the fact that it was done maliciously. And I had no idea the chief would be retiring."

Nevertheless, the retirement board voted to cut Nowicki's annual pension of \$240,923 to \$172,818, and ordered him to return more than \$600,000 in overpayments. The cost savings by correcting future overpayments was projected at over \$1.2 million.

Had the MOFD rank and file been at the CCCERA meeting, they may have jumped to the ceiling.

"I'm glad it happened to Nowicki," said district union representative Mark DeWeese. "The retirement board hearing and ruling validates our union's consistent belief that there was improper behavior from both our board at that time and Nowicki."

As the ruling means that Nowicki has exhausted all of his administrative remedies through CCCERA, it is likely that his pension reduction will be subject to litigation.

Neither current MOFD chief Stephen Healy nor Contra Costa County Fire Protection District chief Jeff Carman may sell back unused, accrued vacation time.

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## Nowicki: I Followed the Rules

By Nick Marnell



Pete Nowicki in 2007 Photo A. Scheck

For a man who five days earlier had his pension reduced by over \$1 million, Pete Nowicki did not appear angry or bitter. Rather, the former Moraga-Orinda Fire District chief said that he felt disrespected and hurt. Disrespected, after the work that he did for 26 years at MOFD, and that he was punished for doing what he was told to do by the Contra Costa County Employees' Retirement Association. And hurt, over how he has been portrayed.

"Absolutely, I feel disrespected," said Nowicki during a Sept. 14 interview. "CCCERA counseled me on what to do, on how to get what I was entitled to. I followed the rules. Then, 'No, we changed our mind, and we're going to take back the deal.' How can they do this?"

Nowicki said he was surprised to receive the Aug. 5 letter from CCCERA, summoning him to a Sept. 9 hearing at which the retirement board was to consider adjusting his retirement allowance. "No, I did not see it coming at all," said Nowicki. "Now

I've got four weeks to find a lawyer and develop an appropriate response. I didn't know I could have asked for a delay."

Nowicki said he felt he had no chance at that hearing. "I felt I was singled out, that this was media and politically driven," he said. He said he is frustrated that he has been unable to convey his position: That he was offered the job of MOFD fire chief in July 2006, and that his original contract did not include sell-back of vacation leave or administrative leave. "The board said they would do annual reviews, and that they would make me whole," he said. "They did exactly what they said they would do."

The district added vacation sell-back rights to his contract in July 2007, but the terms were not finalized until February 2008. "The MOFD board was dysfunctional in getting things done in a timely fashion," said Nowicki. "Shame on them. But they told me it would be retroactive to July. I trusted them, and they did it."

The second amendment to his contract, allowing more sell-back rights, was not finalized until December 2008. Nowicki retired Jan. 30, 2009. The CCCERA board pointed to that retirement date as one of the factors contributing to the improper increase of his pension.

"My biggest mistake was not demanding that those perks be put into the original contract," said Nowicki. "I regret that." He said that he asked MOFD director Fred Weil for an affidavit, stating what the board originally promised Nowicki, but that Weil did not respond. (Weil declined to comment, saying that the status of the former chief's pension "is likely to be the subject of litigation.")

"Of course it hurts," said Nowicki. "It's absolutely awful. I've had a lot of sleepless nights. Six years out of retirement, it overwhelms me, my family, my friends. It's a horrible position to be put in.

"I know the sentiment of the public. Here's this guy coming out of the fire department, making all of this money. It's got to be something I did wrong. But I didn't. I didn't set those standards."

With the retirement board having voted to cut back his pension \$1.2 million - the projected savings by correcting future overpayments - Nowicki has exhausted his administrative appeals

through CCCERA, and he said that he is talking to an attorney.

"I find it equally demeaning and dishonoring to be put in this position, especially after having served the fire district the very best I could for 26 years and having followed all of the rules and direction that was given to me by CCCERA," he said.

"It's shameful."

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