

**TOWN OF MORAGA
PLANNING COMMISSION MEETING**

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

January 4, 2010

7:30 P.M.

MINUTES

I. CALL TO ORDER

Chairman Obsitnik called the Regular Meeting of the Planning Commission to order at 7:30 P.M.

ROLL CALL

Present: Commissioners Daniels, Driver, Goglia, Levenfeld, Whitley,
Chairman Obsitnik
Absent: Commissioner Socolich
Staff: Lori Salamack, Planning Director
Richard Chamberlain, Senior Planner

B. Conflict of Interest

There was no reported conflict of interest.

II. ADOPTION OF MEETING AGENDA

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

III. ANNOUNCEMENTS

There were no announcements.

IV. PUBLIC COMMENTS

There were no comments from the public.

V. ADOPTION OF THE CONSENT CALENDAR

A. November 30, 2009 Minutes

B. December 7, 2009 Minutes

On motion by Commissioner Whitley, seconded by Commissioner Driver and carried unanimously to adopt the Consent Calendar, as shown.

VI. PUBLIC HEARINGS

- A. UP 09-09 - Moraga Country Club HOA (Applicant/Owner) MOSO Conditional Use Permit for 1600 St. Andrews Drive.** Public hearing to consider an application for a Conditional Use Permit for the existing private recreational use of the MOSO property at 1600 Saint Andrews Drive by the Moraga Country Club and establishment of development standards to allow the replacement of the club house in the same location on the property and other related modifications. APN 257-440-001 and 257-470-004.

Planning Director Lori Salamack reported that the Moraga Country Club had operated in the Town of Moraga for approximately 35 years predating the Moraga Open Space Ordinance (MOSO). When MOSO had been approved by the voters of Moraga it had allowed for private recreational use although there was no Conditional Use Permit on file for the Country Club since it had been established prior to MOSO. The applicant was seeking a Conditional Use Permit to continue the existing private recreational use of the Moraga Country Club and establish development standards for the construction of a new club house, replacing the existing club house in its current location. The Conditional Use Permit application included an analysis of the two cells where the development had been proposed to occur. Development was permitted in MOSO if it occurred in a minimum 10,000 square foot cell with an average slope less than 20 percent.

The plans submitted to the Planning Commission had shown two parcels with a cell in each parcel with an average slope of less than 20 percent. The cell where the club house had been proposed would retain the footprint of the existing building with some changes in egress/ingress for the site. The driveway would be eliminated and would function as it currently functioned with parking at the front and along the side of the club house, with the golf carts relocated to the maintenance area on the adjacent parcel and with some expansion of the storage area.

The Planning Commission was asked to approve a resolution which approves a Use Permit and makes the finding that the proposed use was an appropriate use in MOSO and establishes development standards for each of the cells.

Ms. Salamack spoke to the building height of the club house which had been proposed to be approximately 40 feet, taller than most buildings in the Town, although she noted that there were some structures at Saint Mary's College that were in excess of 35 feet. She added that the building height was not prohibited since the Moraga Municipal Code (MMC) stated that the Town shall establish development standards for the lot area frontage, front, side, rear setbacks and impervious coverage when the development standards were set.

Ms. Salamack noted that the building would be set back significantly from the scenic corridor of Moraga Way with good space around it and the proposed structure would not tower over other structures. She stated that staff was comfortable recommending the building height to the Planning Commission.

Ms. Salamack explained that staff had discussed the possibility of reducing the pitch of the roof with the architect although staff was of the opinion that the establishment of the building height at 40 feet was better at this stage than reducing the pitch of the roof. She acknowledged that the building height could be lowered through the design review process. The proposed height was the upper limit staff was recommending at this time.

Karl Danielson, Dahlin Group, Inc., 5865 Owens Drive, Pleasanton, clarified in response to the current height of the building that the existing club house was approximately 36 feet in height with mechanical rooftop equipment. He stated that the floor line of the existing building would actually be lowered. He added that the current club house had a flat roof with no screening for mechanical equipment.

In response to Commissioner Daniels, Ms. Salamack reiterated that the building height would be approximately 40 feet plus or minus. Staff was comfortable recommending that development standard to the Planning Commission as appropriate for the site and the scale of the building. She recommended that the Planning Commission establish a reasonable building height at this stage. Through the design review process the building height could potentially be further defined and could end up being lower.

Ms. Salamack clarified that the Planning Commission was only being asked to approve the potential for development on the site. The actual design of the building would need to be approved by the Design Review Board (DRB). The building was not intended to be visible from the scenic corridor.

Commissioner Whitley spoke to the re-composition of the drive through with the elimination of parking spaces. He asked whether or not the total number of parking spaces would be reduced.

Ms. Salamack noted that Sheet 4 of the plans had shown 76 existing parking spaces, which number would be increased to 84 parking spaces at the club house, with no change in the number of parking spaces at the driving range or at the street and with an increase in the number of parking spaces for the golf carts.

Mr. Danielson walked the Commission through the design plans with photos identifying the existing club house. He noted that the height of the building varied and while the building was not growing, the ground was dropping away and there was a desire to buffer the building.

Mr. Danielson explained that the existing club house had structural and Americans with Disabilities Act (ADA) deficiencies and it was time to replace the building. The Moraga Country Club had the funds to proceed with the project at this time and expedite the design process.

Mr. Danielson described the site as tight given the existing amenities on the site. He referred to a lack of room due to the loop road and swimming pool. The intent was to improve the ingress/egress as one approached the club house and maximize the site. A design concept had been prepared and the existing driveway would be modified to be in/out with a drop-off turnaround circle and a dedicated front door for the club house for a defined frontage. The loop road would be eliminated with double loaded parking provided and extended with a turnaround. He reported on discussions with the Moraga-Orinda Fire District (MOFD) for a potential hammerhead turnaround for the fire trucks which would increase the parking in that area.

The golf cart parking would also be relocated. The curb line and existing wall against the creek would not be modified although the pool deck would be expanded with additional lawn space providing more congregating space between the tennis courts and the club house. A small snack shack would also be provided with a gate attached and fencing of the area as much as possible in order to expand the pool deck. The existing children's wading pool/spa would be relocated elsewhere on the pool deck. No other improvements had been proposed to the pool itself.

The golf cart barn, which was currently tucked underneath the existing club house, would be eliminated and the floor level of the building would be dropped down approximately three feet, even with the pool deck. Additions to the existing maintenance building outside of the scenic corridor would consist of pre-fabricated flat roof metal buildings which would be screened from view. A new two-story building would be constructed over part of the old road and extended towards the pool equipment building which would remain as would the tennis building.

The footprint and interior of the new club house would include a new entrance into the first floor of the two-story lobby with a conference room with access to the lobby, administration and tennis courts. The entry would include the pro shop, access to the women's/men's locker rooms, with direct access to the pool including a family and children's locker rooms. Formal stairs to the second floor would open to a lounge and bar area with a private dining room, main dining room, two smaller break-out rooms, pre-function space, and deck areas out to the rear. The decks would be located off to the side with no foreground obstructions of the first fairway.

The height of the facility would not be increased but would provide roof forms to screen the rooftop mechanical equipment. The architectural design would consist of a Craftsman style with stucco, timber and tile roof to taper down to the existing pool building.

Chairman Obsitnik asked whether or not the Moraga Country Club Homeowner's Association (HOA) members had expressed any concern with the building height.

Mr. Danielson was unaware of any HOA concerns with the building height.

Commissioner Goglia commented that the location of the building appeared to allow views of the roof from above to adjacent homes. As such, she recommended that care be taken in the placement of the rooftop mechanical equipment. She recommended that the rooftop mechanical equipment be painted out to be screened from view.

Mr. Danielson commented that the homes on the ridge would be approximately 1,000 feet away.

PUBLIC HEARING OPENED

Edy Schwartz, Moraga, commented that she had extensive communication with those in the commercial business section of Moraga. She referred to concerns in the Town that the Planning Department was quite strict and not business friendly. As such, she sought some review of the rules and regulations. As to the subject application, she asked the Planning Commission to keep that in mind while considering the building height. She otherwise found the design plans to be well thought out and attractive.

Andre Haseed, Moraga, a resident of the Moraga Country Club who lived near the tennis courts, liked the plan, the aesthetics and had no concerns with the building height. He asked that the noise from the club house be taken into consideration given that larger events, more bands and amplified music could impact the nearby residents. He asked that the building be designed with the sound insulated as much as possible.

John Pearson, Moraga, explained that a 67 percent majority of the Moraga Country Club HOA and associate members was required to allow the construction of the building, and that percentage had been exceeded. He reported that the majority, well over three quarters, were in support of the project.

PUBLIC HEARING CLOSED

Chairman Obsitnik identified corrections he would like to see for the Planning Commission resolution of approval, as follows:

To the third WHEREAS on Page 1:

WHEREAS, the voters of the Town of Moraga approved the Moraga Open Space Ordinance (MOSO) after construction of the club; and

To Page 2 under the Findings for Approval of a Use Permit under MMC Section 8.12.120:

3. **Will not adversely affect the orderly development of property within the town:** Because the area around the club had already been developed.

Ms. Salamack also corrected the frontage calculations for Cell B-Driving Range Site as shown on the Table on Page 2 to read "434 feet" for proposed and existing, not the 497 feet as shown.

On motion by Commissioner Driver, seconded by Commissioner Whitley to adopt Resolution next in number to approve UP-09-09 for the Moraga Country Club HOA for 1600 St. Andrews Drive, subject to the findings and conditions as shown and as amended by the three recommended changes. The motion carried by the following vote:

Ayes: Commissioners Daniels, Driver, Goglia, Levenfeld, Whitley, Obsitnik
Noes: None
Abstain: None
Absent: Commissioner Socolich

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 submitting a statement and through the payment of an appeal fee, through the Planning Department.

- B. **UP 11-09 - Town of Moraga (Applicant) Madhu and Anjali Sridhar - 331 Rheem Boulevard, LLC (Owner), Town of Moraga Corporation Yard Use Permit.** A Conditional Use Permit to relocate the Town of Moraga Corporation Yard to the 22,651 square foot property located at 331 Rheem Boulevard, including the storage of parks and public works equipment and materials in the enclosed side and rear yards and the storage of old Town files and records. The property is zoned CC (Community Commercial). APN 255-020-003.

Senior Planner Richard Chamberlain reported that a public hearing notice had been mailed to all property owners within 300 square feet of the subject site on December 23, 2009. As of this date, staff had received no correspondence from any neighbors. The Corporation Yard provides storage for park and recreation and public works equipment and materials. The exterior fenced yard at the sides and the rear of the building would be used for the storage of Town vehicles and equipment including seven passenger vehicles, five trailers, and other miscellaneous equipment including mowers and small heavy duty equipment like a Bobcat. Maintenance staff would also park their personal vehicles in the fenced yard while on duty for an additional five vehicles. Several Police Department vehicles may also be stored in the fenced yard area from time to time.

Mr. Chamberlain reported that the hours of operation for the Corporation Yard would be from 7:00 A.M. to 6:00 P.M. seven days a week, although maintenance staff may be called for emergency response at any time of the day and night. The public generally contacted the public works maintenance staff through the Town Engineer's office at 2100 Donald Drive. Occasionally a member of the public may need to visit the Corporation Yard in order to pick up a sign that was left in a street right-of-way. Deliveries of the storm drain pipes, fertilizers, and other parks and public works supplies would not require the use of any large trailer trucks and would not be required at frequent intervals.

Prior to the sale of the property by the MOFD, Mr. Chamberlain reported that a seismic retrofit had been completed on the building and a Conditional Use Permit had been issued on June 21, 2004 for a contractor's yard for a fiberglass pool resurfacing business. The approval included a hillside development permit to replace the old retaining walls at the rear with new larger walls behind the building. There was a circular drive around the building. The conditions of approval had included screening of the employee vehicles, proper handling of chemicals and a proposed screening fence and business signage.

On August 1, 2005, the Planning Commission had approved a Use Permit amendment for the pool contractor to have weekly deliveries by a large truck and trailer rig for the purpose of off-loading fiberglass materials at the front of the building. The contractor subsequently applied for a Use Permit for alterations for the pavement and landscaping at the front of the building without approvals of a Use Permit and encroachment permit.

The DRB had approved the landscaping plans and had made a recommendation to the Planning Commission which had approved the landscaping plans and site improvements as reflected in Resolution 15-2006.

Mr. Chamberlain explained that shortly after the approval of the landscaping improvement plans, the pool contractor sold the property to Stephen Kozel who had obtained an Administrative Use Permit on March 1, 2007 for a digital imaging and printing company. On February 26, 2007, the DRB approved plans for the replacement of large rollup doors with glass windows and other doors around the building. The owner was required to complete the improvements that had not been completed by the pool contractor.

The Town's current Corporation Yard and public works maintenance staff were located at the Hacienda where building and ground space was being utilized that could be used for recreational and community programming. The Corporation Yard had an access drive to Moraga Road and several small sheds and buildings for storage at the northeast corner of the Hacienda property.

Mr. Chamberlain advised that the proposed use of the Corporation Yard at the property at 331 Rheem Boulevard may be considered under MMC Sections 8.36.030-F and G with building contractor yards and auto and vehicle storage conditional uses.

Staff had discussed the required findings of the Use Permit as shown in the staff report including the goals and policies and the draft findings that were required and identified in the draft resolution of approval.

Mr. Chamberlain noted that the landscaping had not been maintained since the prior tenant had vacated the property and staff had concerns with the high water usage and maintenance of the turf area which should be replaced with drought tolerant shrubs and additional trees to reduce the water usage and maintain and screen the storage areas of the sides and rear of the building. An existing maintenance problem with dirt spilling out of the low retaining walls at the sidewalk was also a concern. He identified the approximate locations of the Bobcat, trailers and police vehicles on the site plan and noted that one of the new rear windows would be replaced with a roll up garage door to allow entry for work on public works equipment.

Mr. Chamberlain reported that a total of eight parking spaces were required per the MMC based on the proposed allocation of the spaces in the building. Two parking spaces were required for the 1,000 square foot plan for service and repair work and the proposed storage area for planning and police added up to 1,400 square feet, requiring two more parking spaces and four parking spaces for the office spaces including the kitchen area, lunch room, meeting room and two bathroom areas. The proposed site plan would conform to the parking requirement with five parking spaces on the west side for staff and three at the front, with one ADA compliant van space.

Mr. Chamberlain added that a contractor currently occupied a small office on the west side of the building and had equipment supplied at the rear and side yard with no approved permits on record with the Town. The Town Manager was reviewing the terms of the lease with the contractor since the use was not compliant with the Zoning Ordinance. The Town's request for the Use Permit for the relocation of the Corporation Yard and storage of Town records did not include a provision for a sublease of the space and the Town needed all of the space for the Corporation Yard, staff and the storage of vehicles.

Mr. Chamberlain recommended that the Planning Commission approve the Use Permit and draft resolution, subject to the draft conditions, as shown in the staff report.

Ms. Salamack clarified that the Planning Department was not trying to represent the Town as the applicant, although the plans had been submitted to the Planning Department by the Engineering and Public Works Departments. The Town Manager was present to address any concerns of the Planning Commission regarding the acquisition or future use of the property.

In response to Commissioner Levenfeld, Mr. Chamberlain clarified that the Planning Department would enforce the conditions of approval, had reviewed the staff report, and was supportive of the Use Permit approval and the recommendations proposed for the landscaping. He was confident that the DRB would also support the recommended conditions of approval related to the landscaping.

Town Manager Michael Segrest explained that the Town was under contract to purchase the property and was in the process of conducting due diligence. This was the first step of the approval process which would be forwarded to the Town Council which would make a decision on the acquisition of the property. As to the existing tenant on the property, he reported that there was no lease with the tenant who was leasing space on a month-to-month basis. The needs of that tenant exceeded what the Town could accommodate on the site given the Town's needs and the Town would be working with that tenant on a changeover.

Mr. Chamberlain added, when asked, that the focus of the use of the site was for storage for the Town, although there had been efforts to use the Casita at the Hacienda for a meeting area which had proven to be unfeasible. The 331 Rheem Boulevard location, which had proposed a meeting room, would be more convenient to meet the Town's needs. The storage would not be visible given the fencing and additional trees that had been proposed.

PUBLIC HEARING OPENED

There were no comments from the public.

PUBLIC HEARING CLOSED

Commissioner Whitley had no concerns with the acquisition of the property for a storage facility although he wanted to make sure it was clear how the property may appear given its proximity to the Rheem Shopping Center. He expressed concern that the property would appear like a storage yard with maintenance items and could appear to be a junk yard unless meticulously maintained, and the property could become an eyesore in a prominent location. He recognized that the site made sense for the proposed use and was an appropriate location next to the Town offices, but he would like to see a condition imposed that would require that the screening be maintained and appropriately used.

Commissioner Whitley read into the record a condition he would like to see imposed on the Conditional Use Permit application, as follows:

The site is prominently exposed to Rheem Boulevard, a Town scenic corridor. Restrictions on the site that improve views from the site from the scenic corridor therefore fulfill an important Town policy. The portion of the site fronting Rheem Boulevard which does not consist of building frontage shall be screened from the scenic corridor by either: 1) a screening fence or gate which is approximately 6 feet in height; or 2) foliage. Any gate fronting Rheem Boulevard shall remain closed unless vehicles or materials are being transported through such gate

Commissioner Whitley noted that would effectively require a mechanical gate and while the gate would typically be closed during the times when the yard was not open, during periods of activity he suggested that the gate would be left open for convenience unless there was a requirement that it be kept closed. While he suggested that be done, he acknowledged that the condition would be inconvenient and would effectively prohibit the removal of the six foot fence.

Mr. Segrest disagreed that a maintenance yard was analogous to a junk yard. He suggested it would be somewhat operation clumsy to have a gate. He suggested that the vehicles and equipment to be parked in the yard would appear no different than a parking lot. He supported the screening of material storage from the roadway or the use of internal screening fencing. He agreed that a requirement to close a gate would be an inconvenience.

Chairman Obsitnik suggested that some of the Town vehicles would not be unpleasant to the eye. As to the current Corporation Yard location, he did not see that property was visible all of the time. He recognized that site was heavily screened with foliage.

Concern was expressed that the types of equipment stored would be visible on the left side of the property which had occurred when the pool contractor had occupied the site.

In response to the recommended condition, Mr. Chamberlain commented that the condition would require a motorized gate which would have a fiscal impact on the Town.

Commissioner Whitley noted that the language he had suggested would screen everything with no ambiguity as to the materials to be screened. He reiterated his concerns with respect to screening, not necessarily with the fence.

After a discussion of the best way to identify the intent, Commissioner Goglia recommended a modification to the proposed condition, as follows:

The site is prominently exposed to Rheem Boulevard, a Town scenic corridor. Restrictions on the site that improve views from the site from the scenic corridor therefore fulfill an important Town policy. The portion of the site fronting Rheem Boulevard which does not consist of building frontage shall be screened from the scenic corridor. Specifically supplies, non-passenger vehicles, and other storage should not be visible from the scenic corridor.

Mr. Chamberlain referenced discussions with the Town Engineer that there were considerations in having a secondary fence between the vehicles for the security of the equipment.

Commissioner Goglia expressed concern that the fence considered by the Public Works Department could be a chain link fence which would not provide the necessary screening being sought.

Commissioner Whitley recommended further modification to the condition, to read:

The site is prominently exposed to Rheem Boulevard, a Town scenic corridor. Restrictions on the site that improve views from the site from the scenic corridor therefore fulfill an important Town policy. The portion of the site fronting Rheem Boulevard which does not consist of building frontage shall be adequately screened from the scenic corridor. Specifically supplies, non-passenger vehicles, and other storage shall not be visible from the scenic corridor.

Commissioner Daniels recommended an additional modification, as follows:

The site is prominently exposed to Rheem Boulevard, a Town scenic corridor. Restrictions on the site that improve views from the site from the scenic corridor therefore fulfill an important Town policy. Supplies, non-passenger vehicles, and other storage materials shall be adequately screened from the scenic corridor.

Commissioner Driver supported a broader statement. He understood that the Town Manager needed some sort of indication of whether or not the project would be approved to allow the Town to proceed with acquisition of the property. He supported the condition, as follows:

The site is prominently exposed to Rheem Boulevard, a Town scenic corridor. Restrictions on the site that improve views from the site from the scenic corridor therefore fulfill an important Town policy. The portion of the site fronting Rheem Boulevard which does not consist of building frontage shall be screened from the scenic corridor.

Mr. Segrest emphasized the intent for an approval from the Planning Commission given the plan for the Town to commit funds, which he was not comfortable doing absent an approval from the Commission. The Commission could then return with language on what specifically should be screened.

In response to Commissioner Goglia, Ms. Salamack explained that the Commission may impose a condition whereby *Prior to occupancy of the property by the Town, a plan for visual screening from the scenic corridor shall be presented to the DRB for review and approval.*

Mr. Chamberlain advised that would be Condition 2, with the remaining conditions to be renumbered.

On motion by Commissioner Levenfeld, seconded by Commissioner Whitley to adopt Resolution next in number to approve UP-11-09 for the Town of Moraga Corporation Yard at 331 Rheem Boulevard, subject to the findings and conditions as shown and subject to a Condition 2, as follows, with the remaining conditions to be renumbered: *Prior to occupancy of the property by the Town, a plan for visual screening from the scenic corridor shall be presented to the DRB for review and approval.* The motion carried by the following vote:

Ayes:	Commissioners Daniels, Driver, Goglia, Levenfeld, Whitley, Obsitnik
Noes:	None
Abstain:	None
Absent:	Commissioner Socolich

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 submitting a statement and through the payment of an appeal fee, through the Planning Department.

C. Town of Moraga 20 Dwelling Unit per acre Residential Zone.
Continued public hearing from December 7, 2009, discussion and recommendation by the Planning Commission to the Town Council regarding a new draft zoning ordinance for a minimum 20 dwelling unit acre residential zone in the Moraga Center area.

Ms. Salamack reported that the item had been continued from the December 7, 2009 Planning Commission meeting. One ordinance identified the area within the Moraga Center Specific Plan (MCSP) area to be designated 20 dwelling units per acre (DUA), and the other ordinance identified development standards and the process for the review of applications within that district. The Planning Commission had discussed ways to incorporate green building concepts in the draft ordinance and to address concerns for transit issues related to the MCSP.

Ms. Salamack advised that she had met with Commissioner Goglia to discuss alternatives to present to the Planning Commission. The Commission was not required to approve any of the alternatives but would assist in framing the issues under consideration. She noted that the Commission may consider as alternatives; a recommendation to the Town Council to approve the ordinance without change or require that new multifamily construction within the MCSP area would have to meet a minimum of 70 points on the Green Point Rated Scale which required 50 points for a project to be considered green building. A 70-point standard would require more than the minimum. She noted that staff had conducted an analysis of the current multifamily green point checklist and determined that 70 points would be a reasonable number to accomplish.

Ms. Salamack explained that there were a fair number of points available to the Town from the community design category with more points than the minimum required, and those additional points would reasonably take the project from 50 to 70 points without doing too much more to the project. The Commission could consider a 90-point rated scale as the Town had considered for other projects such as for Palos Colorados. Staff had written into the draft ordinance some of the ways to reach the 70 points, which could be done through hard rules to achieve those points or which could be left open and flexible as to how that could be achieved in each case.

Ms. Salamack stated that the Town Council would be taking action on the item on January 13, 2010. She asked the Planning Commission to conduct the public hearing and recommend adoption of an ordinance.

PUBLIC HEARING OPENED

Dick Loewke, representing the Bruzzone family, explained that he had submitted a letter along with current standards which had recently gone into effect from the East Bay Municipal Utility District (EBMUD) regarding water and energy conservation, and a Build it Green Checklist based on the 20-DUA which he had prepared and which had been designed to address many of the elements addressed by staff. He offered a one-page summary of his extensive comments which he reviewed with the Planning Commission at this time.

Mr. Loewke commented that the Build it Green standards were difficult to balance between being overly prescriptive, achieving the most energy efficient project, predetermining design, and interfering with the certification of the Housing Element due to cost implications. The objective of the ordinance was to accommodate senior and workforce housing. He suggested that the Town's Design Guidelines were the place for the citywide standard for Build it Green criteria whereby multifamily projects must achieve a score of 50 points or equivalent. The MCSP had focused on the concept of Build it Green and what CEQA [California Environmental Quality Act] called for placing jobs and retail together. He reported that the MCSP Environmental Impact Report (EIR) had found no significant effects from development in the MCSP which would generate above and beyond what had already been addressed in the General Plan. No mitigation measures had been proposed to address greenhouse gases and energy waste.

Mr. Loewke noted that Build it Green emphasized flexibility and did not want to predetermine home designs but encourage energy efficiency and use of materials that were earth friendly. If the Town were to consider one of the two alternative ordinances, he suggested it could damage the MCSP and the Housing Element goals. The 70-point ordinance alternative included standards which would predetermine a project yet to be designed, adding costs and conflicting with building designs, which was premature. If the standards were increased 40 to 80 percent, the costs would be increased to a certain extent. A large development, such as Palos Colorados, had more flexibility to incorporate those items than a senior and workforce housing project. He suggested it would be reasonable to conclude that increasing the standards up front would add costs to the project, interfere with building design, and potentially incur the wrath of the State Department of Housing and Community Development's (HCD's) certification of the Housing Element.

Mr. Loewke commented that he had run the preliminary model checklist absent a project design including the EBMUD standards now in effect where 59 points could be achieved.

Mr. Loewke acknowledged that achieving a higher score was possible although meeting the category points in each of the areas started to dictate building design. He expressed concern with the imposition of a standard that was different than what applied citywide. He suggested that based on the checklist, in reviewing the program and anticipating a future program, the standards that Build it Green had prepared for multifamily projects should stand which maintained flexibility in project design and had not imposed a standard on affordable housing representing another governmental constraint on affordable housing.

Mr. Loewke added that the ordinance continued to retain a 50-foot setback beyond the riparian corridor of the creek although he had advocated in the past that the requirements of the EIR be retained with no impacts to the creek channel, wetlands, or riparian elements along the creek. Imposing an additional setback standard beyond that would take away use of some of the most efficient land for high-density housing and would narrow some of the site to a depth of 175 feet transposing the physical footprint of the buildings upslope to areas that had steeper slopes and which would be potentially visually more exposed. The most buildable, least environmentally impacted would be those areas down closer to the creek and away from the protected elements of the creek.

Mr. Loewke further commented on the consideration of a shuttle program and use of Contra Costa Transportation Authority (CCTA) Measure J funds, as listed as the next agenda item for Planning Commission consideration. He noted that such funds could be used for a local shuttle to purchase capital equipment but not to fund ongoing operations. He suggested if the MCSP was successful there could be realized increased sales and property tax revenues which could be used to augment funding for such operations. If the program was considered by the Town, he encouraged the Planning Commission to be cautious in imposing yet another fee, or exaction on affordable housing or retail, which would make it more difficult to develop or to recover from a decade of decline.

Lynda Deschambault, Moraga, commented on the green building issue and presented the Planning Commission with information from the Town Council resolutions approving Palos Colorados and language proposed as part of the Rancho Laguna appeal. She asked the Planning Commission to be consistent and preserve the language imposed on the Palos Colorados development. She agreed with Mr. Loewke the need to comply with the checklist and the 90 points as much as possible given that technology and things changed over time. She suggested that 90 points was reasonable and switching to 70 points for this project, or others, was not fair to the Town as a whole.

Ms. Deschambault suggested a compromise utilizing the method used by the City of Rohnert Park which had imposed a phased in approach for its Build it Green requirements.

Ms. Deschambault noted that the Moraga Town Attorney, who also represented the City of Rohnert Park, had experience in drafting that ordinance and could provide assistance to the Town in that regard.

Ms. Deschambault questioned whether or not the 20-DUA ordinance was required. As a resident on a 6-DUA parcel which had only two units, she questioned whether or not there was an upper size limit. She recognized the pressure not to approve affordability and default to the 20-DUA. She commented that she had provided some information in writing on that issue. She emphasized for the long term that the Town should consider a Green Building Ordinance since it made sense to use something consistent throughout the Town which would be reasonable for phasing development.

Ms. Deschambault further suggested that the riparian creek setbacks should be retained given the benefit of trails along creeks and the vibrancy that would create. She spoke to AB 32 and SB 375 and the CEQA mitigations for greenhouse gas emissions. She asked the Planning Commission to consider the potential impacts to the Town in the event of a lawsuit against the Town's Housing Element.

As to the transportation issue on the agenda, Ms. Deschambault understood that a transportation district could be established, Measure J funds could be used to set up capital investment for a shuttle, and that a fee for a transportation district was common similar to the process used for a Landscaping and Lighting District.

PUBLIC HEARING CLOSED

Ms. Salamack acknowledged that the Town did not have a Green Building Ordinance, although the issue of green building had been addressed in the Town's Design Guidelines; whereby new subdivision development should meet Build it Green requirements for new residences or equivalent. If a project was developed as a multifamily project, the green building requirements would not apply based on the Town's current guidelines. The last draft of the 20-DUA ordinance had included language whereby residential dwelling units shall meet the Build it Green point rated scale or equivalent applicable to all other similar housing in Moraga in effect at the time the application was filed.

Ms. Salamack recommended that the Planning Commission support the proposed change in language as it related to Attachment C to the staff report dated January 4, 2010, Revised Draft 20-DUA Ordinance, Design Requirement #16. She acknowledged that there was genuine interest in the Town in having some Build it Green requirement for multifamily.

Commissioner Driver referenced Attachments C and D, the 70- and 90-point alternate versions of the ordinance noting that the language was different for Design Requirement #16. He asked staff whether or not that was intentional. He commented on the public's concern with respect to being prescriptive relative to the checklist which he did not find in the ordinance. He asked staff to clarify.

Ms. Salamack explained that for Attachment C, Design Requirement #16 called for a minimum of 70 points. She clarified the intent of the two attachments and that the intent was that the points had to be made in particular areas with a satisfaction of the program requirements. She referred to the 70-point ordinance, and one of the items from the checklist which was ministerial and written in as a standard, if satisfied, would obtain the green building point. The ministerial process would allow the developer to achieve program compliance and allow the developer to submit a checklist. Attachment C was written to show that the alternative was not hard to achieve.

Commissioner Goglia supported being less prescriptive and concurred with Mr. Loewke in that regard since the design was unknown and should not be constrained.

Ms. Salamack went on to comment that Attachment C, Design Requirement #16 would not need to add in all of the individual standards. The intent of the attachment was to show that the alternative was feasible. The intent was to provide the Planning Commission with alternatives for consideration.

Ms. Salamack advocated fixing the language in Attachment C, Design Requirement #16. In response to the recommendation for a Green Building Ordinance, she explained that would be something the Town Council may consider during its goal setting session.

Mr. Segrest concurred that having the issue dealt with across the board with all like projects throughout the Town would be a more reasonable approach. He acknowledged that the issue had come up with past projects and was something that should be considered in the future although he could not say when that issue would be considered in terms of priorities identified by the Town Council.

Commissioner Levenfeld asked for clarification on making a recommendation to the Town Council. She pointed out that the purpose of the 20-DUA was for senior, student and workforce housing which language had not been included in the ordinance. She wanted to see such language included in the purpose section of the ordinance.

Ms. Salamack explained that the ordinance implemented the MCSP, which was based on a traffic analysis which had considered different DUA types.

There was a traffic matrix in the MCSP which analyzed the trip generation for different types of units. Senior and student units would not generate the same type of trip generation and that matrix would address the issue of whether or not there was too much traffic. The Housing Element had identified the areas of greatest need in the Town in need of student, senior and workforce housing. General language could be added to the ordinance to address that concern.

Commissioner Goglia expressed a preference for the 90-point Build it Green scale which the Town had designated for other developments, which was feasible not at exorbitant cost. In her opinion, the 90-point scale would not be too restrictive on development.

Commissioner Daniels suggested that the best approach was not to be too restrictive. She asked whether or not the 90-point rating would deter developers of affordable housing. She asked whether or not staff was aware of any other affordable housing development with a 90-point Build it Green requirement.

Ms. Salamack suggested it would depend on where the points had come from based on the categories. The program was set up with credits for innovation and the MCSP was the type of development that the Build it Green program was looking to see. She acknowledged that the Palos Colorados development condition of approval for Build it Green standards included language whereby if it was demonstrated that the points could not be achieved the condition could be relaxed. She suggested that language could be added to the 20-DUA.

Chairman Obsitnik declared a recess at 9:45 P.M. The Planning Commission meeting reconvened at 9:48 P.M. with all Commissioners initially shown as present and absent.

Commissioner Goglia suggested that the Town had taken the path it would need to meet its Housing Element requirements by density, not by keeping track of rents or costs but administratively by approving the 20-DUA approach by default.

Ms. Salamack explained that the Town was required to put regulations in place that would allow affordable housing to be developed. The State had indicated if land was zoned for development at 20-DUA and the Town did not otherwise overly constrain the land, the density would be adequate for the development of affordable housing for lower income households in Moraga. She acknowledged that different jurisdictions had taken a different approach and the default density was a different approach taken in State law, which option had not existed in the past when the Housing Element had been prepared. She acknowledged that with the way the ordinance had been written it could go up to 30-DUA under certain conditions.

Chairman Obsitnik suggested that the market would dictate some form of affordability and that the combination of the Housing Element, the MCSP, the needs assessment, and the requirements of the Association of Bay Area Governments (ABAG) along with the knowledge that the 20-DUA was only in the MCSP and was not Town-wide only on specific parcels, was enough constraint that would lead towards affordability.

Chairman Obsitnik questioned the appropriateness of the higher green point rating in terms of material impact, particularly since Build it Green would evolve over time and as technology improved it could overlay a significant amount of cost. He noted that the Palos Colorados and Rancho Laguna developments involved high end homes. He suggested that setting a 90-point rating may make the development too expensive to build although he was unsure of the costs for 90, as opposed to 70 points.

Commissioner Goglia pointed out that based on the planning for the project there was a baseline of 59 points.

Commissioner Driver personally did not see that 90 points was that high on the scale. He suggested that the Build it Green scale was light as compared to LEEDS and others. It was also overlapped as a concern given that the checklist included a number of things that were just good design, particularly in the area of energy efficiency with marginal costs. He could support a higher score since his primary concern was perception and the concern with the HCD as to whether or not a higher score may possibly impact HCD's review of the Housing Element. He suggested that escape clause language as part of the Palos Colorados approval might represent a reasonable compromise.

Ms. Salamack suggested that 90 points with an escape clause may be helpful in terms of the HCD review. Given the current State level policy direction, all of the issues must be considered together. She suggested that the HCD would care about the green building issues. When asked where the 90-point rating had originated, she commented that the 90-point rating had come from the public and the developer for Palos Colorados had agreed to that direction.

Commissioner Goglia suggested that the Palos Colorados language with "all efforts made to achieve a 90-point rating on the Build it Green scale," should be considered, but in no case less than 70 points.

Chairman Obsitnik recommended that reasonable efforts be made to meet the Build it Green scale since the numbers would change over time.

Commissioner Drive agreed given that Title 24 requirements also would likely change in the future.

Commissioner Whitley commented that the project under discussion was a different type of project, an intended affordable project, different from Palos Colorados and Rancho Laguna developments that were high end projects. As such, there was a concern for cost, a concern for the environment, and a concern for the affordability side of the issue, supporting a minimum Build it Green standard.

Mr. Loewke pointed out that he had prepared the checklist identifying an optimistic 59 points for the program without design but the checklist had not been designed by Build It Green, which tended to be stricter. He emphasized that the 59 points were not automatic.

Mr. Segrest recognized the dilemma with the Build it Green issue and explained that the issue was only one component of the affordability of the project. He stated if there was a project that was more on the affordable side there would be negotiations of potential development impact fees and others as part of a Development Agreement (DA) process in order to offset any costs in order to achieve both goals.

On the discussion at great length of the language in Attachment D, Section 8.34.070, Design Requirements, Page 8 of 13, Draft 20-DUA Residential District, A, #16, three Planning Commissioners recommended a revision to the language to read:

16. *All residential development shall achieve a minimum of 70 points on the "Build it Green" Green Point Rated scale and satisfy all required program elements or equivalent requirement.*

As to the issue of the creek building setback, the consensus of the Planning Commission was to keep the language in the ordinance as is.

Speaking to Attachment A, the Draft Zoning Ordinance, Ms. Salamack advised that no changes had been made to the document.

There were no changes proposed to Attachment A, as shown.

On motion by Commissioner Whitley, seconded by Commissioner Levenfeld to adopt Resolution next in number to recommend to the Town Council an Ordinance rezoning 24 acres within the Moraga Center Specific Plan Area to 20 Dwelling Units Per Acre; and an Ordinance to add Chapter 8.34 to the Town of Moraga Municipal Code to establish minimum twenty dwelling units per acre (20 DUA) Residential Districts, with an amendment to #16. The motion carried by the following vote:

Ayes: Commissioners Daniels, Driver, Goglia, Levenfeld, Whitley,
Obsitnik
Noes: None
Abstain: None
Absent: Commissioner Socolich

VII. **PUBLIC MEETING**

A. **Consideration of a draft resolution recommending that the Town Council use Measure J funds to create a public transportation hub in the MCSP area to link BART in Orinda, Saint Mary's College and the higher density housing near the Rheem Center.**

Ms. Salamack explained that when she had met with Commissioner Goglia they had discussed the potential establishment of a transit district. Staff had reviewed the work of the Revenue Enhancement District in that regard and had discussed alternatives available to the Town.

Ms. Salamack clarified that the Town received Measure J funds and that included on the Town's report to the CCTA, transit and operational costs were fundable although she had since learned they were not actually fundable. The item was not something the Town needed to do now given that there was no development to be serviced. The recommendation would be made to the Town Council to consider when establishing budgets for future years although the Planning Commission was not required to make such a recommendation. Currently Measure J return to source funds were spent on street overlays.

Commissioner Driver thanked Commissioner Goglia for the suggestion and was pleased to see the issue before the Commission. He suggested it was appropriate to use Measure J funds for a transit shuttle link. He recognized that more information was necessary before any decision was made. He was interested in taking on that issue.

Commissioner Levenfeld questioned what other projects could be considered for budget considerations in terms of the potential trade off. She expressed concern whether or not such an option could be viable given the current retail impacts.

PUBLIC COMMENTS OPENED

Dick Loewke reiterated his previously stated concerns. He commented that if Measure J funds could be used to provide a link to the college or other uses, it was a great idea, although Measure J funds stopped short of operational costs and it was important to consider alternative funding sources. He encouraged the Planning Commission to be cautious layering additional cost burdens on homes in the MCSP area in terms of senior and workforce affordability.

Mr. Segrest acknowledged the importance of the issue but expressed concern with staff's ability to support such a program in the near term. He agreed with the concerns with respect to how such a program would be funded. He noted that without Measure J funds the Town would be unable to keep its streets serviceable and in repair.

PUBLIC COMMENTS CLOSED

Commissioner Goglia thanked staff for bringing the item forward. She explained that her intent for bringing the issue forward was to assist struggling businesses and facilitate customers to those businesses. A public transportation hub with shuttles could capture the Saint Mary's College population, senior and below market rate housing to allow everyone the opportunity to shop in Moraga. She agreed that all funding sources and opportunities should be considered. She asked whether or not the issue could be brought to the Town Council.

Mr. Segrest suggested that the Planning Commission could make a recommendation that the Town Council consider a community/public shuttle during its upcoming goal setting session.

Commissioner Levenfeld suggested that the type of shuttle be clarified if such a recommendation was made to the Town Council since there were already some forms of existing transportation, such as the County Connection.

Commissioner Goglia suggested that the current bus system was inadequate. She pointed out that running a shuttle to Lafayette from Moraga would not help Moraga businesses since people would shop in Lafayette first.

Ms. Salamack understood that Saint Mary's College did have a shuttle system which provided limited service between the campus and Lafayette Park.

Commissioner Whitley commented that transit would be great as long as there was a destination. In his opinion, it was premature to discuss establishing more public transit with the exception of getting the Saint Mary's College population into the Moraga or Rheem Shopping Centers. While such a shuttle service would be fine he was uncertain there was a destination in Moraga. The MCSP anticipated a destination, or accommodation of a transit center, but it was not there yet. He suggested that the issue was too specific and directive of using Measure J funds.

Commissioner Whitley acknowledged that planning for transit service improvements as part of the MCSP was an important issue where feedback from the Town Council should be sought.

Commissioner Levenfeld acknowledged that the senior population would benefit from such a shuttle system although currently there was no destination in Moraga.

Commissioner Goglia wanted to see the shuttle system developed in conjunction with the MCSP.

Commissioner Driver commented that the suggestion was too specific. He supported planning for transit service improvements as part of the implementation of the MCSP area as an important issue for Town Council feedback.

Commissioner Daniels suggested that the recommendation at this time was premature given that the MCSP had yet to go before the Town Council for approval. If the recommendation was studied now, she suggested that things could become obsolete over time.

Chairman Obsitnik agreed but in the spirit of compromise would make the recommendation to the Town Council for consideration on its priority list as part of its 2010 goal planning session.

Commissioner Driver noted that the issue should be considered earlier rather than later given the time involved with respect to transportation issues.

On motion by Commissioner Goglia, seconded by Commissioner Driver to recommend that the Town Council in its upcoming goal setting session include transportation planning specifically in conjunction with the MCSP, with particular interest in developing transportation links to Orinda BART, Saint Mary's College and higher density housing in the Town. The motion carried by the following vote:

Ayes:	Commissioners Daniels, Driver, Goglia, Levenfeld, Obsitnik
Noes:	Commissioner Whitley
Abstain:	None
Absent:	Commissioner Socolich

VIII. ROUTINE & OTHER MATTERS

A. None

IX. COMMUNICATIONS

A. None

X. REPORTS

A. Planning Commission

There were no reports.

B. Staff

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

Ms. Salamack reported that the Town Council would be considering all of the Housing Element and MCSP items on its next agenda on January 13, 2010. She also noted it was possible that the next regularly scheduled meeting of the Planning Commission on January 19 may be canceled due to a lack of agenda items.

XII. ADJOURNMENT

On motion by Commissioner Goglia, seconded by Commissioner Whitley to adjourn the Planning Commission meeting at approximately 11:00 P.M. to a regular meeting of the Planning Commission on Tuesday, January 19, 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