

**TOWN OF MORAGA
PLANNING COMMISSION MEETING**

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

February 20, 2013

7:00 P.M.

MINUTES

I. CALL TO ORDER

Chair Levenfeld called the Special Meeting of the Planning Commission to order at 7:11 P.M.

ROLL CALL

Present: Commissioners Killam, Kline, Kuckuk, Obsitnik, Socolich, Chair Levenfeld

Absent: None

Staff: Shawna Brekke-Read, Planning Director

B. Conflict of Interest

There was no reported conflict of interest.

C. Contact with Applicant(s)

There was no reported contact with applicant(s).

II. PUBLIC COMMENTS

There were no comments from the public.

III. ADOPTION OF THE CONSENT CALENDAR

A. January 7, 2013 Minutes

B. December 3, 2012 Minutes

C. August 6, 2012 Minutes [added to Consent Calendar]

Chair Levenfeld advised that copies of the *August 6, 2012 Minutes* had also been included in the Planning Commission packets and should be included on the Consent Calendar for adoption.

On motion by Commissioner Socolich, seconded by Commissioner Kline and carried unanimously to adopt the Consent Calendar, as shown, and to include the August 6, 2012 Minutes, as written.

IV. ADOPTION OF THE MEETING AGENDA

On motion by Commissioner Kline, seconded by Commissioner Socolich and carried unanimously to adopt the Meeting Agenda, as shown.

V. PUBLIC MEETING

A. Draft Amendments to the Zoning Ordinance for use regulations and development standards for the Community Commercial District in the Rheem Planning Area

Chair Levenfeld described the format for the discussion, intended as a workshop setting, with staff to present the proposed zoning amendment changes to allow a discussion of each of the proposed zoning amendments, and with no consensus intended to be reached by the Commission at this time. She acknowledged the public present in the audience who would be able to address the Planning Commission to provide feedback.

Planning Director Shawna Brekke-Read explained that she had intended to publish a courtesy notice about the meeting, which was not a formal public hearing, with no recommendation to be offered at this time. She recognized those individuals who had participated in the Visioning Workshops and had been watching the work of the Economic Development Action Committee (EDAC); advised that although a public courtesy notice had not been published as intended, through an electronic newsletter, the efforts of the Moraga Citizens Network, and an active community, she thanked those who were present in the audience. She added that while the staff report had offered a brief background on EDAC, the staff report should also have included the information that the Planning Commission and the Town Council had held a joint workshop on November 30, 2011, at which time EDAC had presented its recommendations related to economic development and what to do about the Zoning Ordinance. A second report had been presented to the Planning Commission on February 21, 2012, which was essentially a follow-up report from staff based on Planning Commission and Town Council direction and Planning Commission feedback.

Ms. Brekke-Read presented a PowerPoint presentation on the draft amendments to the Community Commercial District, as described in detail in the February 20, 2013 staff report, including:

- Establishment of an administrative permit process for permitted uses;
- Clarification of conditional uses and the conditional use permit process;
- Clarification of site and development standards; and
- Expansion of the purpose statement.

Ms. Brekke-Read opened a review of Attachment A to the February 20, 2013 staff report, identified as Draft Amendments to Moraga Municipal Code (MMC) Chapter 8.36 (Community Commercial District), and as shown in a redline strikeout draft. She asked the Planning Commission to consider whether the proposed draft amendments addressed the concerns that had been raised during the Visioning Workshops, Planning Commission meetings, and concerns raised by EDAC, and members of the public.

In response to the Commission as to the proposed amendment to the purpose statement, Ms. Brekke-Read clarified Section 8.36.010 Purpose, Item 4 as written, and noted that planners had found that areas with large box retailers did not create long-term vibrancy which impacted the commercial area and that small businesses created some vibrancy. It had been found that national and local retailers together created the strongest commercial area. She acknowledged that statement could be revised to read "A variety of businesses."

While the Chair recommended that the Planning Commission discuss each of the proposed draft amendments individually and open public comment for each item, the meeting evolved into more of an open format and discussion.

PUBLIC COMMENTS OPENED

Holly Lucas-Alcalay, Moraga, a member of EDAC, commented it had been clear from EDAC that General Plan language should be used in the MMC which could be earmarked in the General Plan. She explained that the Town had decided not to prepare a Rheem Planning Area Specific Plan given the cost and it was important that it be separate from the Moraga Center Specific Plan (MCSP). EDAC sought an expansion of the purpose statement with language that would normally be included in a specific plan, and language which supported a community and addressed the community's concerns and needs. She suggested that the language otherwise proposed in the purpose statement reflected the intent of EDAC.

Dave Bruzzone, Moraga, found the process to be a massive undertaking given the important issues before the Town in the next few months. He asked whether the proposed zoning amendments had been oriented only to the Rheem Planning Area or to all Commercial Districts in Moraga which may impact the MCSP. He noted that permitted uses had been identified in the MCSP, questioned what a permitted use meant, and asked whether this process facilitated the application process for potential businesses. He expressed discomfort with different rules for the Rheem Planning Area as compared to the MCSP, and referenced past issues which had impacted businesses desirous to locate in the area of the MCSP.

Mr. Bruzzone found that many of the findings in the draft Zoning Ordinance amendments to Chapter 8.36 served a cross purpose and conflicted with other findings in the General Plan. He sought a quick and easy process for potential tenants attempting to obtain Town approval. He also spoke to the number of vacancies in the Town's Commercial District, the efforts to obtain potential tenants, and the issues related to permitted uses recommending the elimination of the required findings as a potential option.

Ms. Brekke-Read clarified that the proposed zoning amendments were only for the Rheem Planning Area as recommended by EDAC. She affirmed that the MCSP had been approved. EDAC had expressed concern with an exhaustive list of uses and had recommended two different zoning districts. While Attachment A reflected draft amendments to the MMC Chapter 8.36 of the Community Commercial District, she recommended the changes apply only to the Rheem Planning Area. She described the background of the MCSP which had involved a seven-year effort and a significant investment of time and money, and explained that while the Rheem Planning Area had been designated for a specific plan of its own, given the time and costs involved EDAC and the Planning Department recommended Town Council consideration of the Rheem Planning Area differently; to amend the General Plan, to have a set of policies, a big picture vision, and standards for the Rheem Planning Area including the shopping center, the east side of Moraga Road, and the area currently zoned for Office on Rheem Boulevard. She recommended the development of General Plan language in the MMC to address the Rheem Planning Area.

Ms. Lucas-Alcalay reiterated that EDAC was of the opinion that in lieu of a specific plan for the Rheem Planning Area, the area deserved its own code. She emphasized EDAC's concern that the Rheem Valley Shopping Center, which had been deeply impacted by the recession with numerous vacancies, was part of the reason it was urgent to have this discussion.

An unidentified member of EDAC noted that the major property owner of the Rheem Valley Shopping Center had also found the Town's secondary approval process to be difficult for potential business owners. EDAC had worked to identify ways for the operator of the Rheem Valley Shopping Center to have a simpler process in order to successfully secure tenants.

In the future, Chair Levenfeld asked staff to clarify the differences between a specific plan and a zoning amendment.

Commissioner Obsitnik commented that he had reviewed the Zoning Ordinance from the City of Lafayette, which he found to be prescriptive for the uses in that city, with that city's ordinance dictating the allowable uses in a specific area.

Commissioner Obsitnik questioned how prescriptive the Zoning Ordinance was desired for the Town of Moraga and how it could become a reality for the Rheem Planning Area absent a specific plan.

Ms. Brekke-Read explained that this iteration of the Zoning Ordinance had not proposed major changes but had proposed small incremental changes. One change was the purpose statement and trying to clarify that better as to what the Town was trying to achieve, which was important for conditional uses since findings must be made; to add a layer of text amendments for uses that were considered to be formula uses of a certain size; and to add the administrative over-the-counter permit which would be a key component. Currently the MMC stipulated that a retail store required Planning Commission review, but if exempt from environmental review, the Planning Director had the option to consider the application as the Zoning Administrator. She commented that initially she had brought every application to the Planning Commission but had changed her practice and was now processing applications based on the clear direction from the Planning Commission.

Commissioner Killam sought a discussion of general concepts rather than trying to pinpoint details at this time. As an example, he referred to the statement that "No heavy construction equipment businesses would be allowed in the Rheem Planning Area," which could be better refined in the future and allow the document to be a living document that could change over time.

On the question as to whether the proposed zoning amendments applied to the Rheem Planning Area or to the entire Community Commercial District, Commissioner Kuckuk recommended that the draft amendments apply to the entire Community Commercial District which did not have a specific plan in place.

Mr. Bruzzone reiterated his concerns, questioned bifurcating the process, and questioned giving one property an advantage over another and requested clarification on the problems the Town was trying to alleviate. He sought quick and easy changes and the removal of the findings.

Speaking to Section 8.36.020, Permitted Uses, and the question before the Planning Commission as to whether restaurants should be permitted if they were not formula-based, quick-serve, and drive-through, Ms. Brekke-Read noted that many agencies required restaurants to be a conditional use requiring a Conditional Use Permit. She added that some agencies had concerns with fast food and to-go restaurants with a drive-through or alcohol sales.

Ms. Brekke-Read acknowledged there were some community members desirous for restaurants to be allowed easily and that all restaurants in Moraga allow outdoor seating which provided a sense of livability, but which was up to the Planning Commission. She offered examples of regulated restaurant uses in some communities of the Bay Area.

Commissioner Socolich suggested if a restaurant was in an area where outdoor seating could be provided that made sense. He wanted to see local, not national or drive-through chains, as permitted uses. He also asked that financial institutions be clarified and clearly spelled out as permitted uses.

Commissioner Killam questioned allowing a business which may generate traffic negatively impacting an adjacent business, such as an In-N-Out Burger as an example.

Ms. Brekke-Read noted that staff had interpreted a bank use similar to an office, and that a use such as In-N-Out Burger would require a Conditional Use Permit.

Commissioner Kuckuk referenced the Dollar Tree store as a formula-based non-restaurant use and questioned why the Town had treated that use differently from a number of other uses.

Chair Levenfeld understood that Dollar Tree had been a permitted use but staff at that time had decided it should require Planning Commission review.

Ms. Lucas Alcalay suggested that language in Section 8.36.020 Permitted Uses, A, posed a conflict with that use and in her opinion the Dollar Tree should have been processed as a Conditional Use Permit since food and beverages would also be sold; however, since Home Goods and TJ Maxx also sold food and had been permitted uses, staff at that time had processed the Dollar Tree application as a permitted use.

Commissioner Socolich recalled that there had been a number of complaints about the Dollar Tree store, with the application at that time having been noticed and brought to the Planning Commission for review. It would otherwise have been approved as a permitted use.

Ms. Brekke-Read suggested the Dollar Tree store would have been a conditional use pursuant to the following categories: an over-concentration of businesses, formula-based retail, and number of square feet, all under the proposed language. She acknowledged that the new language was adding a process layer but offered a clearer process.

Commissioner Kuckuk recommended pursuant to Section 8.36.020 Permitted Uses, that formula-based and non-formula based restaurants be handled in the same manner.

Ms. Brekke-Read agreed that formula- and non-formula based restaurants be treated the same, and clarified the intent was not to streamline the process for everything.

Commissioner Obsitnik commented there were certain businesses like Dollar Tree and Starbuck's, Home Goods, and TJ Maxx, where the public deserved a hearing, to determine if the public wanted a business that could be controversial.

Ms. Brekke-Read identified See's Candies as an example of a business that was seasonal, and pursuant to the MMC, required a Planning Commission hearing with the Planning Director having the option to determine whether it was subject to environmental review and whether it could be handled administratively. That process had not been followed in 2011, although it had in 2012. In that case, a notice had been sent to the Planning Commission advising of her intent and with no response, a notice would be sent to everyone within 300 to 500 feet advising that as the Zoning Administrator she would be considering approval of a permit for the use.

Edy Schwartz, Moraga, sought a streamlined process and emphasized the importance of having a vibrant shopping area; one that had a chance of being successful. She found the current process to be complicated, urged a streamlined process, and questioned how the community fit in, with the community having provided input in this discussion in the reports with EDAC, all of which should be taken into account.

Ms. Lucas-Alcalay encouraged the Planning Commission to follow the General Plan policies for shopping centers and the Town's commercial centers. She suggested that the findings proposed by staff were good and an improvement from previous findings although she recommended more standards given that the community sought a diversity of restaurants as a permitted use. She added that EDAC strongly recommended consideration of an over-the-counter permit process and urged an attachment to the General Plan language.

Roger Poynts, Moraga, suggested the EDAC report should have been distributed to all Commissioners given that it was concise and well done. He commented on the formula-based issue and sought to distinguish franchises which may be exempt from the findings. He saw no relevant reason for a 2,000 square foot threshold as a marker for permitted uses.

Mr. Bruzzone commented on the time and effort to obtain the type of stores that the community desired but at this time did not want to locate in Moraga.

Mr. Bruzzone sought a balance in the General Plan for reasonable development. Recognizing both sides of the issue and the community's desire for diversity, he suggested the population could not afford it. He found Moraga to be a difficult place to operate a business.

Commissioner Socolich acknowledged that the community desired a diversity of restaurants that provided outdoor seating during good weather. He wanted to clarify the quick-serve drive-through restaurants, which in his opinion should be permitted uses.

Chair Levenfeld had no problem making the process easier for restaurants although she sought language around a concentration of restaurants to ensure there was not a proliferation of one kind of restaurant to ensure a variety.

As to Section 8.36.030, Conditional Uses, Commissioner Kuckuk pointed out that many of the uses that had been listed bordered on industrial uses, and Moraga was not an industrial town.

Ms. Brekke-Read commented that she had not heard anything in the community where there was support for industry or factory uses.

Commissioner Killam noted that some uses were considered to be Light Industrial, such as Bio-Rad Laboratories, which produced pharmaceuticals in the City of Hercules, and which he suggested could be an appropriate use in Moraga.

Commissioner Socolich suggested a line item of conditional uses, including any industrial facility as opposed to naming the uses individually. He found the list of uses to be too specific.

Ms. Brekke-Read explained that if a business desired to locate in Moraga and was not on the list, it fell under category L of Section 8.36.030, Conditional Uses. She expressed the willingness for staff to work with the business community to determine a way to add some standards.

Commissioner Obsitnik questioned whether conditional uses should be prescriptive or more open-ended.

Commissioner Kuckuk supported conditional uses as more open-ended.

Commissioner Killam commented if not on the permitted uses list, the use would be a conditional use.

Chair Levenfeld affirmed with staff that wine making had been discussed by the community as a potential use but which she understood was considered to be industrial. She did not want to prevent those types of uses.

Ms. Brekke-Read recommended that staff return with a list of uses that had been considered by other cities; affirmed she would amend Item I of Section 8.36.030 Conditional Uses to read: "Drive-through services;" Item J would also have to be amended pursuant to the Planning Commission's discussion on restaurants; and would clarify the intent of Item M and the 2,000 square foot threshold. When asked, she was unsure of the square footage of the vacant spaces in the Rheem Valley Shopping Center although the intent was that the spaces not be combined into one very large space. She commented that when combining existing separate tenant spaces, some cities had placed a trigger for a Conditional Use Permit in those instances.

Commissioner Obsitnik recommended that staff provide information from the cities of Lafayette and Orinda.

Chair Levenfeld recommended that Item M of Section 8.36.030, Conditional Uses, be modified and rather than identifying a specific square footage a statement be included that combining two or more tenant spaces would require a Conditional Use Permit.

On the question of formula retail, Commissioner Killam suggested it was good policy for any such retail to be reviewed by the Planning Commission.

Commissioner Obsitnik was curious to see how other cities had addressed that issue.

Chair Levenfeld commented that as the Commission reviewed how the proposed changes could be applied, she did not want to see one shopping center treated differently and unfairly from another.

Commissioner Kline also sought evenhanded standards for formula retail.

Ms. Lucas-Alcalay stated the MCSP had added to its conditional use list, research facilities devoted to experimental studies such as testing and analyzing but not manufacturing, convenience stores operating outside the hours of 8:00 A.M. to 6:00 P.M., gun shops, and gas stations with three or more pumps. She emphasized that during EDAC discussions, the conditional uses as listed to require Planning Commission review and approval had been important to the public, and that any manufacturing was not desirable. As to the square footage recommendation, she found it to be arbitrary but encouraged the use of small and large uses.

Ms. Lucas-Alcalay also emphasized the importance of formula retail and a discussion amongst EDAC with the issue of larger businesses as part of larger corporations that had better access to marketing and better resources than the smaller businesses, with a recommendation for a more level playing field in order to attract more locally-owned businesses.

Mr. Bruzzone assumed that permitted uses were those that were not listed on the conditional use list. He expressed concern with the concentration of certain uses and restaurants the Town may not approve, which was why he sought a streamlined process to ensure viable businesses, suggesting that more rules and discretion could dissuade future tenants. He agreed the cities of Lafayette and Orinda were good resources and suggested that areas of Walnut Creek and Danville had also done a good job addressing the issue. He otherwise found the 2,000 square foot threshold to be an arbitrary number and suggested that formula-based retail could be another obstacle facing the MCSP.

Chair Levenfeld concurred with Ms. Lucas-Alcalay's comments as to the General Plan policies, which depended on how the regulation changes would be enforced. She pointed out the sale of regulated substances had not been addressed in the conditional uses and should be included.

Ms. Lucas-Alcalay reported that Kimco, the operator for the Rheem Valley Shopping Center, had been approached by a cigarette and paraphernalia shop, both of which had been denied based on Kimco's internal standards.

Speaking to Section 8.36.020, Permitted Uses, Commissioner Kuckuk recommended that Item 6 not be stricken, as shown in the redline format, and be reinserted into the findings.

Ms. Brekke-Read advised that the same finding had been moved to Section 8.36.060, Procedures for review of permitted uses, B (5). She recommended the Planning Commission build into the code the uses it really wanted to see be reviewed.

Commissioner Kuckuk asked that Finding B (5) under Section 8.36.060 be expanded to ensure that the permitted use "shall not create an additional burden on law enforcement" as well as not create an excessive public economic problem.

The Commission discussed striking Finding B (5) under Section 8.36.060 or better defining that finding.

Ms. Schwartz urged a continued discussion at a future meeting given the volume of information presented, the fact that only two Commissioners would remain on the current Commission after this date, and emphasized the importance of being provided all available information including staff reports, to be made available not only to the public and those involved, but to the new Commissioners.

Commissioner Killam offered a motion to continue the discussion of the draft amendments to the Zoning Ordinance for use regulations and development standards for the Community Commercial District in the Rheem Planning Area to a future meeting of the Planning Commission.

Commissioner Socolich referenced Section 8.36.060, Procedures for review of permitted uses, C (1), which he found to be arbitrary, as written. He wanted something in the system that would allow the Commission to determine the appropriateness of a use. He also recommended that Item B (4) of that same section should not be a procedure but a guideline given that there were some businesses which might slightly exceed the 50 or 55 dba noise level, or the applicant may be able to demonstrate the noise level would not adversely impact the existing neighborhood. He cited as an example the approval of a car wash as part of a gas station application, where the applicant had demonstrated that while the decibel level of the car wash could be a bit over what would be allowed, it would not make that much of a difference due to the ambient noise levels.

Commissioner Kline recommended a guideline to allow some flexibility.

Ms. Brekke-Read noted that the decibel level, as shown in the section being discussed, had come from the MMC but that section could be better clarified as to what a 55 dba noise level meant.

Commissioner Obsitnik understood there was agreement in terms of the approach being taken for a set of permitted uses that flowed through with administrative approval and a set of conditional uses governed by a conditional use approval policy. In his opinion, permitted uses should be permitted and if the consensus was that there only be a few permitted uses there should be a focus on the uses the Town only wanted to permit and everything else would be a conditional use. As to the Conditional Use policy and a Conceptual Site Plan, as shown under Section 8.36.070, Procedures for review of conditional uses, 1, he understood that was more of a development regulation.

Ms. Brekke-Read explained that Section 8.36.070, 1 could be reviewed further.

Chair Levenfeld supported the addition of language to a conditional use as to regulated items and substances requiring a Conditional Use Permit, and suggested it would be helpful for the Planning Commission to be provided with a copy of the EDAC report.

Chair Levenfeld understood that the Moraga Chamber of Commerce had also made recommendations to streamline the Town's process. She recommended that a member of the Moraga Chamber of Commerce be encouraged to speak to that item in the future.

Ms. Brekke-Read clarified that the Commission could continue the item to a date uncertain since the item was not a public hearing and had not been noticed to the public.

Ms. Schwartz and Ms. Lucas-Alcalay thanked Commissioners for their efforts; particularly those who had completed their service on the Planning Commission which they stated had been needed and appreciated.

Although a motion had been made by Commissioner Killam and seconded by Commissioner Socolich to continue the discussion of the draft amendments to the Zoning Ordinance for use regulations and development standards for the Community Commercial District in the Rheem Planning Area to a future meeting of the Planning Commission, **no vote** on the motion had been taken.

VI. ROUTINE & OTHER MATTERS

There were no Routine and Other Matters.

VII. REPORTS

A. Planning Commission

Commissioner Kline reported that he had attended the recent Community Liaison meeting.

Chair Levenfeld reported that she and Commissioner Kline had attended the February 19 Park and Recreation Commission meeting regarding the proposed park within the Camino Ricardo development. She offered an overview of the discussions, and reported that the Park and Recreation Commission had formed a subcommittee to walk the site and return with a recommendation to the Park and Recreation Commission.

Commissioner Kline added that there had also been concerns with parking around trailheads which would continue to be an issue.

B. Staff

Ms. Brekke-Read reported that the Rancho Laguna II Tentative Subdivision Map and General Development Plan had been deemed complete and the SummerHill Homes development on Camino Ricardo had also been deemed complete.

In addition, a Temporary Planner was working with planning staff on plan check and administrative design review. The Senior Planner position had been filled with that individual to commence employment with the Town of Moraga the second week of March.

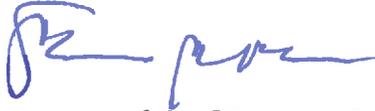
Ms. Brekke-Read added that an appeal of the decision of the Saint Mary's College (SMC) Intramural Field Lights would be considered by the Town Council on February 27, and the Annual Tri-City Meeting would be held on February 21 hosted by the City of Lafayette with everyone invited to attend. No items had been scheduled for the first Planning Commission meeting in March although items were anticipated for the second meeting in March. Additionally, the Environmental Impact Report (EIR) for the Bollinger Valley project would be released on Friday, March 1 with a tentative hearing date of April 1.

Ms. Brekke-Read expressed her appreciation for the efforts of those Commissioners who had served on the Planning Commission and would not be continuing as members.

VIII. ADJOURNMENT

On motion by Commissioner Killam, seconded by Commissioner Socolich and carried unanimously to adjourn the Planning Commission meeting at approximately 9:40 P.M.

A Certified Correct Minutes Copy



Secretary of the Planning Commission

