

**TOWN OF MORAGA
PLANNING COMMISSION MEETING**

La Sala Building, Hacienda de las Flores
2100 Donald Drive
Moraga, CA 94556

January 5, 2009

7:30 P.M.

MINUTES

I. CALL TO ORDER

Chairperson Goglia called the regular meeting of the Planning Commission to order at 7:30 P.M.

ROLL CALL

Present: Commissioners Daniels, Driver, Hays, Levenfeld, Sayles, Whitley,
Chairperson Goglia

Absent: None

Staff: Lori Salamack, Planning Director

B. Conflict of Interest

There was no reported conflict of interest.

II. ADOPTION OF MEETING AGENDA

On motion by Commissioner Whitley, seconded by Commissioner Hays and carried unanimously to adopt the meeting agenda, as posted.

III. ANNOUNCEMENTS

Planning Director Lori Salamack reminded Commissioners that the deadline to apply for Planning Commission positions was January 7, 2009. She encouraged all interested parties to consider applying for the available positions.

IV. PUBLIC COMMENTS

There were no comments.

V. ADOPTION OF THE CONSENT CALENDAR

A. Approval of the December 15, 2008 Minutes

On motion by Commissioner Driver, seconded by Commissioner Whitley to adopt the Consent Calendar, as submitted. The motion carried by the following vote:

Ayes: Commissioners Driver, Daniels, Hays, Sayles, Whitley, Goglia
Noes: None
Abstain: Commissioner Levenfeld
Absent: None

VI. CONTINUED PUBLIC HEARINGS

- A. **SUB 9135 (1161 Larch Avenue Subdivision) – Terry and Linda Gong (Owners/Applicants)**: Consideration of an initial environmental study, mitigated negative declaration, conditional use permit and conceptual development plan for a proposed 4-lot residential development in the Moraga Open Space Ordinance (MOSO) area currently used as the Moraga Tennis and Swim Club at 1161 Larch Avenue. The proposed project consists of the subdivision of 24.66 acres into four residential lots ranging in size from 22,695 square feet to 50,522 square feet with a 21.34 acre open space parcel. The plan proposes clustered development in the vicinity of the existing tennis and swim club improvements and preserves over 86 percent of the site as open space. Access to the open space is provided via an existing 100-foot wide easement for riding and hiking. Access to the four lots is proposed to be provided via the existing driveway access to the tennis and swim club. The new residential development is proposed to be located behind four existing residences on Larch Avenue from 1153 to 1167. This application was continued from the December 15, 2008 Planning Commission meeting. APN 258-600-001.

Planning Director Salamack presented the staff report dated December 22, 2008 and advised that at the last meeting the Planning Commission had considered the Initial Study for the proposed 4-lot subdivision at 1161 Larch Avenue. She noted that the subdivision was not being considered by the Commission at this time. What was to be considered were the proposed Mitigated Negative Declaration and the Conditional Use Permit to allow use of MOSO property for residential purposes and approval of a Conceptual Development Plan for a 4-lot residential development.

Ms. Salamack explained that in the Town of Moraga projects greater than 10 acres in size were processed as Planned Development projects requiring a three-step process of a Conceptual Development Plan (CDP), a General Development Plan (GDP), and a Precise Development Plan (PDP). As such, the application was in the initial stages of that process. She noted that future applications would need to be consistent and in substantial compliance with the approval of the GDP if granted by the Planning Commission.

Ms. Salamack recommended approval of the application and recommended that the density for the property be increased.

Ms. Salamack explained that MOSO allowed one unit per 20 acres although the density could be increased to one dwelling unit per 5 acres. She noted that the staff report had included a discussion of the justification for an increase in density.

With respect to MOSO, Ms. Salamack stated that a determination would have to be made that the property is not high risk so that the density could be increased and that it was also an appropriate place given the neighborhood factors and the nature of the site being developed.

Ms. Salamack added that if the Commission was not able to make the findings to increase the density, the subdivision could not be considered given that the existing parcel was approximately 24 acres in size. She explained that if the Commission found the environmental review to be satisfactory, the Commission would have to determine whether or not the site was appropriate for development and would have to determine the density that should occur.

If the maximum density was found to be appropriate at that location, Ms. Salamack stated that the Commission could adopt the draft resolutions that had been presented. She advised that all actions would be appealable. If not appealed, the actual subdivision approval would be returned to the Commission at a later date and ultimately the GDP and the PDP would also be returned for review and approval. Once all that was completed, a grading permit would have to be considered and approved by the Planning Commission.

When asked, Ms. Salamack explained that the Vesting Tentative Map was currently not under consideration. She noted that the map had been provided to Commissioners to reflect the reconfigured lot lines.

Ms. Salamack added that as of this date she was aware of no correspondence received by the Town on the application. She clarified that if there was germane correspondence of which she was not aware and which had not been presented to the Planning Commission that would have caused the Commission to render a different decision, the Commission had a right to appeal its own decision, should that be desired.

Terry Gong, 1161 Larch Avenue, Moraga, stated that his team of engineers was present to respond to questions.

Bob Moore, the Civil Engineer, stated that the project had been presented at the last meeting. He was available to respond to any questions the Commission might have.

Commissioner Driver asked about the condition of approval in the GDP related to the detention basin and the downstream runoff since that was one of the significant issues in the public testimony at the last meeting.

Mr. Moore stated that he did not anticipate employing a detention basin as reported at the last meeting. He stated that information had been provided to the Town's Stormwater Consultant documenting the fact that since the impervious surface area would be decreased after the subdivision the runoff from the subdivision would therefore be decreased over existing conditions. He explained that a detention basin would be employed when development resulted in an increase in runoff above and beyond historic levels. A detention basin would therefore not be necessary in this case.

Chairperson Goglia asked what was different with the drawings now provided from what had previously been provided.

Mr. Moore stated that there was no difference in the drawings.

PUBLIC HEARING OPENED

Clay Serrahn, 1160 Larch Avenue, Moraga, whose home was located directly across from the property in question, noted that he had made comments at the last meeting to express his primary concerns to ensure that the conditions of the use related to the environmental study would be part of the future project in perpetuity.

Mr. Serrahn emphasized that his primary concerns related to hydrology. He wanted to see the hydrology analysis that the engineer used to demonstrate that not only would the runoff decrease but that it would be improved. He was also concerned about peak flows off the site as a function of the new street alignment being proposed. He wanted assurance that the peak flows at the outlet from the site both on the street and through the stormwater system would be less than or equal to current levels, and local work that would demonstrate that.

Mr. Serrahn stated with respect to geotechnical issues that he also wanted to be assured that any soil stability mitigation proposed as part of the use would be improved in perpetuity.

RESPONSE:

Mr. Moore explained in response to Mr. Serrahn that in the conditions of approval, peak flows were what was being discussed because it was the method of evaluation for drainage to identify whether those flows were worse, better or there was no change from historic levels.

Mr. Moore emphasized that evaluation criteria were based on peak flows before development under current conditions and peak flows after development.

Ray Skinner, the Geotechnical Engineer, added with respect to geotechnical issues that a geotechnical report had been prepared that characterized all the hazards and mitigation measures that had been proposed. He stated that a design level study would get into that area in more detail.

Ms. Salamack clarified for the record that all the mitigation measures from the Mitigated Negative Declaration appeared as conditions of approval in the draft resolution. There would also be further conditions imposed on the project that were not specific to an identified environmental impact. With respect to drainage, she stated there was a condition that drainage be verified prior to the issuance of a grading permit, which was also a public process allowing the public another opportunity to participate in the review of the project.

PUBLIC HEARING CLOSED

Commissioner Sayles characterized the proposal as a good project and a good use of the site. Speaking to the earlier comment that a detention pond was not necessary because the project would improve the drainage by reducing impervious surface, he suggested if the property was virgin undeveloped land a detention pond would be required.

Mr. Moore agreed that virgin undeveloped land would require a detention pond although in this case the driveway, as originally designed in the 1960s, had been stubbed in to be a public right-of-way and it had been anticipated to continue with production style development along the canyon. He suggested therefore that the drainage would have been designed to accept a post-development runoff scenario.

Commissioner Sayles suggested that the removal of the tennis and swim club improvements would result in an undeveloped property for a short period of time which would then be developed into a cul-de-sac of four homes. While an appropriate use, he suggested in that process that a detention pond would have been considered. He asked how difficult it would be to create detention ponds to enhance the overall performance of the drainage.

Mr. Moore stated that the steepness of the grades and slope was a difficulty given that a detention pond would need flat land and a flat area of some size would need to be created. As an alternative, he stated that there could be a detention pipe in the ground. He suggested that the history of drainage issues impacting the neighborhood had to do with a lack of maintenance and debris that plugged catch basins. It was therefore not an issue of pipe capacity but an issue of debris that washed down and blocked the catch basin inlet.

Mr. Moore suggested the key would be the Joint Maintenance Agreement amongst the homeowners and the vigilant maintenance of the inlets and the ditches feeding the inlets, which was done with any subdivision in the Town.

Mr. Moore explained that as part of the drainage study, he would be considering the pipe sizes down to the point where they would get into the public right-of-way at Larch Avenue. All that kind of review would be required as part of the review and approval of the engineering drawings, final map, grading plans and improvements plans by the Town Engineer. He added that if not using a detention basin the drainage proposal would have to be proven to a satisfactory level. By law and by practice, he emphasized that a detailed drainage study would be required of any development to prove that the system worked.

Commissioner Sayles proposed a condition that there be a public access trail to the ridge in the development. He suggested that the homeowners association (HOA) could be an independent third party to maintain such an access. He asked if that condition could be considered at this time. He noted that public access was often cut off with the creation of public open space.

Mr. Moore explained that there was a public access connection into the Sanders Ranch area.

Commissioner Sayles noted, however, that there was no access from the street in question. He suggested there was ample opportunity to provide public access. He emphasized the importance of a common trail.

When asked, Ms. Salamack stated that such a condition could be added to the conditions of approval, which would need to be reflected on the tentative map and which could be included as a placeholder at this time. She suggested that the condition could be added to the Conditional Use Permit under Finding E, that it was consistent with the objectives, policies, general land uses and programs specified in the General Plan and applicable specific plan, was consistent with certain policies and with a provision that a trail be provided and would be further consistent with policy.

Mr. Moore referred to the map displayed in the room and explained where the equestrian and pedestrian access easement was located. He referred to an access road which would allow access to the debris benches for maintenance. If pursuing the public access he stated that the logical solution would be to use a section of that road and continue a trail up onto the ridge. He explained that possibility had been discussed although the applicant had not supported that option given the privacy impact to the neighbors since the pathway would climb the hill and allow views into neighboring backyards.

Commissioner Sayles suggested that there was an old farm road on a reasonable grade that could be considered.

Mr. Moore pointed out steep grades in that area with drainage coming in both sides creating very saturated ground and slumps during the winter. He showed the areas where there should be no access given the condition of the soils.

Terry Gong, 1161 Larch Avenue, Moraga, stated with respect to access to the equestrian trail there was an access point at Tia Place, which currently existed. He suggested that requiring public access through a private drive would be inappropriate for the project. He expressed a desire that the project be sensitive to the neighbors. Given the current access point at Tia Place, he did not see the need for another public access.

Commissioner Hays suggested that the density of the project offered some public good. In terms of access, he asked if the proposal would be to require the development of a specified trail up to the ridgeline or just to provide an opening where the public could travel in any direction.

Mr. Moore suggested that would complicate the situation even more since the scenic easement could become public domain creating liability and privacy issues for the new development and for the neighbors down below. He stated that the property was private property. It was not being dedicated as public parkland. It was being set aside as open space.

Commissioner Sayles suggested that the request for increased density justified the need to find the greater public good.

Commissioner Levenfeld asked if the open space was currently being used, how it was maintained and if there was a system for the maintenance of that property. She was advised that the property would be maintained by the homeowners in the future.

Given the new issue, there was a request from the audience to reopen the public hearing.

PUBLIC HEARING REOPENED

Joon Oh, 1163 Larch Avenue, Moraga, the owner of the home situated immediately beside the driveway to the subject property, commented that over the years as a result of the Moraga Tennis and Swim Club there had been a number of teenagers in the area who had created problems. As such, he stated that a public access easement would present a negative to the adjacent homeowners.

An unidentified property owner who lived along Larch Avenue stated that more immediate access to the public trail would be highly desirable. She stated that the trail was visible from her backyard but required one to walk a mile in either direction to access it. She explained that current trail users already had views of her backyard and she would have no problem with a more immediate trail.

Another unidentified speaker questioned the amount of access proposed and the ramifications of public parking on private property.

Commissioner Sayles commented that in his experience the public access would likely not draw the public from out of the area. He suggested it would be for the immediate area since the public access would not be publicized to the general public.

Byron Hann, 1171 Larch Avenue, Moraga, suggested that the residents of the proposed development would benefit from having a good path to the trail. As a resident, he noted that the absence of such a path made it quite difficult to cross the terrain.

Mr. Gong commented that the public good the project offered was the removal of a commercial operation from a residential neighborhood that had been grandfathered in as a result of the Town's Incorporation. His proposal would voluntarily eliminate that commercial operation and propose a use that was consistent with the General Plan. He added that he had a choice to make to keep going with that commercial operation or do what was best for the community. By choosing to propose four homes he suggested was a way to clean up an area that was inconsistent with the General Plan. He urged that to be taken into consideration.

Linda Gong, Moraga, stated that the area of Larch Avenue where the club was situated had a lot of traffic and resulting traffic problems over the last year. She suggested that allowing people to park in that specific area below the hill would create a dangerous situation. She suggested that the public access would draw in people not from the neighborhood.

PUBLIC HEARING CLOSED

Commissioner Daniels commented that she did not have enough information on the issue of public access to decide whether or not she could support a condition at this time.

With respect to the Conditions of Approval, Commissioner Daniels referenced the conditions requiring the discretion of the applicant. She supported a requirement for the approval of the Town Engineer.

Commissioner Daniels referred specifically to Condition 3 (a) where “Downstream runoff shall be decreased from historic peak flows wherever possible” and stated that should not be left to the discretion of the applicant. She wanted to reword that condition as follows:

“Downstream runoff shall be decreased from historic peak flows if the Town Engineer determines that it is feasible.”

For the last paragraph under that condition, Commissioner Daniels recommended the following modification:

“The report shall be subject to review and approval by the Town Engineer and recommendations for necessary improvements to existing downstream storm drains to handle the increase in peak flow and shall be incorporated into an off-site improvement plan.”

Commissioner Daniels also referred to Condition 3 (c) and noted that there was no requirement that the Town Engineer review and approve the plan for overflow water from catch basins and drainage pipes.

Ms. Salamack supported the more explicit statements although she clarified that the language at the top of Exhibit B, Conditions of Approval for 1161 Larch Avenue Conditional Use Permit and Conceptual Development Plan included the statement “Conditions to be verified prior to issuance of a grading permit and recordation of a final map,” which meant that those things had to happen. She stated there was nothing wrong with adding more explicit language.

Commissioner Whitley commended staff for the thorough analysis in the Mitigated Negative Declaration. His only concern was whether or not there was compliance with the General Plan having to do with MOSO land, which was subject to specific requirements particularly whether or not there was a high risk involved. He praised the high risk analysis and stated that it was thorough and not objectionable. He stated it appeared as if the property was not high risk and could be subject to approval at a higher density than one dwelling unit per 20 acres.

Commissioner Whitley referred to compliance with the General Plan specifically as to whether the density of four units on the 24 acres was appropriate. He had considered the density analysis and the factors required to be met. His review of the analysis found that the commercial property had a fairly high travel and use and that four dwelling units would decrease the traffic and decrease the overall impact, with certain exceptions.

Commissioner Whitley suggested that all of the factors could be met, with the exception of the following:

- f. public benefit will result from the dedication of open space lands, trail or park and recreational facilities beyond those otherwise required for development;
- h. the project is in compliance with Goal 5 and related policies of the of the Open Space and Conservation Element of the General Plan.

Commissioner Whitley explained that Goal 5 called for the Town to *protect, preserve and maintain the natural resources and natural beauty of Moraga*. He noted that the staff report had stated that “This plan complies with this goal in that no new areas are being developed which allows existing natural resources and natural beauty to be retained.”

Commissioner Whitley suggested that the use of the property for residential purposes was appropriate given that it would replace a commercial piece of property. He suggested that the question was whether or not a higher density was appropriate and what public benefit would result. He stated it was clear that there was dedication of over 20 acres of open space with an easement for public access at the top of the property, which would be a significant benefit to the public. Access at the top would also allow for trails and park and recreational facilities.

Commissioner Whitley suggested that the development was one in which there could be one home allowed for development and the entire 24 acres could be a lot subject to development and subject to a change from the natural look and feel of the property. Two homes of 10 acres each could also be allowed which would allow for the building of barns, fences and the development of property that would change the character of the open hillsides which characterized Moraga.

As a result of the 20 acres left in open space, Commissioner Whitley suggested would represent a significant benefit granted by the property owners to the public of Moraga and that it was worthy of approval. He did not disagree with the suggestion for a trail access although he did not believe it was absolutely necessary.

Commissioner Levenfeld stated with respect to access that it would be a huge public benefit although at this point she was not comfortable make a decision on that issue, particularly since the public had not been advised that was a possibility and the neighborhood should be allowed to comment.

Commissioner Hays had no issue with the Mitigated Negative Declaration or compliance with the General Plan. He agreed with the need to discuss the trail issue further when more information was available, potentially during the tentative map stage. He stated that the applicant should be prepared to provide information at that time.

If the applicant had proposed a gated community, Commissioner Hays suggested a pedestrian gate should be provided to allow equestrian and pedestrian access up the trail.

Chairperson Goglia commended the applicants for proposing a project that would dedicate more than 85 percent of the property to open space. She stated that was a significant good to the community that was much appreciated. She added that the change in usage from commercial to residential was appropriate and was more compatible with the surrounding uses.

Regarding the trail, Chairperson Goglia suggested that the applicant should evaluate that possibility and return at the tentative map stage with a proposal. She did not support a condition of approval in that regard at this time.

With respect to the Conditions of Approval, Chairperson Goglia requested an additional change to Condition 3 (a) "Downstream runoff shall be decreased from historic peak flows." She suggested that would be accomplished because the site would have much more permeable surface. Further with respect to that condition, she proposed that "A detention basin or holding pond shall be considered to ensure that historic peak flows shall be mitigated, to be verified by the Town Engineer."

Chairperson Goglia asked if there could be a restriction for the grading to ensure the grading all at once to avoid a piecemeal approach.

Ms. Salamack stated that was usually done with the grading permit although it could be conditioned at this time..

Commissioner Hays commented that given the property was in excess of 10 acres, there would have to be compliance with Regional Water Quality Control Board stormwater requirements anyway.

Ms. Salamack suggested that a new Condition 24 could stipulate that "The rough grading shall be completed in one phase."

Commissioner Sayles proposed a Condition 25 that "A trail access to the existing trail easement shall be considered at the tentative map stage." He agreed with the need for public input on that possibility.

When asked, Ms. Salamack identified the changes requested by the Commission to Exhibit B, the Conditions of Approval, as follows:

- To the first sentence in Condition 1:

A design-level geotechnical and geologic investigation report shall be submitted to the Town of Moraga and approved prior to the recordation of the Final Map.

- To the first two sentences in Condition 3 (a):

Downstream runoff shall be decreased from historic peak flows. A detention basin or holding pond shall be considered.

- At the end of Section 3 (a)

The proposed plan shall be submitted to the Town Engineer for review and approval.

- To the last paragraph under Condition 3 (b):

The report shall be subject to review and approval by the Town Engineer and recommendations for necessary improvements to existing downstream storm drains to handle the increase in peak flow and shall be incorporated into an off-site improvement plan.

- At the end of Condition 3 (c)

This plan shall be subject to review and approval by the Town Engineer.

- A new Condition 24:

The rough grading shall be completed in one phase.

- A new Condition 25:

A trail access from the private road to the existing trail easement shall be considered at the tentative map stage.

On motion by Commissioner Whitley, seconded by Commissioner Sayles to adopt resolution next in number to adopt a Mitigated Negative Declaration for the Larch Avenue Subdivision at 1161 Larch Avenue, as corrected to reflect the "Larch Avenue Subdivision" in the title. The motion carried by the following vote:

Ayes: Commissioners Daniels, Driver, Hays, Levenfeld, Sayles, Whitley,
Goglia
Noes: None
Abstain: None
Absent: None

Ms. Salamack advised that there was a ten day right of appeal for anyone wishing to appeal the decision of the Planning Commission to the Town Council by filing a letter stating the grounds for the appeal and through the payment of an appeal fee through the Planning Department.

On motion by Commissioner Hays, seconded by Commissioner Whitley to adopt resolution next in number to approve Conditional Use Permit and Conceptual Development Plan for the Moraga Tennis and Swim Club at 1161 Larch Avenue, subject to the findings and conditions as shown and subject to the modifications to Conditions 1, 3(a), 3(b) and 3(c) as modified, and with the addition of Conditions 24 and 25. The motion carried by the following vote:

Ayes: Commissioners Daniels, Driver, Hays, Levenfeld, Sayles, Whitley,
Goglia
Noes: None
Abstain: None
Absent: None

Ms. Salamack advised that there was a ten day right of appeal for anyone wishing to appeal the decision of the Planning Commission to the Town Council by filing a letter stating the grounds for the appeal and through the payment of an appeal fee through the Planning Department.

VII. NEW PUBLIC HEARING

A. None

VIII. PUBLIC MEETING

A. None

IX. ROUTINE & OTHER MATTERS

A. None

X. COMMUNICATIONS

A. None

XI. REPORTS

A. Commission

Commissioner Hays reported that he would not be able to serve as Commission Liaison to the DRB meeting on January 12. Commissioner Sayles agreed to serve as the Commission Liaison at that time.

Commissioner Sayles commented that given the full parking lot, the 24 Hour Fitness appeared to be a huge success.

B. Staff

1. Update on Town Council Actions and Future Agenda Items

Ms. Salamack advised that the Town Council would be considering the appeal of the Hetfield Estates Subdivision at their next meeting on January 14. She stated that staff would recommend that the Planning Commission's decision be upheld.

As to upcoming items for Planning Commission agendas, Ms. Salamack reported that a minor subdivision on Camino Pablo would be on the next meeting agenda on January 20 along with a variance application. The February 2 meeting agenda would likely include the Palos Colorados Precise Development Plan. It was also possible that the Rancho Laguna project would return. She stated that the Commission would have substantial agendas in January and February.

Ms. Salamack added, when asked, that new Planning Commissioners would be seated in March.

Chairperson Goglia verified with Ms. Salamack that the Specific Plan was expected on the agenda for the Commission's second meeting in February.

XII. ADJOURNMENT

On motion by Commissioner Whitley, seconded by Commissioner Hays to adjourn the meeting at approximately 8:45 P.M. to a regular meeting of the Planning Commission on Tuesday, January 20, 2009 at 7:30 P.M. in the La Sala Building at the Hacienda de las Flores, 2100 Donald Drive, Moraga, California.

A Certified Correct Minutes Copy

Secretary of the Planning Commission