

**TOWN OF MORAGA
PLANNING COMMISSION MEETING**

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

March 5, 2012

7:00 P.M.

MINUTES

I. CALL TO ORDER

Chairperson Levenfeld called the Regular Meeting of the Planning Commission to order at 7:00 P.M.

A. ROLL CALL

Present: Commissioners Killam, Kline, Kuckuk, Socolich, Wykle,
Chairperson Levenfeld
Absent: Commissioner Obsitnik
Staff: Shawna Brekke-Read, Planning Director
Richard Chamberlain, Senior Planner

B. Conflict of Interest

Planning Director Shawna Brekke-Read advised that each Planning Commission binder included a tab of a map of each Commissioner's home, the 500-foot radius around the home, and a mailing list. If a project was on the mailing list and within that radius, a Commissioner must recuse himself/herself from that item pursuant to Conflict of Interest laws.

C. Contact with Applicants

Ms. Brekke-Read reported that this was a new item on the Planning Commission agenda; one of the conflicts of interest was for financial reasons and the other if a Commissioner lived within close proximity to a project. While contact with applicants was not a conflict of interest, this item had been added to the agenda for transparency purposes as part of the public policy in terms of whether or not an applicant had contacted a Commissioner or whether or not a Commissioner had conducted a site visit to the project site.

Chairperson Levenfeld reported that she had not contacted any of the applicants on the current meeting agenda, although she had spoken with one of the occupants of 2094 Laird Drive regarding the project at 1800 Donald Drive.

Commissioner Killam reported that he had not contacted any of the applicants but had conducted a site visit to 1800 Donald Drive.

Commissioner Kline reported that he had no contact with the applicants.

Commissioner Kuckuk advised that she had no contact with the applicants.

Commissioner Socolich reported that he had no contact with the applicants but had visited the site at 1800 Donald Drive.

Commissioner Wykle reported that he had no contact with the applicants but had visited the site at 1800 Donald Drive.

II. PUBLIC COMMENTS

There were no comments from the public.

III. ADOPTION OF THE CONSENT CALENDAR

- A. **Approval of the February 6, 2012 Minutes**
- B. **Approval of the February 21, 2012 Minutes**

On motion by Commissioner Socolich, seconded by Commissioner Wykle and carried unanimously to approve the minutes of the February 6, 2012 Planning Commission meeting, as shown, with the February 21, 2012 minutes to be moved for consideration under agenda Item VI. Routine and Other Matters as Item A.

IV. ADOPTION OF MEETING AGENDA

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

V. PUBLIC HEARINGS

- A. **UP 01-12 / May Lo (Applicant), Kimco Realty Corporation (Owner) - 384 Park Street:** Conditional Use Permit application to allow the operation of a frozen yogurt shop in a 1,625 square foot vacant retail commercial space at the Rheem Shopping Center. The store would have 18 seats for customers. Tenant improvements include a new door at the back for access to the rear parking. Business hours: Sunday to Thursday from 10:00 A.M. to 9:00 P.M., and Friday and Saturday from 9:30 A.M. to 10:00 P.M. Signage includes two lighted signs, a back-lighted "halo" type sign on the front canopy beam and an internally lighted sign behind the window. Zoning: CC (Community Commercial), APN 255-150-015.

Senior Planner Richard Chamberlain presented the request for a Conditional Use Permit application to allow the operation of Tangelo's Frozen Yogurt store in a vacant commercial space at the Rheem Shopping Center.

The 1,625 square foot store would occupy space previously occupied by Curves for Women which relocated to 592 Moraga Road in the Rheem Shopping Center.

Mr. Chamberlain reported that a public hearing notice had been mailed on February 21, 2012 and the Planning Department had received no written communication from the public on the application. The yogurt shop would employ two full-time and six part-time employees with a maximum of four employees working at the same time. Tenant improvements included a new door at the back for access to the rear parking area. Business hours would be Sunday to Thursday from 10:00 A.M. to 9:00 P.M., and Friday and Saturday from 9:30 A.M. to 10:00 P.M. The business would receive deliveries twice a week in the mornings.

Mr. Chamberlain explained that restaurants were required to provide one parking space off-street for every three seats in a restaurant and the business would require six parking spaces for the 18 customer seats. The plan for the business also called for a multi-purpose room which would be used as a meeting room and staff lounge of approximately 190 square feet in size. If the room were to be used for private parties and available to customers of Tangelo's, the number of seats available in the room should be added to the total number of seats to determine the parking allocation.

Tangelo's Frozen Yogurt shop would be a self-service business with customers choosing the yogurt flavor and toppings and with some customers taking the yogurt outside the store. There would be trash receptacles in various locations in the center. Some policing may be necessary by the employees to ensure that discarded containers did not accumulate and that the trash receptacles were cleared at sufficient intervals.

Mr. Chamberlain explained that the internally illuminated two and a half-foot sign behind the window did not conform to any standard approval for the Rheem Center although the Town had approved some illuminated signs when set back and less visible from the street. The interior signs were typically smaller and usually read "open." The internally illuminated sign behind the window would be set back 113 feet from Rheem Boulevard and 40 feet from the front of the pet store adjacent to Park Street. A planter box also partially blocked views of the store. He noted that the Rheem Center provided large dumpsters at the rear of the store and the C.3 guidelines for stormwater would not require a roof unless there was an addition or impervious surface less than 10,000 square feet. He stated that if the owners of the shopping center or the tenants were cited for C.3 violations, a roof would be required over the dumpsters.

Mr. Chamberlain reported that the applicant intended to paint the front of the store in colors similar to the Shish Kabob Show store at 376 Park Street. A color palette had been submitted and enclosed as Attachment D to the staff report

dated March 5, 2012. The front would be changed from a light beige tone to a stone brown color and the front entry door would be a burnt orange or terra cotta color.

Mr. Chamberlain advised that the project was consistent with the General Plan and Zoning Ordinance and would have minimal impact on surrounding properties. He recommended that the Planning Commission adopt Resolution next in number, Approval of a Use Permit for Tangelo's Frozen Yogurt store at 384 Park Street in accordance with the required findings from Moraga Municipal Code (MMC) Section 8.12.120 and subject to the conditions of approval as contained in Attachment A to the staff report.

In response to Commissioner Killam, Mr. Chamberlain stated that the applicant would also provide a dual gender handicap accessible restroom at the rear of the store. The exterior color palette could also be reviewed by the DRB if the Planning Commission so directed.

PUBLIC HEARING OPENED

May Lo, 50 Warfield Drive, Moraga, was excited to bring the project to the Planning Commission and have the store provide frozen yogurt to families of all ages.

PUBLIC HEARING CLOSED

Commissioner Wykle asked that the DRB review the color palette as well as the signage.

Mr. Chamberlain recommended a new Condition 10, to be added to Part 2: Conditions of Approval of Attachment A, the Draft Resolution of Approval of the Conditional Use Permit as follows:

The Design Review Board shall review and approve the proposed colors for the building.

On motion by Commissioner Socolich, seconded by Commissioner Wykle and carried unanimously to adopt Resolution next in number to approve UP 01-12 Tangelo at 384 Park Street, subject to the findings and conditions of approval as shown, and as amended with the inclusion of Condition 10.

- B. DRB 04-11 / James Phillip Wright (Applicant), Stephen Williams-Pensco Trust Co. (Owner) - 1800 Donald Drive:** The Planning Commission will first consider and receive comments on a revised environmental Initial Study and Draft Mitigated Negative Declaration for a new 3,001 square foot residence with an attached 553 square foot second

unit proposed on a vacant 13,203 square foot lot on the northeast side of Donald Drive and 1,000 feet southeast of the Laird Drive intersection. The Planning Commission will consider the Initial Study/Mitigated Negative Declaration and a Hillside Development Permit. Story poles have been installed on site. Zoning: 6-DUA (Six dwelling units per acre). APN 255-183-011.

Mr. Chamberlain explained that the Planning Commission will first consider and receive comments on a revised environmental Initial Study and Draft Mitigated Negative Declaration (MND) for a new 3,001 square foot duplex residence with an attached 553 square foot second unit proposed on a vacant 13,203 square foot lot on the northeast side of Donald Drive and 1,000 feet southeast of the Laird Drive intersection. The site is heavily wooded with over 29 trees on a steep approximate average slope of 65 percent. The project site is vacant and undeveloped.

A public hearing notice for the application had been mailed to property owners within 800 feet of the subject property on February 21, 2012. Correspondence previously received for the November 7 Planning Commission meeting had been included in Attachment P to the staff report dated March 5, 2012. Additional correspondence including letters and e-mails that had been received from the property owners of 2092, 2094, and 2066 Donald Drive had been distributed to the Commission at this meeting.

The applicant had also submitted new photo renderings of the project and four sheets of the plans which had been revised or refined.

Mr. Chamberlain explained that if the Planning Commission approved the Initial Study/MND a second public hearing would be scheduled for the Hillside Development Permit (HDP) given that the Planning Commission may not make a discretionary decision without first approving the environmental clearance.

Mr. Chamberlain noted that in order to have a sufficient offset of the floors, the architect had modified Sheet A2.0 (Upper Level Plan) to provide tandem parking for the primary unit so that the previously proposed double-wide garage would not be a third story above the lowest floor level. Sheet A4.0 (Upper Level Plan) of the plan set included cross sections through the building. He explained that attic and crawl spaces with less than six feet of height would not count as floor levels. The applicant proposed a building foundation that required less than 50 cubic yards of soil excavation and no cuts greater than three feet to comply with the Town's Grading Ordinance for minimum grading and exemptions for foundation grading. Story poles had been erected on the project site as requested by the Planning Commission during its November 7, 2011 public hearing.

Mr. Chamberlain explained that the project was not exempt from the California Environmental Quality Act (CEQA) since it involved grading of four building foundations on a slope over 10 percent. The Planning Commission considered the Draft Initial Study on November 7, 2011, and continued the public hearing pending additional information. The Initial Study had been modified to include references to a biotic survey, an arborist report, and included recommendations from a supplemental geotechnical evaluation of the collection of rainwater through the proposed rain catchment storage in the foundation underneath the building.

The Initial Study had found that there would not be a significant environmental effect given the revisions to the project or agreed to by the applicant, with a Revised Draft MND having been prepared based on the additional environmental information received. That information included mitigation measures to significantly reduce potential environmental impacts to less than a significant level.

Mr. Chamberlain advised that if the MND was adopted, all of the mitigation measures would become mandatory conditions of approval for the project. Review of final project plans for compliance with the conditions of approval would serve as the mitigation monitoring program for the project although long-term mitigation measures may also require an agreement with the property owner or the recordation of deed restrictions to require adherence to mitigation measures by future owners of the property.

Mr. Chamberlain stated the biotic survey had found no endangered species on the property. The arborist report inventoried 29 trees on the property along with two trees that overhang the property from adjacent properties. The arborist had recommended the removal of 16 trees to accommodate the construction of the building and/or due to the poor condition of the trees. Six of the remaining 15 trees would require protection measures since the driveway bridge would encroach into the drip line of the trees. A total of five native trees would be removed; three California bay trees and two Coastal Live Oak trees. The plans had also been revised to show the piers under the stepped foundation that would anchor the foundation into the bedroom below the building.

The applicant had also agreed to make revisions to the project necessary to implement the mitigation measures. Mr. Chamberlain stated that after the Planning Commission heard testimony on the Initial Study and MND, the Commission should discuss whether or not the mitigation measures would reduce all of the environmental impacts to a less than significant level and consider the findings in the Draft MND. The Planning Commission may make amendments to the mitigation measures and to the findings in the MND. Following the adoption of the MND, no significant changes could be made to the mitigation measures without reopening the public hearing on the environmental

determination unless the change was an alternate mitigation measure that would be equally effective at reducing the environmental impact. If the Commission finds that the Initial Study had adequately addressed all of the issues and that the environmental impacts could be mitigated, a motion could be made to adopt the MND.

If the Commission finds that one or more of the environmental impacts were not adequately addressed or mitigated in the Initial Study, staff should be directed to amend the Initial Study and address the deficiency.

Ms. Brekke-Read clarified that the ultimate action for the project would include two separate actions; the consideration of the Initial Study and MND, and the discretionary action on the HDP.

Mr. Chamberlain explained that the next part of the application was the approval of the HDP since the slope was over 20 percent, and there were a number of factors required to be part of the approval of the HDP as outlined in Attachment L to the staff report, which included slope, soil instability, drainage, soil characteristics, seismic factors, existing and future residential development, view shed, access, potential traffic congestion, fire risk, noise, glare, wildlife, dust, and impacts on existing vegetation. He noted that the applicant's geotechnical engineer had previously prepared reports for the property in 2006 and 2007 for a different application that had included a variance request, and on the basis of those reports a supplemental report had been prepared to address the new stepped foundation design. This new report from August 22, 2011, had been reviewed by the Town's geotechnical review peer consultant, Cal Engineering, which had also reviewed the 2006 and 2007 reports.

Additionally, during the November 7 Planning Commission hearing, the Commission requested that the soils engineer also review the rain catchment storage system under the foundation for the storage of storm water which would also serve as the heating and cooling system for the home. The Town received a letter from the applicant's geotechnical consultant on that issue which had indicated that the system would be feasible but it was important that the system not have any saturation or leakage into the soils below.

Mr. Chamberlain noted that the Slope Density Ordinance had not included any findings although staff had devised findings based on the intent and purpose of the ordinance, as outlined in the staff report. He added that the Planning Commission directed that the DRB also review the project which had been done during a Study Session with the DRB on January 23, 2012. The DRB discussed specifics on zoning compliance, required setbacks, building height, parking requirements, and other details. The DRB had discussed the fact that the project, a duplex allowed in the 6-DUA (Dwelling Units per Acre) Multifamily

Residential District, would require four parking spaces. The project was deficient in the parking requirements.

The project generally was in compliance with the setback requirements, although the 6-DUA ordinance was conflicting and the DRB had discussed the fact that none of the existing duplexes on Donald Drive on either side of the project site were in compliance with the 20-foot sideyard setback requirements, and a variance would not grant a special privilege for less than the 20-foot sideyard setback.

Mr. Chamberlain advised that the MMC allowed the Planning Commission and the DRB to establish a greater or lesser setback upon the finding that the adjustment was necessary to establish a proper site planning relationship to existing and proposed uses. As to the rear setback requirements, the DRB could not find that the setback was in compliance and the DRB had concerns with the encroachment of the deck into the rear yard area. The DRB sought some setbacks for decks, particularly those high and off the ground and those which could impact neighboring properties. The DRB had recommended that the deck be cut back and not encroach so far into the rear yard. The DRB had also expressed concern with the deck's impacts on trees and noted the importance of having trees below the site to screen the property from the duplex located below.

Mr. Chamberlain went on to note that the residential density stipulated that no more than six dwelling units shall be erected on any one acre exclusive of streets, except as provided in Subsection B of MMC Section 8.32.040 A, and in Goal 4 of Policy 8 of the Land Use Element of the General Plan. A density of 6-DUA is equivalent to one unit for each 7,260 square feet of lot area and two units would require a minimum lot area of 14,520 square feet. The actual lot area is 13,203 square feet or 1,317 square feet less than required for two units. The minimum lot size in the 6-DUA zone is 10,000 square feet which would not provide sufficient area to comply with the 6-DUA density requirement. He explained that the lot is an existing legal lot that had been created in 1964.

Mr. Chamberlain added that the DRB had also discussed the General Plan consistency findings and had found that Policy PS4.10 Grading, as shown on Page 5 of the staff report, was a concern in that if the Town Council did not allow any grading on the site construction of a residence on the property would have to be supported on piers with no excavation or fill on the hillside, increasing the height of the structure and mass or bulk of the building given that no part of the structure would be below grade. Alternatively, if limited grading and cuts into the hillside were allowed, the structure could be designed to better comply with the other General Plan polices and the Town's Design Guidelines regarding maintaining hillsides. Also as part of Policy PS4.10, grading for any purposes whatsoever may be permitted only in accordance with an approved development

plan that is found to be geologically safe and aesthetically consistent with the Town's Design Guidelines.

Land with a predevelopment average slope of 25 percent or greater within the development area shall not be graded except at the specific direction of the Town Council and only where it can be shown that a minimum amount of grading is proposed in the spirit of, and not incompatible with, the intention and purpose of all other policies of the General Plan.

Mr. Chamberlain spoke to the massing of the building above the duplex below noting that the applicant had provided newly rendered photo montages of the building both with some of the existing trees in front of the building and some mages without. When the new renderings were compared with the photos in the staff report, they appeared to line up with the story poles better than the original photo montage that had been submitted in summer 2011.

Mr. Chamberlain commented that the offset of the structures would avoid the three stories eliminating the side-by-side garage staff determined was a better configuration and suggested that was an issue that the DRB should review with the garage shifted closer to the street. He commented that the building aggregate complied with the building height of 45 feet and the Planning Commission should discuss whether or not that had an adverse effect on the neighboring properties and whether or not that should be reduced although the only way to shorten the distance would make the building narrower and closer to the street. He noted that all of the recommendations of the applicant's geotechnical engineer, Friar Associates, Inc., had been added as mitigation measures regarding the catchment system. In addition, although the project contractor had submitted plans on what they planned to do, the DRB requested additional information on the methods of excavation and the removal of dirt from the foundation, and expressed concern for the location of the staging platform between the two bridges which could potentially impact several more trees, along with concerns for the legal access to Donald Drive. The applicant had submitted a Title Report for the property which affirmed that Longwood Moraga LP had granted a non-exclusive easement over a strip of land 60 feet in width (commonly known as Donald Drive-Private Road). A legal description of the easement was shown on Page 6 of the Title Report, shown as Attachment K to the staff report.

Mr. Chamberlain further commented that a Tree Removal Permit would be necessary for the removal of the five native trees pursuant to MMC Section 12.12.030. He recommended that the Tree Removal Permit be considered by the DRB in case there were adjustments to the building and/or driveway bridge locations that would change the number of trees to be removed and noted that the Moraga-Orinda Fire District (MOFD) may also require the removal of large trees within 15 feet of the new residence to maintain a defensible space around the new home.

Mr. Chamberlain stated that the Planning Commission should provide comment on the number of trees to be removed; the effect tree removal would have on the hillside and environment, and the consistency of that tree removal with the General Plan. He reiterated that prior to any discretionary approval of the project the Planning Commission must first consider the approval of the MND. The MND, including its mitigations, may be amended after the Planning Commission received testimony from the public. A draft resolution of approval of the MND had been enclosed as Attachment A to the staff report.

Commissioner Socolich asked whether or not any borings had been conducted as part of the previous and recent geotechnical reports, to which Mr. Chamberlain affirmed that borings had been done and the applicant was aware of the depth of the base rock with shallow soil on the site. He explained that the Town's geotechnical peer reviewer had noted that with a hillside as steep as the subject site there must be bedrock close or there would have been a landslide long ago.

Commissioner Kline spoke to Attachment L, Item 6 and a survey of future residential development and the duplexes below and asked staff to comment on the contention that the other 6-DUA areas had similarly constructed homes.

Mr. Chamberlain commented that the Town would likely not have approved any subdivisions as what was being proposed with the subject property, which had been approved by the County. There were a few duplexes below with modest additions. The property had never been subdivided and was located on a legal lot that had been recorded.

Chairperson Levenfeld asked whether or not staff would be providing any direction to the Commission on the issues surrounding the density, parking, and grading requirements.

Mr. Chamberlain explained that staff had raised the issues because the property was a legal lot but did not comply and there were other duplexes that may be in the same situation. Almost all of the duplexes on Donald Drive constructed under the County's zoning did not comply with the Town's requirements for setbacks. Some constructed farther up Donald Drive may have sufficient area.

Ms. Brekke-Read commented that the resolution for the HDP, Attachment B, Condition 13 on Page 7 required that the project plans be amended to either fully comply with the zoning regulations including but not limited to sideyard setbacks and parking and ensure that all elevated decks did not extend into any required setbacks.

As to the issue with respect to density, Ms. Brekke-Read stated that the findings could be made that the site could not support two units. If that was the case,

there was no condition dealing with that which would require approval of a Conditional Use Permit to allow one unit. A grading permit was not required pursuant to the regulations of the Grading Ordinance although an HDP is required due to the slope.

Mr. Chamberlain commented that the Grading Ordinance dealt with average slope within the area of disturbance and certain parameters which must be achieved such as 50 cubic yards of earth movement and over three feet in height. If the project exceeded the parameters of a required grading permit, Town Council approval of a grading permit would be required.

Commissioner Killam requested clarification from staff on his understanding that the home could be built on piers, to which Mr. Chamberlain advised that the piers were required to extend approximately four feet below the site, like a cut into the hill, and would be where the foundation steps into the hill would be placed. None of the steps would be deeper than three feet and the home would not be elevated on piers. As the staff report had discussed, to avoid any cuts into the hills the home would have to be built entirely on piers although that would raise the total height of the home.

Commissioner Wykle asked staff whether or not the Town's geotechnical peer review had evaluated the revised plans.

Mr. Chamberlain reiterated that the Town's geotechnical peer review consultant had indicated that the plans were feasible.

PUBLIC HEARING OPENED

James Phillip Wright, Architect, Lafayette, expressed concern with the late receipt of correspondence and e-mails from residents, as staff had identified during the staff presentation, and which he had just received. He expressed his displeasure with the notion that he would have to respond to the concerns raised by the neighbors without having the opportunity to review the information provided prior to the meeting. Speaking to the stability of the site, he identified bedrock located four feet below the surface, described the site as grossly stable, and commented that a neighbor had earlier expressed concern during a prior hearing with the rainwater catchment system although the soils report prepared after that time affirmed that the stability was grossly stable.

Mr. Wright explained that his clients sought a green building. He described his expertise with zero energy buildings and explained that the proposed project was intended to provide the greenest building in Moraga. He sought the approval of a building that would represent the Town in a healthy fashion.

Mr. Wright presented a photomontage showing the design absent the deletion of the trees proposed to be removed. He clarified that the structure would actually be obscured by the trees. In response to a request to provide a 35-foot setback for the deck, he clarified that the deck had been reduced and would be 35 feet from the rear property line. A wall had been pulled in to allow tandem parking on site. Other photomontages of the other levels of the proposal were also provided. He stated that the property would have a 65-percent slope and suggested that some of the information presented by staff was unfair. He offered his information for purposes of clarity.

Mr. Chamberlain clarified that the property had a 65 percent slope, not a 65 degree angle, in that a 100 percent slope would produce a 45 degree angle while a 65 percent slope was at a 33 degree angle.

Mr. Wright explained that the project would not require a grading permit given that the excavation into the hillside would not exceed 35 inches at any location. He had worked with the Town Engineer on that issue to ensure that the project would not require a grading permit. He noted that the design of the home had been inspired by a tree house with the use of recycled materials for the façade and the rain screen roof would have lichen growing on top and recycled redwood for the siding of the building. He presented examples of buildings he had designed in the cities of Berkeley and San Francisco. The design of the home was proposed to be a passive home certified by the Passive House Institute U.S., using 90 percent less energy than the same home with the same square footage. As part of the materials being proposed for the subject home, Hardy backer board would be painted with a metallic surface paint to appear like core tex steel, using recycled redwood fencing with lichen, PSL engineered lumber and Trex, and bronze hardware. A redwood split rail fence had been proposed at the street with lichen on sandstone.

Mr. Wright spoke to the issues with respect to parking and again identified the tandem parking submitted as an exhibit, offering a total of three parking spaces although he suggested that more parking could be stacked behind the setback. He also described the rain catchment system as part of the energy system running the entire length of the building to be used to heat and cool the building. The home would have an airtight building envelope with the use of energy recovery ventilation with fresh air and the use of a home ventilation heat recovery system using the rain storage system as a heat pump and micro misting for air conditioning.

Speaking to the density issues in response to Commissioner Wykle, Mr. Chamberlain commented that the permitted uses in 2006 were duplexes whereas a single family residence would require a use permit in the 6-DUA zone. Duplexes, as defined in the Zoning Ordinance, were not required to be of equal size but have two kitchens and two separate residential units. As previously

discussed, when the lot had been subdivided it did not have the area to meet the 6-DUA density although there were other lots located below the subject lot that were also not of sufficient size.

Paul Bunton, 1056 Sycamore Creek Way, Pleasanton, explained that he owned the duplex property located directly below the subject site, that he had been an Architect by profession for the past 23 years focusing on educational and religious projects but also had experience with residential development and had built homes in Orinda, and was familiar with the area. He commented that he had not been noticed of the November 7 study session until he had been notified of the public hearing by a tenant and a neighbor. He added that he had recently submitted written information on the project for consideration, had viewed the story poles, and had spoken with the property owner, and while he did not intend to block the project he had concerns with the development.

Mr. Bunton applauded the sustainability of the proposed design although he had a number of concerns including the lack of a utility easement that would allow the property owner to route utilities down through his property. He sought a condition that would resolve that issue. He expressed concern with the site drainage due to the steepness and geology of the site and questioned how rainwater would be discharged out of the cistern and downhill or if it would be routed through a utility easement. He expressed concern with some of the statements contained in the geotechnical report as to the stability of the soils and rainwater on the hillside in terms of safety with no detailed geotechnical report that could be reviewed to identify the soils conditions, and he had concerns with the complexity of the project. He suggested that additional planning should be done to support the civil and structural engineering criteria, and sought civil engineering drawings that would support the drainage and design criteria. He also expressed concern with the criteria for grading and the lack of detailed construction documents with no detailed structural engineering plans to show the foundation design. Other concerns related to the soils report and comments on soil creepage and undocumented fill on the site. He suggested that the rainwater catchment system was a good idea but questioned its review by a geotechnical consultant, not a structural review, to ensure that the structure could support the load of the water being proposed and to ensure there would be no leakage to the hillside below.

Mr. Bunton understood that the applicant was requesting a variance to the required setbacks and suggested that a variance should not be granted just because there were no properties on either side of the site. In terms of the parking requirements, he opposed a variance and requested that the applicant be required to provide the four total parking spaces.

Mr. Bunton questioned whether the project met the density requirements and questioned approval of a project that did not meet the Town's Zoning Ordinance

where a variance may be required. He expressed concern with the massing of the home and suggested there were ways to break the massing of the project with greater mitigation with a green or living wall that would be consistent with the sustainability and green design concept and which could mitigate some of the massing. He also had concerns with privacy and suggested that he could work with the property owner on some ideas for the home which would hover over his property located below.

Mr. Bunton sought an increase in the tree ratio and an increase in the tree gallon size, suggested that the aesthetics could be conditioned although he had safety concerns with the way the garage deck had been designed and he would like some safety measures included to ensure that automobiles did not go beyond the deck and on the hill. He also wanted to see temporary safety mitigation measures provided while the project was under construction to ensure the safety of his property located downhill, and rather than a recommendation he requested a condition that inside glare glass be provided to ensure no glare on his property and that the exterior lighting be screened to ensure no light pollution to the downhill properties.

Lynda Deschambault, 2066 Donald Drive, Moraga, former Mayor, pointed out that Mr. Bunton's property was not the only property that would be impacted by the Planning Commission's decision in that the entire Town would be impacted by that decision. She commented on her background and history regarding the protection of hillsides and the fact that the Town had not established an upper limit where hillsides could be developed at the time she had been elected to the Town Council, the fact that it had taken from 2004 to 2006 to change the grading permit regulations, with language included that an upper limit would be determined and only built on in the event of a slide or emergency, and it had taken another two years for the Town Council and the Planning Commission to meet jointly in 2008 to address a Hillside Ordinance which had never been completed and remained unfinished business in the Town. She supported the proposed green design and suggested the proposal represented a great home, although she asked that the Planning Commission not approve the project at this time given the numerous unanswered questions.

Ms. Deschambault commented that she resided in her duplex unit on Donald Drive and was uncertain how many other property owners were aware of the project. She acknowledged that the applicant had submitted revised photo renderings which had answered many of her questions although the renderings made it appear as if the proposed roof was below the road with vehicles parked below the road. She asked that more owners of the duplex rental properties be made aware of the development prior to any approval.

Ms. Deschambault also commented that her home did not have to be subdivided to allow another home on upper Donald Drive and suggested that a 20-foot

setback was fine absent any other homes in the vicinity. She suggested that 20 feet would not be sufficient.

Ms. Deschambault commented that the bridge would be within the front yard setback and she asked if structures were allowed in the setback. She pointed out that when Mulholland Ridge had been developed benches had been considered structures and were not allowed. She questioned how the bridge would be allowed in the front yard setback, suggested that the home remained three stories, and she urged the Planning Commission to consider the history of the property noting that slides had occurred in the past. She referenced property on Laird Drive which had a landslide just prior to the construction of a home. That project involved the same soils and construction and that hillside had still not recovered since that time. She also referenced the Rancho Laguna development where the viewsheds had been considered from all locations and noted that the entire greenbelt from Rheem Boulevard was visible with no assessments of the impacts, and she asked that those impacts be assessed. She also noted that as part of the Rancho Laguna project, the road had been required to be repaired and she asked that the same condition be applied to this project.

Ms. Deschambault further sought the prohibition of decorative lighting citing a home on Rheem Boulevard as an example. She urged the Planning Commission not to approve the project, suggested that the MND was incomplete absent a Mitigation Monitoring Plan, and questioned whether or not the MOFD had reviewed the project to ensure defensible fire space.

Walter Nelson, 2024 Donald Drive, Moraga, agreed with the comments. He noted that he was interested in the proposal and was present to listen to the comments.

PUBLIC HEARING CLOSED

Commissioner Wykle asked whether or not there were any plans or grading necessary for the connection from the driveway to the road.

Mr. Wright described 30 inches of grading that would blend in the corner with everything else to be above grade. The driveway would consist of a center pile.

In response to Commissioner Killam as to how the parking would be contained, Mr. Wright described a thin shell 40-foot plywood roof enabling the parking which would be covered parking identified as a regular structure. He noted that there were only three legal parking spaces since two would be tandem parking spaces and the other within the other parking.

Guest parking would block the garages but would allow for more parking. He suggested that the parking requirements had been met.

Mr. Chamberlain clarified that two covered parking spaces were required for each of the residences.

Ms. Brekke-Read pointed out that staff had not seen a site plan showing that four parking spaces had been accommodated on the site. She was unclear about the tandem parking spaces as well.

Mr. Wright advised that they could provide four parking spaces, as required.

Mr. Chamberlain clarified that the Mitigation Monitoring Program (MMP) was comprised of the mitigation measures made mandatory conditions of approval and as the project moved forward staff would check to ensure that the applicant complied with the conditions of approval, which was typically done for smaller projects. The intent was that the mitigation measures reduce any impacts to less than significant. If a 3:1 ratio for tree replacement was important that could be done now rather than later.

Mr. Wright had no concerns with the 3:1 tree replacement ratio but wanted to ensure that the trees be situated in such a way to ensure their health.

Commissioner Kline recommended that the mitigation measure for tree replacement remain as shown and if the DRB determined it should be increased it could be done at that time.

The Planning Commission considered Attachment A, Draft Resolution of Approval of the MND for 1800 Donald Drive, Part 1 - Findings that Support a MND and made the following comments:

- Finding 1, revise the second sentence to read: "*The native trees that will be removed for the project will be replaced at a minimum 1:1 ratio up to 3:1 replacement ratio at the discretion of the Design Review Board (DRB);*"
- Finding 2, Commissioner Wykle suggested that only the first sentence of the finding could be met but recommended that if the second sentence of the finding which referenced General Plan Policy PS4.10 was stricken, the remainder of the finding could be met, Commissioners also expressed concern with the absence of detailed construction design plans which would calculate the amount of excavation required.

Ms. Brekke-Read stated if the Planning Commission determined that the project required the Town Council level of approval because of a General Plan policy that finding could be made. She noted that Policy PS4.10 had been addressed

in the conditions of approval requiring Town Council approval which meant that the project would be subject to Town Council approval for the grading.

Mr. Chamberlain advised that a grading permit was not necessary although Town Council approval was necessary for the grading pursuant to the definition of grading.

- Finding 2, the second sentence of the finding to be revised to read: "General Plan Goal PS4.10 has been addressed through a mitigation requiring Town Council approval of proposed grading in accordance with Moraga Municipal Code (MMC) Section 14.04.033;"
- Finding 3 revised to read: "The proposed project is conditioned to be consistent with the land use designation for the property and complies with the minimum required building setbacks of 20-foot sideyards and 35-foot rear yard, and a 32-foot setback for the rear deck because the setbacks allow the structure to conform with the neighborhood and existing structures in the area and a minimum of four off-street covered parking spaces as required."

Ms. Brekke-Read recommended that the Planning Commission consider the adequacy of the environmental documents and then consider the HDP. She expressed concern wordsmithing the findings in the MND if it was not found to be adequate and the document not approved, as revised, at this time.

By consensus, the Commission continued its review of the Findings in the MND and considered Part II - Mitigation Measures from the Initial Study for 1800 Donald Drive and offered the following comments:

- No. 2. Aesthetics, MM 2, revise (a) to read: "All trees removed with a trunk diameter greater than 5 inches shall be replaced at a minimum of 1:1 ratio and up to a 3:1 replacement ratio with a minimum 15-gallon size California native tree at the discretion of the Design Review Board (DRB)";
- No. 3. Aesthetics MM 3, revise (a) to read: "Use of anti-glare glass, coatings, or other treatment on the northeast windows," and (b) to read: "Use of exterior lighting on the residence and within the landscaping areas that is low wattage, shielded, and does not spill off-site," and add (c): "Use of architectural treatments and landscaping to minimize the appearance of the structure including interior lighting at night;"
- No. 8. Geology & Soils MM 2, revise the last sentence to read: "Prior to Design Review Board (DRB) review and approval, the Project shall incorporate the geotechnical recommendations in the August 22, 2011 Geotechnical peer review report by Cal Engineering and Geology;"

- No. 9. Geology and Soils MM 3, revise to read: "The project shall include the recommendations of Friar Associates, Inc. from their supplemental letter dated January 12, 2012 for the storm water catchment area under the building and as reviewed by the Town's geotechnical peer review consultant, as follows," and revise (a) to read: "Ensure that the capacity of the water storage structure is adequate for anticipated rain water and designed with an overflow device tied into the structured drainage system to minimize the potential for spills and over saturation of the site slopes;"
- No. 10. Geology & Soils MM 4, revise the first sentence of (a) to read: "Comply with Moraga Municipal Code (MMC) regarding Storm Water Management and Discharge Control," and revise (d) to read, "Address the requirements of Chapter 13.04 of the Moraga Municipal Code (MMC);"
- No. 12. Geology & Soils MM 6, revise the first sentence to read: "The project shall incorporate FAI's recommendations on building foundations as required by MM2 and MM3 above, as peer reviewed by the Town's geologist prior to Design Review Board (DRB) review and approval;"
- No. 21. Hydrology & Water Quality MM 5, revise to read: "The project's waste water shall be connected to the Central Contra Costa Sanitary District (CCCSD) sewer system and shall comply with the requirements of the CCCSD for service;" and
- Add a new mitigation measure: Required Findings Mitigation Measure 1, RQ MM 1 to read: "The project shall be subject to Town Council approval of proposed grading as required by MMC Section 14.04.033."

On motion by Commissioner Socolich, seconded by Commissioner Wykle and carried unanimously to approve the Mitigated Negative Declaration as discussed, and as modified.

Ms. Brekke-Read asked for an amendment to the motion and vote to reflect the modifications to MND Findings 1, 2, 3; and modification to Mitigation Measures under Aesthetics MM 2, MM 3; Geology & Soils MM 2, MM 3, MM 4, MM 6; and Hydrology & Water Quality MM 5, and new RQ MM 1.

On motion by Commissioner Socolich, seconded by Commissioner Wykle and carried unanimously to approve the Draft Mitigated Negative Declaration, subject to revision to Findings 1, 2, 3; and modification to Mitigation Measures under Aesthetics MM 2, MM 3; Geology & Soils MM 2, MM 3, MM 4, MM 6; and Hydrology & Water Quality MM 5, and new RQ MM 1.

Ms. Brekke-Read explained in response to Ms. Deschambault speaking from the audience that the body with the decision-making authority was the lead agency and the body taking action on the environmental documents. There was no permit the Town Council would be approving in this case and the Planning Commission had the discretionary authority as part of the site planning and it was appropriate for the Planning Commission to adopt the Draft MND.

Mr. Chamberlain identified the 10-day appeal process of a decision of the Planning Commission in writing to the Town Clerk.

Chairperson Levenfeld declared a recess at 10:09 P.M. The Planning Commission meeting reconvened at 10:15 P.M. with all Commissioners initially shown as present and absent at the start of the meeting.

Mr. Chamberlain reiterated that there were no findings under the Slope Density Ordinance although the intent and purpose of the ordinance had been rephrased to make the findings shown in Attachment B, Draft Resolution for Approval of the Hillside Development Permit.

Commissioner Wykle expressed concern that the peer review documentation to this point had indicated that a complete peer review could not be done on preliminary drawings to show that the project was viable for an HDP and therefore he suggested that the project must require Town Council approval. He suggested that the Commission had no option to approve the HDP absent Town Council direction.

The Planning Commission was in concurrence with Commissioner Wykle's concerns and asked for direction from staff.

Ms. Brekke-Read explained that Section 8.136.050(c) of the MMC allowed the reviewing body to review an application to another component unit of the planning agency for review and recommendation, not for the approval. As discussed, in many codes a Planning Commission had the ability to refer an application up and in some portions of the MMC that was allowed but in other sections it was not.

Mr. Chamberlain acknowledged that the Slope Density Ordinance had not been updated consistent with the approved 2002 General Plan and as a result was not up to par with the Grading Ordinance and the Town's Design Guidelines, which was something that staff was anxious for the Town Council to address.

Commissioner Socolich was uncertain that the Commission had the information to sort its way through the issues such as a final geotechnical report.

Commissioner Killam asked if it would be more appropriate for such reports to be submitted to the Town Engineer with the Town Engineer to then report back to the Commission.

Chairperson Levenfeld recalled that had been done in the past with other difficult HDP applications. Also, reports had been made by the peer review consultant making it easier to understand.

Commissioner Killam asked that the condition be met prior to granting any approval.

Ms. Brekke-Read explained that an environmental determination was not required to be made if the Commission did not approve the project. While interwoven and there was a 60-day timeline in which a decision must be made on the project, given the adoption of the MND the MMC allowed a reconsideration of that decision. She asked whether or not the additional information desired for the HDP was also necessary for the MND. She could not locate that section of the MMC at this time where the Planning Commission could refer the decision to the Town Council.

Chairperson Levenfeld pointed out that the findings in the HDP called for higher standards. She did not see that the Commission had the information at this time to make that determination.

Ms. Brekke-Read acknowledged that although a grading permit was not required there was no preliminary grading plan submitted to show the volumes of the cut to be excavated and the issues identified by the Town's peer review consultant. She recommended that the Commission identify the areas of concern for the applicant or the peer review consultant that needed to be addressed. In the meantime, staff would review whether or not a recommendation could be made from the Planning Commission to the Town Council.

Commissioner Killam stated that he would be more comfortable with the Town's peer review consultant providing guidance and be in attendance during the Commission hearing. He stated that the Commission did not have the expertise to know what it needed to know at this time to consider the HDP and wanted to be aware of any deficiencies before a decision was made.

Commissioner Socolich suggested it would be beneficial for the Commission to consider Attachment B, the Draft Resolution for the approval of the HDP.

Commissioner Kuckuk understood with respect to the MND that there was a requirement to obtain Town Council approval on the grading. In order for the

Town Council to give direction, finalized plans must be submitted. As a result, additional information was needed from the applicant prior to the peer review and review by the Town Council. She sought a continuance pending the submittal of that additional information.

Commissioner Socolich sought the submittal of a set of detailed grading plans that could be peer reviewed to identify the excavation figures.

Ms. Brekke-Read pointed out that any grading plans would be preliminary in nature at this time.

Commissioner Wykle also sought the submittal of foundation plans to show that the cistern could structurally hold the water along with additional information on slope stability relating to the expansive clays.

Commissioner Socolich requested the submittal of a safety plan to show the proposed access to the site with safety measures to minimize damage from the construction equipment to existing structures and to avoid personal injury.

Commissioner Kline also asked for more detail on traffic, how often and how long Donald Drive would be blocked during the construction period, particularly as to potential impacts to the upper portion of Donald Drive.

Mr. Wright questioned how a grading plan could be provided when no grading would occur on the site. He stated that a foundation plan could be provided.

Commissioner Socolich pointed out that a slot would be cut for a peripheral wall.

Ms. Brekke-Read outlined the concerns of the Commission as follows:

- The process for Town Council approval;
- Peer review updates beyond the preliminary plans;
- Additional information on grading and foundation plans, proposed access to site and safety measures, to particularly address and minimize off-site hazards to structures and people;
- Slope stability issues to address the expansive clays; and
- More details as to how the applicant would address traffic and how often the road would be totally blocked, the length of time of blockage, and ways to address blockages.

Ms. Brekke-Read reiterated that the Planning Commission had already taken action on the MND although that action may be rescinded at the discretion of the Commission which would allow the MND to remain open. The agenda item involved two separate actions; the MND and the HDP, the discussion of which could be continued since it was separate. She commented that if the Town

Council must make the decision on the MND it would be the lead agency and should adopt the MND requiring a re-notice of the public hearing. A decision must be made within 60 days on the HDP pursuant to the Permit Streamlining Act or the applicant may request a 90-day extension after the 60 days.

Mr. Chamberlain commented that the peer review consultant had previously reviewed many of the issues raised other than the concerns with the rain catchment system. He recognized that it was clear that Friar Associates Inc. and the Town's Peer Review Consultant should be present at the next meeting of the Commission if the item were to be continued.

On the discussion, Ms. Brekke-Read stated that she would have recommended that the Commission not take action on the MND if it was known the Commission was not going to take action on the project and approve it. She recommended that the Commission take action pursuant to MMC Section 8.12.250 and reconsider the previous action on the MND at this time.

An unidentified speaker for Pensco Trust Co., 2647 Pleasant Hill Road, Pleasant Hill, asked that the applicants be allowed to have 30 days to gather the additional information the Commission had requested including having witnesses present, which would be within the 60 day period to allow the application to proceed.

Mr. Wright added that they had no witnesses present because their structural engineer needed the recommendation from the soils engineer to create a foundation plan.

Commissioner Wykle suggested that a joint meeting with the Town Council was warranted in this case.

On motion by Commissioner Socolich, seconded by Commissioner Wykle and carried unanimously to continue the public hearing for the consideration of the Hillside Development Permit for DRB 04-11, to a date uncertain.

VI. ROUTINE & OTHER MATTERS

A. Approval of the February 21, 2012 Minutes

Chairperson Levenfeld asked for clarification from staff in that the minutes of the February 21, 2012 meeting appeared to be incomplete and did not include all of the Commission's discussion on the Zoning Ordinance Amendments and Issues. Ms. Brekke-Read recommended that the February 21 meeting minutes be revised. She also affirmed that the new Commissioners would have to abstain from the approval of this set of the meeting minutes when returned to the Commission for approval.

VII. REPORTS

A. Planning Commission

Commissioner Wykle reported that he had attended the February 27 DRB meeting with the DRB having approved 425 Moraga Road Gas Station Improvements, an application for Saint Mary's College for covers over the dumpsters, and a fence application for 312 Rheem Boulevard which had been approved on the DRB Consent Calendar.

Chairperson Levenfeld reported for the benefit of the new Commissioners that the Commission packets included a calendar of liaison and DRB meeting schedules Planning Commissioners were required to attend on behalf of the Commission and the dates Commissioners had been assigned.

B. Staff

Ms. Brekke-Read added that the Commission binders included a calendar of all Town meetings but did not show canceled or special meetings with the Commissioners to be informed of those meetings through e-mails. Commission binders also included information on the Brown Act. She updated the new Commissioners on the regulations of the Brown Act and required ethics courses at this time. She stated that the Planning Commission would meet again on March 20 although the agenda would not include consideration of the Hetfield Estates project as previously anticipated. Staff had also scheduled the consideration of three contracts with at least three planning consultants to provide on-call planning services, to be considered during the March 14 Town Council meeting.

VIII. ADJOURNMENT

On motion by Commissioner Kline, seconded by Commissioner Wykle to adjourn the Planning Commission meeting at approximately 11:00 P.M. to a regular meeting of the Planning Commission on Monday, March 20, 2012 at 7:00 P.M. at the Moraga Library Meeting Room, 1500 St. Mary's Road, Moraga, California.

A Certified Correct Minutes Copy

Secretary of the Planning Commission