TOWN OF MORAGA
PLANNING COMMISSION MEETING

Moraga Library Meeting Room
1500 Saint Mary's Road
Moraga, CA 94556

October 4, 2010

7:30 P.M.

MINUTES

I. CALL TO ORDER

Vice Chairman Driver called the regular meeting of the Planning Commission to order at 7:30 P.M.

ROLL CALL

Present: Commissioners Levenfeld, Richards, Socolich, Whitley, Wykle, Vice Chairman Driver
Absent: Chairman Obsitnik
Staff: Lori Salamack, Planning Director
Richard Chamberlain, Senior Planner

Conflict of Interest

Commissioner Wykle reported that he resided within 300 feet of the property under consideration for public hearing item DRB 08-10. As such, he recused himself from that discussion.

Commissioner Whitley reported that the applicant for DRB 08-10 had done contracting work for him in the past and while he understood it was not sufficient to be considered as a conflict of interest, in order to maintain a level of transparency and avoid the appearance of a conflict, he also recused himself from the discussion of the public hearing item.

II. ADOPTION OF MEETING AGENDA

On motion by Commissioner Socolich, seconded by Commissioner Levenfeld and carried unanimously to modify the meeting agenda to consider all agenda items prior to the public hearing.

III. ANNOUNCEMENTS

There were no announcements.

IV. PUBLIC COMMENTS

There were no comments from the public.

V. ADOPTION OF THE CONSENT CALENDAR

A. September 20, 2010 Minutes

The minutes were moved to the Reports section of the agenda to allow amendments to be made.

VII. PUBLIC MEETING

A. None

VIII. ROUTINE & OTHER MATTERS

A. Election of Planning Commission Chair and Vice Chairman

Commissioner Socolich nominated Russell Driver to be the Chair of the Planning Commission. The nomination was seconded by Commissioner Whitley. There were no other nominations and the nominations were closed. ***Russell Driver*** was unanimously elected to serve as the Chair of the Planning Commission.

Chairman Driver nominated Dick Socolich to be the Vice Chairman of the Planning Commission. The nomination was seconded by Commissioner Richards. There were no other nominations and the nominations were closed. ***Dick Socolich*** was unanimously elected to serve as the Vice Chairman of the Planning Commission

IX. COMMUNICATIONS

A. None

X. REPORTS

A. Planning Commission

Commissioner Levenfeld reported that she had attended the Design Review Board (DRB) meeting of September 13, 2010 when the public hearing item on the current agenda had been considered. As such, she would not be making a report to the Planning Commission at this point on the agenda.

B. Staff

1. Update on Town Council actions and future agenda items.

Planning Director Lori Salamack reported that the Town Council would consider an appeal of the decision of the Planning Commission to approve the Dollar Tree store on October 13. The Town Council would also consider an appeal of the decision of the Planning Commission to approve Rancho Laguna II on October 27**.**

C. September 20, 2010 Minutes

Commissioner Socolich requested an amendment to the last sentence of the last paragraph of Page 9, as follows:

> *He* [Commissioner Socolich] *reported that he had also visited a Dollar Tree store in another community and understood that the shelving was five feet six inches high.*

Commissioner Wykle requested an amendment to the second sentence of the first paragraph of Page 11, as follows:

> *He* [Commissioner Wykle] *suggested that the empirical data was clear that Dollar Tree stores typically locate in depressed areas.*

On motion by Commissioner Socolich, seconded by Commissioner Richards to approve the minutes of the September 20, 2010 meeting, as amended. Commissioner Levenfeld abstained due to absence.

Commissioners Whitley and Wykle left the meeting at this time.

VI. PUBLIC HEARINGS

A. DRB 08-10 - Dan Wood (Applicant and Owner) 120 Moraga Road: An appeal from the September 13, 2010 decision of the Design Review Board denying without prejudice the application for design review approval for a new 3,259 square foot two-story craftsman style residence, with a 771 square foot garage on a 33,715 square foot lot at 120 Moraga Road. The property is zoned 1-DUA (one dwelling unit per acre single-family residential). APN 255-511-001.

Planning Director Salamack advised that the Planning Commission had been provided with all materials from the public hearings that had been held by the DRB in July and September 2010. She reported that the DRB had spent a great deal of time studying the findings required to approve the application but could not make all of the findings for the approval.

Ms. Salamack explained that the DRB was able to make two findings for disapproval of the application, without prejudice, which allowed the applicant to resubmit a substantially similar application to the Town within one year. A denial with prejudice would not allow that resubmittal to occur.

Ms. Salamack stated that staff had prepared two alternative draft resolutions for consideration by the Planning Commission. One resolution would conditionally grant the appeal with conditions regarding landscaping and the access easement. Protection for the Town had been incorporated into the draft resolution in the event that the Planning Commission determined that conditional approval of the application was the appropriate action. The resolution granting the appeal required the submittal of a new landscape plan to the DRB or staff prior to issuance of a building permit.

Ms. Salamack explained that the legal right to use the existing easement to the lot was a matter of law which was beyond the authority of the Town to determine. She added that the second draft resolution denied the appeal, without prejudice, in accordance with the same findings made by the DRB. Adoption of the second resolution would require that the applicant make a new submittal to the DRB.

Senior Planner Richard Chamberlain advised that procedurally the public hearing was a “de novo” appeal hearing where any aspect of the application may be considered, not just those identified in the filing of the appeal. The DRB found the design of the new home to be consistent with the Town’s Design Guidelines, however, the application had been disapproved because the DRB found that the increased use of the access driveway through the rear yards at 3763, 3767 and 3771 Via Granada and adjacent to 126 Moraga Road could have a substantial adverse affect on those properties, especially from the headlights of vehicles at night unless adequately mitigated.

The DRB found that the proposed landscape plan within the 30-foot wide access easement did not completely mitigate privacy concerns expressed by the property owners at 3763 and 3767 Via Granada and 126 Moraga Road. The DRB also expressed concern for possible views from the second story windows of the new home which the DRB believed had not been adequately mitigated by existing or proposed landscaping around the new home. The DRB also found that the increase in vehicular traffic on the access road for the new home could have a negative impact on the property values at 3763, 3767 and 3771 Via Granada and 126 Moraga Road.

Mr. Chamberlain added that the DRB further found that the property values of the adjacent properties where the access easement was located could be reduced if the existing driveway was increased in width from 12 feet to 16 feet to comply with Moraga-Orinda Fire District (MOFD) standards.

Mr. Chamberlain reported that the applicant's statement with grounds for the appeal had been filed on September 20 and had been attached as Exhibit D in the Planning Commission packets. The testimony at the DRB meetings and the findings of the Board suggested that there were very few concerns expressed for the design of the residence. The DRB's decision had been primarily concerned with the adverse impacts from increased use of the access easement. The DRB had indicated that the potential privacy impacts from the second story windows of the new home could be mitigated by increased landscaping around the home.

Mr. Chamberlain commented that one issue that continued to be raised had been the assertion that an alternative access to the project site could be built from Corte Santa Clara. Aside from the fact that the Town did not have the legal authority to impose such a condition for an off-site road improvement, staff believed that the grading and retaining walls required to build an access road from Corte Santa Clara would not conform to the General Plan, and if approved, would set a precedent for grading in the scenic corridor that would be very detrimental to the review of other projects in the Town. He reiterated that the legal right to use the existing easement to the lot was a matter of law which was beyond the authority of the Town to determine. The Town must respect the rights of those who were legally entitled to use the easement and could not assume that the right did or did not exist. The Town would also not want to approve the use of the easement for purposes of residential ingress and egress without protection from potential future litigation.

Commissioner Levenfeld reported that during the September 13 DRB meeting when the application had been denied by the DRB, the DRB had spent a significant amount of time discussing a number of issues including whether or not the home should be one or two stories, access to the property, whether or not the driveway should be 16 or 12 feet, and whether or not the easement was to be used by the property owner or used for a water tank. She understood that the MOFD Fire Marshal was to provide an opinion on the issue of the driveway. She referred to the volume of resident participation and concern with respect to the application based on potential view impacts and adequacy of the landscape plan.

Mr. Chamberlain affirmed that staff had met with the Fire Marshal after the September 13 DRB meeting who had indicated the requirement was for a 20-foot wide road and that the MOFD would be granting an exception for a 16-foot wide road. He also affirmed, when asked, that 12-foot wide driveway access had been used by the MOFD in the past.

Mr. Chamberlain noted, as an example, that all of the private road accesses in the Sanders Ranch development consisted of 12-foot wide driveways although in speaking with the Fire Marshal he had informed staff that had never been the case and that a 20-foot wide driveway would be required where there was more than one house with access. Single homes had been allowed 12-foot wide driveways and there were some homes in Sanders Ranch with the same size width driveway. As to whether or not there could be a trade off if the home was sprinklered had not been explored with the MOFD. He emphasized that the applicant and residents had agreed during the DRB meetings that the driveway be 12-feet wide and not any wider. Access driveways were typically between some of the lots in the neighborhood rather than the side yard. He pointed out that flag lots were not that unusual in Moraga.

Commissioner Levenfeld added that the DRB had also been concerned with the position of the solar panels on the home although that had not been under the purview of the DRB.

Mr. Chamberlain clarified that the Town had jurisdiction over the rack/structure which supported the solar panels but not the solar panels themselves. He acknowledged that there were existing solar panels on the hillside.

Commissioner Richards spoke to the issue of the legality of the easement and the assertion in the materials provided to the Commission that the property had always been zoned for residential use where the water tank was a non-conforming use of a residential lot.

Mr. Chamberlain explained that most of East Bay Municipal Utility District's (EBMUD's) tanks or reservoirs had been located in residentially-zoned properties or Moraga Open Space Ordinance (MOSO) lands. In this case, the subject property was located in a 1-DUA zone.

Chairman Driver understood that if the resolution granting the appeal was approved it would require the submittal of a new landscape plan to the DRB or staff prior to issuance of a building permit, however, that had not been identified as a condition of approval.

Mr. Chamberlain affirmed that the draft resolution would have to be modified to include such a condition.

Chairman Driver also spoke to the DRB meeting minutes that had been included in the Commission packets which had outlined discussions on the dissatisfaction with the submitted landscape plan. He sought more detail on the issues associated with the landscape plan which was the primary attempt at mitigation.

Mr. Chamberlain reported that after the first meeting of the DRB in July, the applicant had been directed by his attorney to obtain a landscape plan, which had been done. The expectation of the neighbors was that there would be a more collaborative effort of what would be proposed, however, there had been no opportunity for additional review due to the requirements of the Permit Streamlining Act (PSA).

APPELLANTS:

Dan Wood, 4 Corte Santa Clara, Moraga, introduced his wife, design team, landscape architect, and attorney who were present in the audience. He spoke to his extensive background and experience over the years in the contracting field in Moraga, with neighborhood associations and Town boards, all of which had given him insight into the development and design of Moraga homes. He had worked closely with his architect and Town staff to follow Moraga's Design Guidelines to ensure the project's consistency with the required findings for approval. He noted that he had built his current home at 4 Corte Santa Clara over 20 years ago and had made improvements to the home and beautified the surrounding hillside and area with landscaping.

Mr. Wood commented that the owner of 132 Moraga Road had planted approximately 20 trees on the western edge of his property to mitigate any impacts the development of the home at 120 Moraga Road may bring. He presented the Commission with landscape plans that had been prepared and submitted to the DRB and the neighbors prior to the August 20, 2010 DRB meeting. He reported that there had been no feedback from the neighbors other than one e-mail from a resident just prior to that meeting.

Mr. Wood explained that his landscape architect was present to answer any questions but noted that the landscape plan included 60 plants and had identified the location of existing trees and bushes that provided existing screening. He presented current photographs of 120 Moraga Road including views of neighboring properties, views from the top, and views from 30 to 60 feet down from his property. The photographs depicted current vegetation and all views of and from the driveway.

Mr. Wood commented that during the initial DRB meeting he had been informed that he had not submitted sufficient information for the application including the absence of a vicinity map. He provided the Commission a vicinity map at this time. He stated that he had also been asked to provide a side section map showing the proposed home in relation to the home at 132 Moraga Road. A side section map was also provided to the Commission for review. Additionally, photographs that had been taken from a 16-foot ladder, 13 feet above the exact location of the east window and bedroom 4 of the proposed home were also provided for review. The photographs depicted views of the neighboring residences. Photographs of the first story poles from the driveway were also provided.

In response to concerns that a two-story home would be inappropriate along the scenic corridor, Mr. Wood provided photographs of four two-story homes which had recently been built in the scenic corridor and which were surrounded by single-story homes. He commented that he had spoken with a representative of the MOFD who had suggested he meet with the MOFD to address the issue of the 12-foot driveway. He contended that he had the right to use the easement, noting that the property had always been zoned residential. He, along with the neighbors, preferred that it remain 12-feet wide. He suggested that issue could be resolved with the MOFD. In fact, in speaking with the MOFD he had been informed that he could widen the driveway beyond 12 feet at any point with no permit required and no input from the Town of Moraga.

Mr. Wood presented the Commission with a sketch showing how the driveway could be widened with minimal impact.

Julie Wood, 4 Corte Santa Clara, Moraga, explained that 120 Moraga Road had been zoned single-family residential by the Town years ago and had been reiterated by EBMUD to the Town prior to the sale of the property. All nearby neighbors had been informed well in advance of EBMUD's intention to sell the lot where any interested persons had the opportunity to purchase the lot. At the time of their purchase of the lot, she and her husband had notified the owners of adjacent properties of their intention to build a home and urged the neighbors to contact them with any questions or concerns. One neighbor contacted them when the sale had closed. She added that the driveway had been established many years ago with no restriction on its use, which was not new information.

Ms. Wood stated that while she and her husband had no desire to litigate that point, they had hired an attorney to provide clarity on that issue and in response to a law firm that had been engaged by other persons.

Ms. Wood further pointed out that the proposed home would be situated a significant distance from other homes with the closest neighbor 95 feet away. She advised that their closest neighbor was supportive of the home. She suggested that those neighbors who were opposed to the home were located anywhere from 140 to 300 feet away. While she understood there would be concerns with change, she explained that the proposal was a well-designed home in accordance with the Town's Design Guidelines and would enhance and complement the neighborhood.

Commissioner Socolich understood that the Woods had driven the driveway to see where the lights would play out. He asked Mr. Wood to clarify that issue.

Mr. Wood explained that as one drove into the property during the evening there was no point where the lights would enter the rear yards of the neighboring properties since there was an up elevation. Down the driveway there would be some impact on one of the residences that had an open wire fence. The Persons residence at 3763 Via Granada had grape stake fencing and a solid fence where the headlights of his pickup truck did not go beyond the height of that fence. He encouraged Commissioners to drive the property at night to either agree or disagree with his findings.

Mr. Wood also clarified, when asked, that the current driveway included a drainage swale on the north side between the Persons residence, Holmes residence at 3767 Via Granada, and his residence, with no place to install landscaping. If the Persons' and Holmes' moved their fences to the edge of the landscape easement he had offered to develop landscaping on seven feet of the north and south sides. However, he was limited to only provide landscaping on his easement and it was not appropriate to require landscaping or structures on someone else's property.

Mr. Wood further clarified the location of an asphalt curb where everything sloped towards the curb directing the water out into a berm and under the sidewalk. He had proposed a concrete curb as close as possible up against the fence and on the opposite side of the drive where it could be widened, which would not limit the landscaping and where there would be room for landscaping adjacent to the driveway similar to what currently existed. He reiterated his efforts to determine whether or not there would be any headlight impacts from the use of the driveway as a result of the existing grade. He reiterated that the only location where there would be an impact would be well within his property when reaching a flat part and well within Moraga Road. No fencing had been proposed as part of the landscape plan.

David Bowie, Attorney representing the applicant, Dan Wood, clarified the issue related to the easement. He stated that the easement was an easement interest with the rights defined by what the grant of the easement identified. In this case, the grant was for the construction, reconstruction, and maintenance repair of a roadway right-of-way and did not include the right to build a fence, may actually be inconsistent with the grant and use of the easement, and did not include the right to install landscaping. He added that the neighbors favored a 12-foot wide driveway, the home would be sprinklered, and the driveway did not need to be 16-feet wide.

Mr. Bowie noted that there was a requirement for a major turnaround at the top of the lot where vehicles could turn around and pass another vehicle. Under those mitigation measures, he suggested it would be ridiculous to require a right-of-way driveway that had been in existence for 60 years to be modified for the first time to accommodate a private drive to a residence. That issue would be taken up with the MOFD Fire Marshal and the MOFD Board of Trustees. He understood that the desires of the MOFD were a policy and not totally restrictive.

Mr. Bowie noted that presently any headlights would be intercepted by a fence constructed by the neighbors. If that fence was moved to the boundary of the easement and Mr. Wood vegetated that area, the neighbors could build another fence along the boundary line of the easement. He noted that as one traveled down the driveway there would be headlights although there was distance and any impact would be no more than ambient light in the evening. He suggested that the concern with the headlights was misplaced but could be addressed within the landscape plan within the constraints of the existing construction.

Chairman Driver commented that he had visited the property under discussion and found the condition of the fences to be not well kept. He suggested that a better constructed fence could potentially solve a lot of issues. He asked Mr. Bowie to clarify the legal issues of fencing as opposed to the planting of trees.

Mr. Bowie suggested that fencing would be more of a physical barrier to the use and enjoyment of the easement rather than vegetation which would allow a vehicle to turn out. A fence would preclude any vehicular entry and would be inconsistent with the joint use of the easement area. The easement had been created long before the plots had been subdivided and although it cut through some backyards that could have been avoided by dividing the properties in some other fashion. He clarified that for all of these years the easement had been a right-of-way for the benefit of EBMUD.

Mr. Bowie commented that a fence had been placed on the easement and did not give any rise for adverse rights or prescriptive easement. He suggested that his client had a legal right to have those fences removed immediately and those fences should not be encroaching on the easement. He suggested it would be inappropriate for the Planning Commission to require his client to build fences for the neighbors although it was not likely the neighbors would make a big deal about it since they only needed and wanted a minimum 12-foot width. He added that the Woods were interested in being good neighbors with everyone.

Commissioner Socolich understood that there was nothing to prevent the Woods from working with the neighbors voluntarily and possibly building a substantial fence if the existing fence was in disrepair. It would also prevent any headlights from glaring into the rear yards.

Mr. Bowie acknowledged that there was nothing to prevent a voluntary agreement although he stated it was not the right of the Town of Moraga to require, as a condition of approval, that the Woods build a fence on a neighboring property. He emphasized that the Town did not have the legal authority to impose such a requirement as a condition of approval.

Mr. Wood reiterated that he had sent out a letter to the adjacent neighbors after his purchase of the lot and only after three months had passed had he received a voice mail from Mr. Persons. He had not heard from Mr. Persons personally since that time but had been contacted by Mr. Persons' lawyer.

Alan Sayles, Chair of the DRB, identified himself as the representative of the DRB present in the audience in the event the Planning Commission had any questions.

Chairman Driver asked whether or not there were any DRB issues that had not yet been touched upon by the current discussion.

Mr. Sayles explained that the DRB had initially deemed the application to be incomplete given the lack of a complete site plan and request for certain site sections to be developed. The DRB had later received a full site plan and partial landscape plan. The DRB had requested a 90-day extension to allow a full landscape plan to be submitted although the applicant had refused leading to the recorded vote of the DRB.

PUBLIC COMMENTS OPENED

Meredith Persons, 3763 Via Granada, Moraga, commented that when the property had been placed on the market for sale her parents had been unable to purchase the property. Familiar with the traffic in the area, she expressed concern having someone living on the property with associated traffic which would have a significant impact and which the neighbors were unaware could occur when the property had been sold by EBMUD. She commented that many of the trees on the applicant's property were old and would have to be replaced. She was uncertain that had been reflected on the landscape plan. She also expressed concern with the lack of privacy and use of her rear yard if the home was allowed to be built.

Claude Persons, 3763 Via Granada, Moraga, explained that the reason an attorney had been contacted had been a result of an unlocked gate that had been located on his property but which had been removed by Mr. Wood. He expressed concern with the lack of communication and suggested that the Woods had not attempted to contact any of the neighbors other than through the latest landscape plan that had been submitted to the DRB. He added that neighbors had been unable to schedule a meeting with the Woods in order to review those plans prior to the September 13 DRB meeting. He also added that a post had been installed at 120 Moraga Road with notification to the neighbors. He expressed concern with the application's imposition on the neighbors.

Mr. Persons acknowledged the existing 1954 easement although he had been informed when he had purchased his home that the easement was an outlet easement that was used once to twice a month. He read into the record language from his Real Estate disclosure statement at the time he had purchased his home regarding the easement and his understanding that the property would always be a tank site.

Mr. Persons went on to comment that he had initially offered to buy out Mr. Wood's portion of the easement given that his property was bounded by Moraga Road with a bus stop, driveways, and traffic along Via Granada and now a driveway through his rear yard. He emphasized that his property was now surrounded on three sides, all of which he suggested impacted the value of his property. He advised that his attorney was unable to attend the meeting to address the Planning Commission. While he understood that the issue of the easement had no impact on the Commission's decision, he emphasized the impacts to his property value which must be taken into consideration during the deliberations.

Kevin Johnson, 132 Moraga Road, Moraga, acknowledged that he had been notified by EBMUD regarding the sale of the property.

Mr. Johnson commented that he too had an easement on his property leading to the tank with his Real Estate disclosure statement indicating that there was a water pipeline with a 1961 easement for electricity only. He understood that Mr. Wood would run all of his utilities through that easement although it was only to be used for electricity. He stated that he had also sought a legal opinion and had been informed that the easement was to be used for water and electricity only. He had since learned that Mr. Wood would only use the easement for those utilities and not for sewer. As to the landscaping, there were no plans for any landscaping between his property and 120 Moraga Road and he too expressed concern with the condition of much of the existing landscaping at 120 Moraga Road.

Mr. Johnson walked the Commission though numerous photographs which depicted his views of 120 Moraga Road and landscaping he had planted when he had become aware of the plans for the subject property. Given that there would be noise and visual impacts, he sought a fence on his property line to mitigate those impacts and asked that it be a condition of approval. He otherwise commented that Mr. Wood had offered to install and maintain landscaping on a flat portion of his [Johnson] property to provide privacy, which offer he had declined.

Eleanor Persons, 3763 Via Granada, Moraga, clarified that the easement under discussion would go through her property. She too expressed concern with the potential noise, traffic, and privacy impacts, all of which she suggested would impact the value of her property.

Selma Mirante, 126 Moraga Road, Moraga, stated that she had submitted copies of a letter dated July 23, 2010 which had outlined her concerns with the application, the construction of the home, and the use of the easement for a residential home versus its past use by EBMUD. She emphasized that the movement of the driveway to 120 Moraga Road had been discussed at length by the DRB although the alternative may be difficult due to the way the driveway started close to Moraga Road as opposed to closer to Corte Santa Clara, which would have been a better design. She added that the easement had been situated in an elevated position where some of the existing homes were below the easement impacted with vehicles driving up and down. She urged the Commission to visit the homes of the existing neighbors to view the potential impacts.

Ms. Mirante understood that the one property owner who supported the project and whose property was currently listed for sale had received no offers in two months. She commented on the unknown number of vehicles that could travel up and down the driveway further impacting the neighbors' privacy.

Ms. Mirante explained that Mr. Wood had trespassed onto her property before he had purchased his property. There was no guarantee he would remain on his property or limit the number of people on the driveway. She went on to note that her home had two driveways and included a circular driveway. The driveway that was used the most was 21 feet away from 120 Moraga Road. She expressed concern with a dangerous curve from the Lafayette direction into Town where traffic was traveling in excess of the speed limit making it difficult for her to exit/enter her driveway, which could be further exacerbated by the use of the driveway at 120 Moraga Road.

Bill Hickman, Moraga, identified himself as a local Realtor who had been contacted by the Persons to address the potential impacts to the Persons' property value as a result of the easement. He advised that he had submitted comments in writing for the record. He suggested that if the driveway was widened it would have a great impact depending on the number of trips up and down the road which could be further exacerbated by the current condition of the Real Estate market. He also spoke to the issue of disclosure on Real Estate properties, noting that whatever decision the Planning Commission made on the application would have to be disclosed to a future homebuyer.

Commissioner Socolich commented on the concerns with the potential increase in traffic, impacts from headlights, and potential impacts to property values. He pointed out that Moraga Road was heavily traveled on a regular basis with vehicles, lights, and noise which also impacted property values.

Mr. Hickman acknowledged the existing impacts from Moraga Road although he noted that the cumulative impacts from all of the potential negative impacts were unknown.

Ms. Mirante acknowledged that Moraga Road was a busy roadway, however if the application was approved it would impact her property value and her privacy with additional traffic and noise.

Dillma Johnson, 132 Moraga Road, Moraga, presented additional photographs of her home which depicted the potential privacy impacts if the application were approved.

PUBLIC COMMENTS CLOSED

REBUTTAL:

Mr. Bowie noted that flag lots were not unusual in the Bay Area.

Mr. Bowie described the issue as a driveway where the MOFD should not require a width of more than 12 feet. He pointed out that everyone around the street and cul-de-sac had a driveway which was nothing special. The driveway would serve a single-family residential lot, not a subdivision, and was the same use found throughout Moraga. He went on to comment that based on the site plan, there would be far less intrusion from the development and the access road than from most other developments in Moraga.

Mr. Bowie emphasized that his clients had the right to develop their property as had their neighbors. His client was sensitive to the privacy concerns, noting that the home would be at a distance of 95 to 150 feet from the closest adjacent homes and could not possibly be an intrusion of privacy. He otherwise suggested that some of the photographs that had been presented to the Commission had been enhanced and did not offer a true picture of the actual distance based on the actual eye, particularly with a home and restrictions with respect to sight lines. He saw no issue before the Commission that needed to be discussed, suggesting that staff had properly pointed out that the legal entitlement regarding the easement was an issue for a court of the parties and not the Town of Moraga. His client had a right and granted easement to use the easement and if the Town took that right away it would be eminent domain and condemnation. Staff had properly indicated there was no right to require an exaction or require a condition of approval to build an improvement off site as the neighbors' had advocated.

Mr. Bowie pointed out that there had been no concerns expressed about the design of the home other than some concerns with the placement of windows. Staff and everyone present had indicated that the home was not an issue and the home design met all of the required findings. The only opposition was to the access easement and the roadway although that was not an issue before the Commission and was something that should have been clarified by the Real Estate professionals as legal rights that already existed and was clearly visible.

In response to the concerns with impacts on property values, Mr. Bowie found it doubtful that the road impacted existing property values. He asked that the Planning Commission approve the application as the proper thing to do. He noted that a detailed landscape plan had been submitted and well thought through but had not been fully reviewed by the DRB. He was willing to work with staff on the landscape plan.

Commissioner Richards understood that an alternative road option had been considered.

Mr. Bowie clarified that the alternative road option was an off-site proposal. He reiterated that the Town had no legal right to compel the applicant to built off-site improvements.

Commissioner Richards asked staff whether or not a decision of the Planning Commission was pending a resolution of the legal issues regarding the easement.

Chairman Driver identified the draft resolution of approval which included a condition whereby the approval would be conditioned upon a resolution of the legal issues and with the Town of Moraga to be indemnified.

Ms. Salamack identified Conditions 17 and 18 of the draft resolution of approval which addressed that concern.

Commissioner Socolich expressed his appreciation for the concerns expressed by the adjacent property owners. He commented that homes were being built closer and closer due to the scarcity of land and privacy could not be guaranteed. He described the home as an in-fill development. He had no concerns with the design of the home and pointed out that the DRB had also expressed no issues with the design of the home. While he acknowledged that there could be some privacy impacts, to a large extent any impacts could be mitigated by landscaping on the adjacent properties or something could be worked out between the applicant and adjacent property owners to reach an amicable solution. Also, while there could be some impacts from the driveway many of the adjacent properties were located on a heavily used roadway where traffic, noise, and lights would offer an impact at all times along Moraga Road. At this time he favored the approval of the application.

Commissioner Levenfeld recognized that the issue was contentious. She expressed disappointment with some of the unfortunate occurrences such as the lack of clarity on the Real Estate disclosure statements regarding the easement which was not under the purview of the Town. She noted that the property was zoned for residential development and she was inclined to approve the application. She would like to see Condition 17 of the draft resolution of approval be further tightened in addition to any conditions for the landscaping. She wanted to see the issue of the easement be resolved with a solution with the neighboring properties either through landscaping or fencing, to be approved by the DRB prior to the time designated for construction. She suggested that it was in both parties' best interests to make it work.

Commissioner Richards stated that he had lived on Moraga Way and was familiar with living on a busy street. He also understood that the property owner had the right to develop his property. The lot was a flag lot with a driveway easement and he could relate to the concerns with respect to noise and traffic. He could also relate to the applicant's property rights. In this case, he too was leaning towards approval of the application. In terms of the conditions, he disagreed that Condition 17 should be further modified possibly hindering permits given that the easement was a legal issue.

Commissioner Richards commented that when he lived on Moraga Way he had dealt with impacts related to noise and lights through the landscaping of his front yard using tall shrubs that grew fast and screened the street. He did not support being too prescriptive in telling either neighbor what they should do with their property.

Commissioner Levenfeld understood that the DRB had not approved the landscape plan.

Mr. Sayles clarified that the DRB had deemed the landscape plan to be incomplete since it had not addressed the area of impacts around the home and views into neighbors' properties. Absent a complete landscape plan, there could be defects in the design that could not be satisfied and the landscape plan could have shown that.

Commissioner Levenfeld recommended that the landscape plan be approved by the DRB. She would also like an additional condition to address the easement in addition to Condition 17.

Chairman Driver agreed with the Commission's comments and given the need to have the legal issues resolved prior to issuance of building permits he suggested that should address that issue. He commented that oftentimes applications must be mitigated to ensure no impacts. He was not confident that issue had been addressed to the satisfaction of all parties although he was uncertain the Commission had the authority to dictate that issue. The Commission could impose a condition where the DRB could review the application to ensure that the impacts were mitigated, where appropriate, and it needed to cover more than the easement such as the need for the landscape plan to be more complete prior to final approval.

Commissioner Socolich suggested that any landscaping on or off-site would offer the opportunity for the DRB to review the application and allow the opportunity for the adjacent residents to provide their input.

Commissioner Socolich wanted to see a better working relationship between all parties. He supported a full landscape plan reviewed by the DRB in a public session prior to final approval.

Ms. Salamack commented that if the Commission desired to add a condition regarding the landscape plan, she recommended that the second sentence of Condition 1 on Page 2 of 5 be amended to read:

> *A complete landscape plan for the entire property that mitigates the impact of the modified driveway and new residence shall be submitted to the Design Review Board for review and approval prior to the issuance of the building permit for the new residence.*

The Commission supported the staff recommended modification to Condition 1.

On motion by Commissioner Socolich, seconded by Commissioner Levenfeld to adopt Resolution No. 10-2010PC, granting an appeal and conditional approval of an application for design review for a new single-family residence for Wood at 120 Moraga Road, as modified. The motion carried by the following vote:

Ayes:	Commissioners Levenfeld, Richards, Socolich, Driver
Noes:	None
Abstain:	None
Absent:	Commissioner Obsitnik, and Commissioners Whitley, Wykle [recused]

Ms. Salamack identified the 10-day right of appeal of a decision of the Planning Commission in writing to the Planning Department subject to an applicable appeal fee. Any appeal would be considered by the Town Council.

Mr. Chamberlain took the opportunity to report that Verizon Wireless had completed the work on its equipment enclosure pad and was working on the trench for the power from Rheem Boulevard. He noted however that PG&E had decided it wanted the transformer to be up on the hill not on the bottom which would necessitate another enclosure. As a result, the MOSO cell would have to be expanded to include the PG&E transformer. The Town Engineer desired that the transformer work be completed prior to winter and Verizon was working with PG&E to get the transformer approved. As such, the matter may have to be brought back to the Commission.

Ms. Salamack stated that while not requested, it was typical that the Chair of the Planning Commission be in attendance for the Town Council meeting at such time as the Dollar Tree Store Appeal was considered to speak for the majority viewpoint the Planning Commission had taken on that item.

Commissioner Socolich stated that he planned to be in attendance at the October 13 Town Council meeting and would be more than willing to represent the Planning Commission at that time.

XII. ADJOURNMENT

On motion by Commissioner Levenfeld, seconded by Commissioner Richards to adjourn the Planning Commission meeting at approximately 9:36 P.M. to a regular meeting of the Planning Commission on Monday, October 18, 2010 at 7:30 P.M. at the Moraga Library Meeting Room, 1500 Saint Mary's Road, Moraga, California.

A Certified Correct Minutes Copy

Secretary of the Planning Commission