

**TOWN OF MORAGA  
PLANNING COMMISSION MEETING**

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

February 17, 2009

7:30 P.M.

**MINUTES**

**I. CALL TO ORDER**

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

**ROLL CALL**

Present: Commissioners Driver, Levenfeld, Whitley, Chairperson Goglia  
Absent: Commissioners Daniels, Hays, Sayles  
Staff: Lori Salamack, Planning Director  
Richard Chamberlain, Senior Planner  
Rafael Mendelmann, Town Attorney's Office

**B. Conflict of Interest**

There was no reported conflict of interest.

**II. ADOPTION OF MEETING AGENDA**

On motion by Commissioner Levenfeld, seconded by Commissioner Driver and carried unanimously to adopt the meeting agenda, as shown.

**III. ANNOUNCEMENTS**

Ms. Salamack announced that copies of the agendas were limited due to a breakdown of the Town's copier. For the benefit of the audience, she reported that the agenda included a single item related to the 123-lot Palos Colorados residential development project.

**IV. PUBLIC COMMENTS**

There were no comments from the public.

**V. ADOPTION OF THE CONSENT CALENDAR**

**A. Approval of the February 2, 2009 Meeting Minutes**

The minutes were not available and were continued to the next meeting.

**VI. CONTINUED PUBLIC HEARINGS**

A. None

**VII. NEW PUBLIC HEARINGS**

A. **SUB. 8376 - PALOS COLORADOS - Richfield Investment Corporation (Applicant), Bigbury Company (Owner)**: Consideration and approval of amendments and extensions to the previously approved Conditional Use Permits for the residential use of MOSO [Moraga Open Space Ordinance] and non-MOSO open space lots within the Palos Colorados subdivision. Also proposed is approval of one new Conditional Use Permit (CUP) for the residential development of one additional non-MOSO open space lot. No change in the total number of lots is proposed. The additional CUP is necessary due to refinement in the Precise Development Plan (PDP) project design. The Palos Colorados residential development project is a 123-lot residential development project located east of Moraga Road just south of the City of Lafayette. Also intended for discussion are aspects of the PDP that are related to the construction of custom and semi-custom residences within the project area. The PDP is the third step in the three-step process for approval of a Planned Development in the Town of Moraga. APNs 256-370-004, 005, 006, 007 and 008

Planning Director Lori Salamack advised of two items for consideration where the Commission was being asked to take action to extend the Conditional Use Permits (CUPs) for MOSO and non-MOSO open space that had been approved for the project in 2007, and which would be expiring. She explained that staff had the authority to extend the use permits which had been granted for a two-year term with a one-year extension, although it would be some time longer than one year before the construction of the residences could commence, and more than a year before the building permit for construction could be issued.

Ms. Salamack explained that was an area where the Town had limited discretion given the provisions of the Settlement Agreement that called for a 123-lot project and allowed the development of single-family residences in MOSO and non-MOSO areas. She advised that the Precise Development Plan (PDP) was in substantial conformance with the General Development Plan (GDP) and the Vesting Tentative Subdivision Map (VTM) where the lots had previously been identified as appropriate locations for residential development. As such, the term of the use permits would technically have to be extended.

Ms. Salamack reported that the applicant had requested and staff had agreed with a ten-year term with a five-year extension. She did not support an indefinite term given that development standards could change in the future.

Given the time period associated with the development of other projects in the Town where custom lots did not develop quickly and using some of the lots associated with the Mulholland lot line adjustments as an example, Ms. Salamack suggested that a ten-year term with a five-year extension would be a reasonable period. She advised that the Commission was not being asked to change any of the particular characteristics of the lots at this time.

Ms. Salamack also advised of the intent that the Commission pursue a general discussion of the PDP with greater attention to the custom and semi-custom lots that had been the center of the Commission's discussion at its last meeting, and how to analyze those lots relative to the Town's standards related to floor area ratio (FAR) and the Town's Design Guidelines.

Commissioner Whitley asked if there was a history in the Town of extending CUPs, specifically for ten-year extensions with a five-year renewal potential, to which Ms. Salamack advised that the Town had the authority to establish the initial term and to allow a renewal period. She commented that the Town had more experience where CUPs had expired and had to be reissued.

Senior Planner Richard Chamberlain referred to the Development Agreement for the Moraga Country Club, as an example, which had a ten-year term. He noted that oftentimes other use permits had received more than one two-year extension.

Commissioner Whitley asked if other jurisdictions, such as Lafayette or Orinda, had approved similar extensions. Staff advised that there were few cases in those cities where a use permit was required. Moraga was different given the provisions of MOSO.

Ms. Salamack further advised that absent the Settlement Agreement the Town might have come to a different conclusion, however given the Settlement Agreement's requirement that the Town approve a 123-lot project and authorize their construction in the MOSO and non-MOSO areas, because the lots were consistent with the basic layout of the VTM and the GDP, and given the Town's history for granting new permits when old permits expired, the request was consistent with those prior approvals.

In response to Commissioner Levenfeld as to why ten years had been requested, Ms. Salamack suggested that the period was appropriate given the two years since the GDP and the VTM had been approved during which time the applicant had not been successful in gaining the necessary approvals from the resource agencies, which approvals were required prior to the issuance of any grading permit. Once the grading permit had been issued, the grading would need to occur over a period of time. Subsequent to the grading work, the subdivision improvements would have to be installed.

Given the custom home designs for MOSO and non-MOSO lots, Ms. Salamack added that each lot would require design review approval and a custom home building permit plan would be required for each building permit.

Ms. Salamack stated therefore that would take some years to accomplish in a strong economy. Factoring in the weakness of the current economy, she suggested that the request for ten years was reasonable.

In response to the Chair as to the types of changes that could occur in the Town's development standards in light of the Settlement Agreement, Ms. Salamack explained that the applicant had asked for an indefinite approval and she had been uncomfortable with that request given potential changes in technology and the like that could change the Town's development standards.

Alicia Guerra, Briscoe Ivester & Bazel LLP, representing the applicant, Richfield Investment Corporation, stated that the original request for an indefinite extension was due to the uncertain economic times, the time required for the completion of the approval process, and the need for flexibility. In lieu of the requested extension, she did not see that an annual request for extensions would represent the best use of the applicant's or the Town's time and resources. With respect to the ten-year request and the five-year renewal, she stated that Moraga was unique in requiring a CUP for residential development in some areas. She noted that in many jurisdictions CUPs, while somewhat different, had ten-year terms.

Ms. Guerra added that a ten-year period had been determined to be reasonable given that the use would remain the same and in light of the fact that the resource agency permits were still in process and which had partly been driven with the attempt to finalize and refine the PDP. She commented that those permits were expected soon.

Ms. Guerra stated with respect to the Settlement Agreement that the hope was that the Agreement would continue to apply for the life of the project. She affirmed that the Settlement Agreement had defined the use of the lots in the MOSO areas. As such, there should be no changes in the development standards which had been set in place by the Settlement Agreement, a judicially determined agreement. She added that case law had stipulated that Settlement Agreements granted some vested rights protections or equivalents. The CUPs also had certain rights in that they ran with the land and when approved for the MOSO lots, they were reflected in, consistent and issued with the GDP. As such, she suggested this would be a reasonable timeframe for requesting a ten-year extension.

PUBLIC HEARING OPENED

Chairperson Goglia asked for public comments on the request for continuance only at this time.

Ellen Bean, 20 Carr Drive, Moraga, asked if the extension applied to the entire project.

In response, Ms. Salamack advised that there were 20 lots that were governed by the CUPs; Lots 16 through 32 and Lots 22 and 23. She added that in the future the Planning Commission might consider a CUP for Lot 121, a non-MOSO lot that did not have a CUP granted at the GDP stage, and which would be submitted to the Commission at another time for consideration of a CUP.

On motion by Commissioner Whitley, seconded by Commissioner Driver to adopt Resolution next in number, as presented, to approve the staff recommendation to extend the Conditional Use Permits (CUPs) for MOSO and non-MOSO Open Space for the Palos Colorados project with a ten-year term and with a five-year extension, as presented. The motion carried by the following vote:

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

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.

With respect to the second item, Ms. Salamack referred to the discussion at the last Commission meeting related to the Commission's question of the Town's authority to regulate the design, the analyses that had been completed relative to the lots, and the like. The Commission had expressed a desire to learn what the Town's approval of a PDP including the approval of semi-custom residential designs would mean to the Town along with the request for input from the Design Review Board (DRB).

Ms. Salamack reported that there would be a joint meeting with the DRB on February 23 to solicit its recommendations with respect to the design aspects of the project. The DRB had previously offered input in June 2008 with respect to design concepts pertaining to fencing, landscaping and mailbox locations.

Ms. Salamack explained that after the last meeting she had pursued a stepped analysis which she identified at this time. She referred to the plotting plan for the project and the seven exterior elevations which had been proposed in conjunction with the PDP in April 2008. The plan was displayed in the room.

Ms. Salamack reported that for any one lot there were a number of designs proposed by the applicant. She added that some lots could have any one of the seven designs plotted on the lot, which she understood had been a concern for the Commission. She explained that in approving the PDP there had not been a lot of certainty as to what would be constructed within the project. It would be possible to have seven of one plan constructed next to each other even with variations and there had been some concern as to the possibility of a resulting appearance of a tract lot development.

Ms. Salamack explained that staff had evaluated what was required to be approved from the Settlement Agreement and earlier approvals along with the additional discretion the Town might want to exercise.

In terms of what the Town would be required to approve, Ms. Salamack stated that the Town would be approving custom residences on the MOSO and non-MOSO lots since they had been identified in the prior approval as custom lots. While the seven prototypes could be constructed on those lots, it was not anticipated that would occur on all the applicable lots given that different plans were anticipated. She also noted that Lot 106 had a recommended condition of approval relative to the Lafayette BART Station and would also likely be a custom design. She acknowledged that there were approximately 93 lots where the seven prototypes could apply.

Ms. Salamack explained that the earlier approval had discussed lots greater than 20,000 square feet in area and lots that were less than that size. Lots greater than 20,000 square feet in area were not subject to the Town's FAR requirement. As a result of the prior approval, she stated that the Town had agreed that the applicant could construct residences that were greater than 5,000 square feet in area on those lots and if the Town did not agree to that at the PDP stage the Town would forgo some potential revenue to the Town.

Ms. Salamack explained that there were 61 lots greater than 20,000 square feet in area and 62 lots less than 20,000 square feet in area. Given the 62 lots that could potentially be subject to the FAR calculation, she clarified that the Settlement Agreement had stated that the Town would allow residences between 2,800 and 4,500 square feet with three-car garages, separating the habitable square footage from the non-habitable square footage of the garage when specifying the size of the residence. She clarified that the Town included the garage in its calculation of FAR.

As a result of those constraints, Ms. Salamack recommended that the Commission consider "size guidance" for the 62 lots less than 20,000 square feet in area.

Ms. Salamack explained what that meant by considering the language in the Settlement Agreement where residences should be considered between 2,800 and 4,500 square feet, by considering a modified FAR calculating the FAR for the residence but excluding the garage, and by considering the factor of the lots greater than 20,000 square feet in area.

Ms. Salamack commented that when she had done the calculation of the modified FAR for each of the lots making up the PDP, she had found that the vast majority of them had design prototypes that were less square footage than what the limit would be. In a few instances, there was no design that had been proposed by the applicant that was less than the recommended size guidance. In those instances, she suggested that those residences should also be custom. She identified nine lots out of the 62 lots that would apply in that case.

Ms. Salamack referred to an Exhibit C that would be included in the staff report for the next meeting, which exhibit included a "fit matrix" prepared by the applicant which she had modified in the perspective of lot coverage and a modified FAR. She described the method she had used to modify that matrix and explained how she had plotted the data also factoring in the Town's Design Guidelines for such things as a restriction of no more than two, two-story residences in a row. She concluded that there should be a fair number of choices for each lot for a semi-custom residence which should allow some flexibility on the part of the applicant and prospective purchasers. Noting that there were not an unlimited number of choices, she stated that the Town would also have some say in the appropriate residence for the lots.

Ms. Salamack walked the Commission through the plotting map, noted some of the particulars involved with some of the lots, and clarified that the modified fit matrix had been an attempt to address the concerns expressed by the Planning Commission at the last meeting. She clarified that the matrix related to approximately 90 residences although that did not mean that custom homes could not be proposed for those pre-approved semi-custom residences. She commented that process would be different from what the Town had done in the past.

Chairperson Goglia verified with Ms. Salamack that the proposal was to approve template designs for approximately 90 lots where the applicant would not be required to secure DRB approval for those lots as long as the designs conformed to that template. She also verified that the Town had not previously pursued that type of process.

Ms. Salamack clarified that the process had been approved as part of the GDP and VTM process two years ago with the interest of the applicant and agreed to by the Town. She added that the Town was required to consider semi-custom residences.

If there were no semi-custom residences for the residential lots that met the Town's approval, Ms. Salamack advised that the Town was not obligated to approve the design. She reported that a residential lot was one where a CUP was not required or a condition did not exist, which were the majority of the lots in the project. She pointed out that the exhibit had highlighted the conditions of approval that related to residential design. When asked, she also pointed out the MOSO and non-MOSO lots and identified the lots that would be custom lots versus semi-custom lots.

In response to the Chair, Ms. Salamack reiterated that the Commission at its last meeting had discussed the Town's Design Guidelines and the Town's authority relative to green building. She clarified as she had at the last meeting that the Town had a requirement for green building in new residences in new subdivisions although that guideline had been approved after the approval of the VTM for the Palos Colorados project and did not strictly apply to the project. She added, however, that there was a condition of approval as part of the project, A.VTM.16 "To conserve natural resources, increase energy efficiency, and improve indoor air quality, the applicant or its successor shall use reasonable efforts as determined by the Town to employ 'Green Building' practices in the design and construction of the project."

To implement that condition, Ms. Salamack recommended a new condition of approval in the current draft of the PDP, Condition J.PDP.3 "Prior to the issuance of a building permit for any new residence and prior to final approval of the same permit, the Town shall verify compliance with the green building requirements of Condition A.VTM.16." She explained that it was unknown what program the Town might follow in the future with respect to green building. She added that checkpoints had been built into the PDP approval to specify how A.VTM.16 would be implemented.

Ms. Salamack further clarified that the applicant's design guidelines included in the packet were the guidelines that governed the Palos Colorados project while the Town of Moraga was still governed by the Moraga Design Guidelines. Applicants would have to meet the Town's approvals. She characterized the Palos Colorados guidelines as a tool to communicate with its prospective purchasers design and design consistency in terms of the project while acknowledging that approvals were required from the Town of Moraga. She emphasized that the Town was not governed by the Palos Colorados design guidelines.

Ms. Salamack referred again to the fit matrix and the various prototypes to lot sizes and stated that she had found that Plan 3, the smallest square footage residence, had the ability to be plotted on nearly every lot while Plans 1 and 2, also single-story plans did not fit as well given that they were wider and some of the lots were narrower.

As a result, Ms. Salamack suggested that another plan type with the same footprint as Plan 3 had been recommended. A new plan type had then been created, a modification of Plan 4, a new Plan 4 NGS (no guest suite), and a plan with a smaller size at 4,200 square feet instead of 4,815 square feet, and with a second story in the rear. She expressed her understanding that there would be additional elevations for that plan.

Chairperson Goglia verified with Ms. Salamack that the applicant's design guidelines had been submitted to the Town for informational purposes and were not required to be approved by the Town.

As to any perceived conflict between the Town's requirements and the applicant's design guidelines, as drafted, Ms. Salamack supported a discussion of how the Town interpreted its guidelines. She used the example of a two-story residence that appeared to be a single story from the front and stated the Town would identify that situation as a two-story residence. She added that would not mean that residence would not be approvable but would mean that residence would require the review and approval of the DRB.

Ms. Salamack clarified that the applicant had not seen the material being presented by staff. She had submitted the material to the Commission in advance of the Commission's discussion and joint meeting with the DRB on February 23.

In response to Commissioner Whitley as to the stop light at the entrance to the project, Ms. Salamack explained that the stop light would require the approval of the Traffic Safety Advisory Committee (TSAC) prior to installation. She explained that the Town's Traffic Engineer had evaluated a stop sign and signalization. The Town's Engineer had recommended that because of the pocket park, the trail and the Park and Ride lot a stop light would be required to allow safe pedestrian access to the project. She reported that the Town would not be making a decision on that signal until the Certificate of Occupancy for the 51<sup>st</sup> residence.

Ms. Salamack advised that all of the Town's consultants would be present at the next meeting to respond to any questions at that time.

Chairperson Goglia expressed her hope that the applicant would make a presentation at the next meeting on the designs for the 92 lots.

Ms. Salamack reported that as part of the PDP, the Commission would be asked to approve 92 residential designs. To implement those designs, the applicant would only need a building permit for a set of plans consistent with the Commission's approval.

Ms. Salamack noted that in the plotting there were 30 lots identified as appropriate for secondary living units, accommodating plan types 4, 5, 6 and 7, as identified in the table in Exhibit C.

Chairperson Goglia opened up public comments on the home designs.

Rick Sabella, Richfield Investment Corporation, speaking to the intent of the pre-approved designs, stated that during the VTM he had performed a financial analysis. He noted that if all went well, the cost would approach \$100 million for the site alone. He stated that he had been uneasy with a potential bottleneck with respect to processing by the DRB and had decided to create a situation where pre-approved plans could be offered to potential homebuyers. He explained that the pre-approved plans would constitute 20 percent of the overall units. Given the price of the homes, he suggested that potential homebuyers would not be first-time homebuyers and would be very particular about the design of the home and would not want to have a home the same as an adjacent home or close by homes. He added that in his experience, energy efficiency was critical for potential homebuyers. Given the cost of the site, he stated that the project could not survive with a tract-like development. The majority of the homes would be custom built.

Mr. Sabella emphasized that the pre-approved designs were an attempt to protect the investment in the property and to bring the project to a level where the project would be open to custom homes but would also be able to accommodate pre-approved designs to make the project economically viable. He added that the pre-approved designs were semi-custom and potential homebuyers would be able to modify the plans and the fenestration. As such, a number of the same plans would likely not occur. He added that it would take some time to sell the homes.

#### PUBLIC HEARING CLOSED

In response to Commissioner Levenfeld as to whether or not the conditions of approval attached to the draft resolution were different from the conditions attached to the CUP, Ms. Salamack clarified that the conditions attached to the CUP governed the use of the lot while the conditions of the PDP governed the entire project. She added that the current conditions had built on the prior approval of the VTM which required that certain things be satisfied by the PDP stage. Those conditions had now either dropped out or had been reassigned to other time periods for confirmation. There was also the ability at this stage to add new conditions.

Ms. Salamack further clarified that there were certain conditions that could not be changed.

Ms. Salamack used the example of the VTM condition required custom and semi-custom residences, which could not be eliminated since it had already been approved by the Town and since the appeal period had expired. Through the PDP, she stated that the Town could identify the plan types that were consistent with a particular plotting plan, the applicant's original plotting plan, or any combination thereof.

Raphael Mendelmann, Town Attorney's Office, clarified that the Town had to be reasonable in applying conditions that were appropriate and consistent with prior conditions of approval and the Settlement Agreement.

In response to Commissioner Whitley, Ms. Salamack advised that the condition related to the traffic signal had not been changed from the earlier draft. She referred to Condition L.III.3 to identify that condition.

Commissioner Whitley did not believe that the Town should continue to signalize all of its intersections. He strongly supported a non-signalized intersection for the project. As an alternative, he asked staff to prepare a resolution that would include a stop sign as an alternative to signalization, or signalization similar to the pedestrian signalization on Moraga Road toward Lafayette to match what was located near Silver Springs to offer some alternatives for discussion. He clarified his understanding that the stop sign had been proposed at the entrance to Palos Colorados at a cross street and not on Moraga Road.

Ms. Salamack recognized that while the applicant's traffic engineer had recommended a stop sign, the Town's Engineer had recommended a signalized intersection primarily due to the pedestrian concern. She added that part of the pedestrian concern was driven by the fact that there were sidewalks only on the west side of the road.

**VIII. PUBLIC MEETING**

A. None

**IX. ROUTINE & OTHER MATTERS**

A. None

**X. COMMUNICATIONS**

A. None

**XI. REPORTS**

A. Commission

There were no reports.

**B. Staff**

1. Update on Town Council Actions and Future Agenda Items

Ms. Salamack explained, when asked, that on appeal the Town Council had recommended a focused Environmental Impact Report (EIR) for the Hetfield Estates project.

**XII. ADJOURNMENT**

On motion by Commissioner Whitley, seconded by Commissioner Levenfeld to adjourn the meeting at approximately 9:00 P.M. to a regular meeting of the Planning Commission on Monday, February 23, 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