

**TOWN OF MORAGA
PLANNING COMMISSION MEETING**

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

August 2, 2010

7:30 P.M.

MINUTES

I. CALL TO ORDER

Commissioner Whitley called the Regular Meeting of the Planning Commission to order at 7:35 P.M.

ROLL CALL

Present: Commissioners Levenfeld, Socolich, Richards, Whitley
Absent: Commissioners Driver, Wykle, Chair Obsitnik
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 Socolich, seconded by Commissioner Richards and carried unanimously to adopt the meeting agenda, as shown.

III. PUBLIC COMMENTS

There were no comments from the public.

IV. ADOPTION OF THE CONSENT CALENDAR

A. July 19, 2010 Minutes

The July 19, 2010 minutes were pulled from the Consent Calendar to be considered after Item V. Public Hearings, as Item V., B.

V. PUBLIC HEARINGS

A. GRADING and HDP 01-10 Mr. and Mrs. Robert White (Owner/Applicant), 32 Buckingham Drive: Application for a hillside development permit and grading permit to grade a hillside with a slope greater than 25 percent including an approximately 50 cubic yard excavation for an in-ground storage building and related improvements.

In accordance with Moraga Municipal Code Section 14.16.020, the Planning Commission shall make a recommendation to the Town Council regarding the proposed application. The work that is the subject of this application including the hillside excavation and partial storage room construction was commenced without benefit of any Town approvals. The Town will evaluate the proposed application as if the work had not been started. This application will receive no special consideration because it was started without permits. The property is zoned 3 dwelling units per acre. APN 256-203-012.

Planning Director Lori Salamack advised that the Planning Commission had been asked to consider the application for a hillside development permit and grading permit and forward a recommendation to the Town Council with respect to the grading permit since it had been proposed on a slope greater than 25 percent. The Moraga General Plan specifically called for grading in those conditions to be decided by the Town Council. The hillside development permit would be considered along with the grading permit in accordance with the Moraga Municipal Code (MMC).

Ms. Salamack reported that construction on the property located at 32 Buckingham Drive had been brought to the Town's attention in May 2009. Since that time the Town had been working with the property owners to submit an application for the hillside development and grading permits. Plans had been submitted and a soils report had been reviewed and submitted to the Town for peer review. The technical issues of the soils report had been resolved between the professionals and the Town's geotechnical consultant who was of the opinion that issues identified in his comment letter, as contained in the August 2 staff report, had been satisfied. However, construction had commenced absent Town approvals and the Town could not consider the fact that work had occurred and give the applicant the benefit of that work.

The Town must evaluate the application as if the excavation and retaining walls for the storage shed had not been constructed and that whatever findings the Planning Commission may have made for the site in a pre-construction condition were what should have been recommended to the Town Council.

Ms. Salamack identified two attachments that had been provided to the Planning Commission and contained in the staff report, including factors to be considered with respect to the approval of the hillside development and grading permits. The factors for the approval of the hillside development permit were general in nature and had considered subject areas that were often considered with respect to the requirements of the California Environmental Quality Act (CEQA).

Ms. Salamack explained that the grading requirements call for the Planning Commission to consider the Town's design guidelines identified as Attachment E to the staff report and the technical issues regarding the grading permit in terms of the rules and regulations in which the manner of the grading should occur. In addition, the General Plan provided guidance for grading on hillsides and had encouraged minimal use of retaining walls and the minimum amount of grading possible on the site with natural contour grading.

Ms. Salamack noted that the plans had shown the construction of a concrete building and a retaining wall on the slope above the building which was important for the Planning Commission to consider as it related to the factors to consider for the grading permit. The proximity of the building to the property line had also been a factor since it would be only 2 feet from the property line where a variance would be required. A survey of the property line had not been obtained and the property owners have represented to staff that the building may actually be 3 feet from the property line.

Ms. Salamack added that Senior Planner Richard Chamberlain and Staff Engineer John Sherbert who both have worked with the property owners were present to address any comments from the Planning Commission. She further clarified that due to travel plans, the property owners were not present. Staff had informed the property owners in the event the Planning Commission was unable to render a decision or recommendation due to the absence of the property owners, any questions would be forwarded to the property owners for a response through e-mail. That information would be provided to the Planning Commission for its next meeting scheduled for August 16. She explained that the property owners had been interested in moving forward as soon as possible, since the Town Council would only meet once in the month of August. The property owners would like the Planning Commission to render a decision or recommendation to the Town Council at this meeting or the meeting of August 16 so that the Town Council may make its decision at the end of this month.

Commissioner Socolich understood through reading the history of the application that this was not the first time the property owner had problems in obtaining appropriate permits and had moved forward with work absent the proper authority.

Ms. Salamack affirmed the history of the property adding that a staff report from 2006 had been included in the August 2, 2010 staff report since it had shown the low retaining walls which was where the current excavation had occurred. The 2006 staff report also illustrated the site conditions prior to 2009.

John Friar, Friar Associates, Incorporated, representing the property owners, Mr. and Mrs. Robert White, stated that based on his discussions with the property owners, the contractor for the project had informed the White's that permits were no big deal. He understood that a portion of the work had been permitted, although the southwest side had not been permitted and the contractor had commenced work in that area.

Commissioner Whitley understood that the retaining walls had gone through design review with the Design Review Board (DRB) in 2006. He inquired of staff whether or not it had also gone through the hillside development and grading permits process with approval by the Town Council.

Ms. Salamack clarified that a hillside development permit had been approved as part of the application in 2006.

Senior Planner Richard Chamberlain explained that the Town's Grading Ordinance required the approval process through the Town Council. In 2006, the Town was still under the County's grading requirements where permits were obtained from the County. The property owners had obtained a grading permit from the County in 2006 and it was possible they were under the impression that same process with the County would apply in this case.

Commissioner Richards understood there were concerns with the foundation which was on bedrock and there was a need for assurance the structure was stable in terms of the integrity of the hillside. He asked staff whether or not there was any doubt the work had been done properly in order to maintain the integrity of the hillside.

Staff Engineer John Sherbert explained that the way the grading had been constructed had been intended to minimize risk from landslides. Both the property owner's consultant and the Town's geotechnical consultant have reviewed the design and resolved any questions about its safety.

PUBLIC HEARING OPENED

There were no comments from the public.

PUBLIC HEARING CLOSED

Commissioner Socolich commented that based on his review of the June 14, 2010 follow-up letter from Cal Engineering & Geology (CE&G) the Town's geotechnical consultants, he understood there remained concerns with the masonry retaining walls and a discrepancy between the retaining wall having been designed for actual site conditions.

Mr. Chamberlain explained that CE&G had indicated in the same letter satisfaction with those issues.

Commissioner Richards recognized that the issues of prior concern had been satisfied per the letters from CE&G. He asked staff if the only remaining issue was the location of the property line.

Commissioner Whitley recognized that the Town and the property owner's consultant's have determined that the structure was safe. Based on Exhibit D, all of the issues had been satisfied with the exception of the location of the building site, the steep slopes and the building being in a deep cut where it could have been sited and placed better. Whether or not that alone was enough to reject the approval of a hillside development permit was a judgment call. He noted that the grading determination findings required for approval of the grading permit as outlined in Exhibit E, in his opinion, had shown that findings B, G, H and I have not been satisfied. The only reason to give the application the benefit of the doubt was that the project had been substantially constructed, however, that was something the Planning Commission was not to do.

Commissioner Whitley suggested had the work not commenced, the application would not have come before the Planning Commission as a new application, since staff would have pointed out the findings that have not been met. The property owners had the burden to bring not only to the DRB and the Planning Commission, but to the Town Council, plans that met all of the requirements.

Commissioner Socolich emphasized the absence of the property owners who may have been able to explain any reasons for the development of the project as constructed and for knowing how close the structure was to the property line. He stated that he could not support a recommendation of approval to the Town Council at this time.

In response to Commissioner Levenfeld, Ms. Salamack commented that had the application come before the Planning Commission with no work having commenced and based on the same plans as submitted, as an example, the Planning Commission may have determined that the Town's General Plan which directs the minimization of soil displacement, retaining walls and grading on the site, the project may not have been approved with those requirements in place. It may have been possible to revise the plans with the structure sited at a minimum distance from the property line, reduced to a smaller dimension and at an elevation further up the slope to minimize the dirt to be removed and still get the volume of space needed. Or as an alternative, consideration of the construction of the structure in the side yard with a different dimension where excavation would not have been required. Those would all be mitigation factors the Commission could have considered.

Commissioner Socolich reiterated that with the property owners not present they could not discuss those issues. Given the work had already commenced the site was not clean and the Planning Commission had no opportunity to consider alternatives. He pointed out that the project would have gone before the DRB who likely would have raised concerns with the retaining walls.

Commissioner Richards inquired whether or not the DRB had approved similar retaining walls and grading.

Mr. Chamberlain explained that the Town's guidelines state if the retaining walls exceed 3 feet in height and if visible off-site design review would be required. If the retaining walls exceed 5 feet in height, whether or not they were visible design review would be required. The prior retaining walls did not exceed 5 feet in height but had required a hillside development permit and had gone before the DRB for that reason under the requirements of the County's grading policy.

Mr. Chamberlain noted that both he and Mr. Sherbert had met with the property owners since the issue had come to staff's attention. He clarified that the property was not a clean site prior to the construction of the subject project since there had been two, 3-foot high wooden retaining walls that needed replacement. Had those structures been replaced with stone walls it was likely they would have been approved administratively without DRB approval since a grading permit would not have been required. However, once they were in excess of the 3-foot high criteria, permits and DRB approval was required. In this case, they were dealing with much higher walls.

Mr. Chamberlain commented that the only time he could recall a similar wall situation had been for a home that had been built into a hillside located at 2226 Rheem Boulevard. In that case, there was an exception in the Grading Ordinance for structural foundations into the hillsides. He was uncertain that exception could be used for the subject building structure and retaining walls given the current design guidelines and variance requirements.

Commissioner Socolich referred to the December 5, 2005 staff report for an application for retaining walls in the rear yard of the subject property as included in the August 2, 2010 staff report, and which had identified a large cut into the hillside. He asked staff of the status of that work.

Mr. Chamberlain advised that that work had been completed. He was uncertain there had been any comments from the surrounding neighbors at that time other than concerns from the Code Enforcement Officer about the volume of dirt being removed from the site. In that case, the work had not been visible from the street and had not come to the Town's attention early in the process.

Commissioner Whitley understood that even if there had been policy exceptions in the past the Planning Commission may exercise its judgment in making a recommendation to the Town Council. As to whether or not there was any mitigation to allow the project to meet all of the findings required for the approval of a grading permit, he was uncertain. He was confident the property owners would argue the project did meet all of the required findings. In his opinion, the property owners had not addressed the concerns raised by staff.

Mr. Friar clarified, when asked, he was an engineering consultant representing the property owners. In response to the concerns being expressed by the Planning Commission, he commented that an argument could be made that the retaining walls which were against the hillside served as a foundation for the storage structure. He noted that the slope at the rear of the home was very steep and in order to make room for the storage building excavation had been required for the retaining walls. As to the staff's assertion that a variance would be required since the structure was close to the property line, he understood that the property line was actually located on the other side of the fence. He was confident a variance would not be required.

Commissioner Socolich would like to hear from the property owners prior to the Planning Commission making a decision. He was uncertain that alternatives, such as building in the side yard rather than in the rear yard and up against the hillside, had been investigated. He was dismayed that the project had not gone through the proper process with the DRB and the Planning Commission. He suggested that much of the discussion on design was under the purview of the DRB.

Mr. Friar suggested that there was not enough room on the west side of the side yard for a structure. The east side of the side yard was exposed where the storage structure would have been an eyesore in the neighborhood.

Commissioner Richards commented that he had driven past the property and agreed if the storage structure had been built on the left side of the home it would have been visible from the street. Presently the structure was not visible to the public.

Commissioner Socolich reiterated his concern that the property owners had not gone through the proper channels and followed the Town's requirements. As it now stands he would have to deny the application. He would like the opportunity for the property owners to address the Planning Commission and explain why the project had been built as it had and whether or not there had been any consideration of viable alternatives.

Commissioner Whitley recognized that justifications and arguments could be made by the property owners to each of the required findings, which could be achieved by the property owners providing staff with additional information. At this time there was not enough information to approve the application.

Commissioner Levenfeld agreed the property owners should provide a rationale for past decisions that had been made for a project that did not follow the process. She agreed that there were areas where the project had not met the standards. The Planning Commission could either adhere to strict application of the design guidelines and findings of fact for the hillside development and grading permits or grant a special privilege which clearly they were not supposed to do.

Commissioner Socolich pointed out had the property owners followed the Town's policies and requirements, many of the concerns and questions raised by staff would have been addressed with the property owners who would have ensured consistency or a rationale for not following those requirements.

The Planning Commission discussed the property owners working with planning staff to address the concerns staff had raised in the materials provided to the Planning Commission with consideration of either changes to the plans or arguing mitigation. The Planning Commission recommended the application be held over with no decision made at this time due to insufficient information.

Ms. Salamack advised that the item could be held over and scheduled for a Planning Commission meeting where the property owners could be present. She emphasized that the August 2 meeting of the Planning Commission had been scheduled at the request of the property owners who were extremely eager for the matter to be brought before the Town Council in order to complete the project in this grading season even with the knowledge they could not be present.

Ms. Salamack affirmed that the Planning Commission may alternately deny the application, subject to the Planning Commission discussion and forward that recommendation to the Town Council.

Commissioner Levenfeld stated that she was inclined to forward a recommendation for denial to the Town Council although she was open to the alternative that had been discussed.

Commissioner Richards, Socolich and Whitley were not opposed to continuing the item to allow the property owner to be present to address the Planning Commission.

On motion by Commissioner Socolich, seconded by Commissioner Richards to continue GRADING and HDP 01-10 Mr. and Mrs. Robert White (Owner/Applicant) 32 Buckingham Drive, to the first Planning Commission meeting scheduled for the month of September 2010. The motion carried by the following vote:

Ayes: Commissioners Levenfeld, Richards, Socolich, Whitley
Noes: None
Abstain: None
Absent: Commissioners Driver, Wykle, Chair Obsitnik

B. July 19, 2010 Minutes

Commissioner Socolich requested an amendment to the first paragraph of page 4, as follows:

Commissioner Socolich recommended a condition that the facility would be for the use of Moraga Country Club members and guests of members.

On motion by Commissioner Levenfeld, seconded by Commissioner Socolich and carried unanimously to approve the July 19, 2010 Planning Commission meeting minutes, as amended.

VI. ROUTINE & OTHER MATTERS

A. None

VII. COMMUNICATIONS

A. None

VIII. REPORTS

A. Planning Commission

Commissioners Richards and Socolich reported that they would not be present for the August 16 Planning Commission meeting.

B. Staff

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

Ms. Salamack reported that the next meeting of the Town Council had been scheduled for August 25.

Ms. Salamack advised that the next meeting of the Planning Commission scheduled for August 16 would include a permitted use application for Dollar Tree to be located in the Rheem Shopping Center. In the event of a lack of quorum for the August 16 Planning Commission meeting, the application would be held over to the next meeting of the Planning Commission.

Commissioner Whitley asked that if the August 16 Commission meeting was cancelled that a Special Meeting be considered on an alternate date in the month of August to consider the Dollar Tree application to ensure approval by September 1. He emphasized the desire to be business friendly.

IX. ADJOURNMENT

On motion by Commissioner Socolich, seconded by Commissioner Levenfeld to adjourn the Planning Commission meeting at approximately 8:34 P.M. to a regular meeting of the Planning Commission on Monday, August 16, 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