

**TOWN OF MORAGA
PLANNING COMMISSION MEETING**

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

April 21, 2014

7:00 P.M.

MINUTES

I. CALL TO ORDER

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

ROLL CALL

Present: Commissioners Comprelli, Marnane, Onoda, Schoenbrunner,* Woehleke,
Chair Kuckuk

* Commissioner Schoenbrunner arrived at 7:10 P.M.

Absent: Commissioner Levenfeld

Staff: Shawna Brekke-Read, Planning Director
Ella Samonsky, Associate Planner
Karen Murphy, Town Attorney

B. Conflict of Interest

There was no reported conflict of interest.

C. Contact with Applicant(s)

Commissioner Onoda reported that she had contact with the applicant for the Public Hearing agenda Item V.B, SummerHill Homes, Camino Ricardo Subdivision.

II. PUBLIC COMMENTS

There were no comments from the public.

III. ADOPTION OF THE CONSENT AGENDA

A. February 18, 2014 Minutes

On motion by Commissioner Marnane, seconded by Commissioner Comprelli to approve the minutes of the February 18, 2014 meeting, as shown. The motion carried by the following vote:

Ayes: Comprelli, Marnane, Onoda, Kuckuk,

Noes: None
Abstain: Woehleke
Absent: Levenfeld, Schoenbrunner

IV. ADOPTION OF THE MEETING AGENDA

Chair Kuckuk asked that the meeting agenda be modified by moving Item B under Public Hearings to Item A, and with the remainder of the agenda to be modified accordingly.

On motion by Commissioner Marnane, seconded by Commissioner Onoda and carried unanimously to modify the meeting agenda, by moving Item B under Public Hearing to Item A, with the remainder of the agenda to be modified accordingly. The motion carried by the following vote:

Ayes: Comprelli, Marnane, Onoda, Woehleke, Kuckuk,
Noes: None
Abstain: None
Absent: Levenfeld, Schoenbrunner

V. PUBLIC HEARING

- A. Consider Resolution __-2014, Amending Conditions of Approval #14 and #15 for the Camino Ricardo Subdivision (Planning Commission Resolution 2014-02) in Conformance with the Approved Development Agreement between the Town of Moraga, SummerHill Homes, and C&C Equities for the project.**

Planning Director Shawna Brekke-Read presented the staff report dated April 21, 2014. She recommended that the Planning Commission adopt Resolution __-2014 Amending Conditions of Approval #14 and 15 for the Camino Ricardo Subdivision (Planning Commission Resolution 2014-02), in conformance with the approved Development Agreement (DA) between the Town of Moraga, SummerHill Homes, and C&C Equities for the project. She advised that the Town Attorney was also present to respond to any questions.

Denise Cunningham, Director of Development, SummerHill Homes, thanked the Commission for moving the item forward on the agenda. She asked that the Planning Commission adopt the resolution, as identified, and advised that the developer was satisfied with the staff recommended conditions as written.

PUBLIC HEARING OPENED

There were no comments from the public.

PUBLIC HEARING CLOSED

In response to the Commission, Ms. Brekke-Read explained that the plans for the Livable Moraga Road Project had not been finalized; there were three conceptual alternatives under consideration with the crosswalk currently planned for the project to

cross towards the Skate Park consistent with Town Council direction; and DKS and Associates, the Town's Traffic Engineer, also recommended that location as the preferred location. The crosswalk was currently under discussion as a High Visibility Crosswalk and the design was yet to be finalized.

Commissioner Comprelli offered a motion to approve the resolution as presented by staff.

There was no second to the motion.

On the motion, Town Attorney Karen Murphy understood that Commissioner Woehleke planned to abstain since he was a new member of the Planning Commission, although she stated he could vote on the item if he so wished. Absent a second to the motion, no action could move forward. She asked that the Planning Commission take an action that could allow for final action, or an appeal of the Planning Commission's decision.

Commissioner Schoenbrunner opposed another high visibility crosswalk within the scenic corridor, and she could therefore not support the motion as stated.

Commissioner Marnane objected to the bridge and the crosswalk, had initially voted against the items, and planned to oppose the motion approving the staff recommendation.

Ms. Brekke-Read reiterated that the intent of the item before the Planning Commission was whether to approve or disapprove the Town Council's decision, and not to approve or disapprove the project itself. In the event the Planning Commission decided to disapprove the Town Council's decision, she expected that decision would be appealed by and to the Town Council. While the Planning Commission had recommended a course of action for the SummerHill Homes project, the Town Council had chosen to follow a different course of action.

Commissioner Comprelli stated that while not opposed to the applicant, based on the context of the explanation from staff at this time, he would vote consistent with the way he had voted when the project had initially been approved. He did not support the bridge where it was currently located.

Ms. Murphy reiterated that there had been a recommendation from the Planning Commission to the Town Council on this project regarding the location of the bridge and crosswalk, with a recommendation from the Planning Commission when the DA had been forwarded to the Town Council. The Town Council had amended the DA to address those two issues, and in order for the Development Plan to be consistent with the DA, and as part of the DA, the applicant had to resubmit an application to amend Conditions #14 and #15, which was what the Commission was being asked to consider. Given no second to the original motion, another motion would be required.

Commissioner Marnane offered a motion to reject Conditions #14 and #15 as currently stated.

Commissioner Onoda seconded the motion.

Ms. Murphy advised that the motion would be considered an Alternate Motion given that there was no second to the original motion.

Alternate Motion: Passed

On motion by Commissioner Marnane, seconded by Commissioner Onoda to reject Conditions #14 and #15, as currently stated. The motion carried by the following vote:

Ayes: Comprelli, Marnane, Onoda, Schoenbrunner
Noes: Kuckuk
Abstain: Woehleke
Absent: Levenfeld

Ms. Brekke-Read identified the 10-day appeal process of a decision of the Planning Commission in writing to the Town Clerk. She added that the Town Council would be informed of the Planning Commission's action.

- B. Consider Resolution __-2014 1) Approval of the General Development Plan, Vesting Tentative Subdivision Map, Hillside Development, Permit, and Grading Permit for the Rancho Laguna II Project, a 27-Unit Single-Family Residential Subdivision and Consider Resolution __-2014 2) Recommending to the Town Council an Amendment to the Planned Development District Ordinance.** An EIR was previously certified for the Conceptual Development Plan in January 2011. A CEQA Addendum has been prepared to address modifications to the project since approval of the CDP and Revisions to the Mitigation Monitoring and Reporting Program. *(Public Hearing Continued from March 17, 2014).*

Ms. Brekke-Read presented the staff report dated April 21, 2014. She identified correspondence via e-mail received April 21, 2014 (identification of sender not reported) regarding meeting attendance; the road across the ridge, street lights, road signs, parking area, and correspondence from the applicant who had been working closely with Preserve Lamorinda Open Space (PLOS), with a recommendation to modify the first paragraph of Condition 246, to read:

The Project Sponsor shall investigate the feasibility of avoiding populations of semaphore grass, floating water primrose and Davy mannagrass, and maintaining the hydrologic conditions that support them. Impacts to native wildflower populations falling within fenced portions of lots 23-25 per Condition 27 including woodland star, California saxifrage, rigid hedge nettle, Henderson's shooting star, Pacific sanicle, Chinese houses, and other species shall be mitigated. The Project Sponsor shall implement the following measures:

And Modify Condition 246 (e) to read:

- e. *Plants of the perennial species Davy mangrass, floating water primrose, and the perennial wildflower species shall be salvaged and grown in containers for subsequent transplantation during the following winter. Seeds from the annual wildflower species shall be collected and propagated in containers or broadcast as appropriate for planting in suitable locations on site. All plantings shall lie within areas protected by the conservation easement.*

Ms. Brekke-Read recommended that the Planning Commission adopt resolutions to include the following actions:

- A. Adopting the Addendum to the Rancho Laguna II Project EIR:
- B. Amending the Rancho Laguna II Project EIR Mitigation Monitoring and Reporting Program;
- C. Recommending that the Town Council approve the proposed amendment to Moraga Municipal Code (MMC) Section 8.48.040;
- D. Approving the General Development Plan, Vesting Tentative Subdivision Map, Hillside Development Permit, and Grading Permit for the Rancho Laguna II Project, a 27-Unit Single-Family Residential Subdivision.

Responding to the Commission, Ms. Brekke-Read referenced Exhibit 1, Conditions of Approval, Condition 91, and noted that the condition reflects that a Geologic Hazard Abatement District (GHAD) would be required for the project; and Condition 92, identified the responsibilities related to the Conservation Easement.

Ms. Brekke-Read explained the different ways a GHAD may operate, with the Town Council to have the option to either form its own GHAD or consider annexation into another GHAD. In the event the Town formed its own GHAD, the Town Council may decide to have local elected officials [Town Council] act as the GHAD Board or five property owners may act as the GHAD Board.

Ms. Murphy advised that the GHAD was a separate legal entity regardless of who served on the GHAD Board. The GHAD was to address the liability of geological hazards in an area of the GHAD. She acknowledged that the Town must create the GHAD but as far as conflicts and decision making, the GHAD Board would operate in accordance with GHAD law, separate from Town Council decision making authority.

Ms. Brekke-Read clarified the intent of Condition 35, which would address a condition where the project, once begun but incomplete, requires the applicant to complete a Bond Study and set bond funds aside; Condition 252 related to Rheem Boulevard road repairs consistent with Town Council action years ago; and Condition 252 (e) and (f) where the applicant shall be responsible for the first \$500,000 in engineering, project management and construction costs, with the Town responsible for the remainder of those costs up to \$1.5 million.

Ms. Murphy clarified that the Town would be responsible for the cost between the \$500,000 and the \$1.5 million, and if the total exceeded that amount the excess cost would be split 50/50 between the Town and the applicant. Condition 252 (h) addressed the allocation of those funds.

Ms. Brekke-Read explained that the definition for completion or success of the project had also been attached as a condition to the Hetfield Estates project given the neighborhood concerns with the status of the 10-lot subdivision on the other side of the ridge which had been abandoned. Staff had devised the condition of approval and determined that it could also be applied to the Rancho Laguna II project. She acknowledged concerns with the definition but asked that it be discussed further after the completion of the public hearing.

PUBLIC HEARING OPENED

Kevin Ebrahimi, Vice President of Development, SummerHill Homes, emphasized that the developer had been working diligently with staff to ensure they had adequately addressed all of the concerns raised during the March 17, 2014 Planning Commission meeting. He expressed his hope to be able to work with staff to resolve any remaining issues as they moved forward.

Mark Armstrong, Project Manager for the subsequent Development Plan process, clarified that Condition 252 had been negotiated for some months with a formal estimate prepared by Cal Engineering, the Town's consultant, in consultation and with input from ENGeo, the project engineers. The first \$500,000 of the cost to stabilize and improve Rheem Boulevard in that location was to be absorbed by the applicant, with the applicant to be responsible for the construction. The balance of the cost up to \$1.5 million would be the Town's responsibility with the provision that if the Town wanted to waive the development impact fees associated with the project, those monies would be applied by the applicant towards the construction costs, with the approximate \$500,000 balance the Town's responsibility, which had been added at the Town's request. The \$1.5 million estimate was a high end estimate the applicant and Town engineers had determined to be the cost, and if the costs were more than estimated, it was intended to be split 50-50. The estimate had been included as part of the staff report to the Town Council at the time, and the Town Council and staff were well versed on the costs.

Mr. Ebrahimi stated that SummerHill Homes had conducted an extensive study of Rheem Boulevard prior to taking on the project, with third party contractor and soils engineer review.

Mr. Ebrahimi explained that the cost estimate at that time was below \$1.5 million with a 15 percent contingency. He also noted that in working with staff, the original CDP had shown parking on the top of the hillside. Based on comments during the March 17, 2014 Planning Commission meeting, there was interest to place the parking on Rheem Boulevard. Pursuant to the trail exhibit, a location had been shown where the parking could be relocated if the Planning Commission so chose. The parking on the top of the hillside was intended to be shoulder parking only, on gravel. The map had shown Fay Hill Road and the road up to the reservoir with the trail head parking pursuant to Sheet

14. The location of the parking had been defined although the exact spotting would be done during the improvement plan phase and was intended to be below the ridgeline. No timing had been set for public access which had yet to be defined.

Mr. Ebrahimi also explained in discussions with the Public Works Department that three locations had been identified for streetlights, at Rheem Boulevard/Fay Hill Road, Fay Hill Road/"E" Court, and the intersection of "E," "C," and "D" Streets, to consist of the same design and with 14-foot tall Dark Sky light compliant lights.

Joan Bruzzone, Moraga, asked for clarification regarding the responsibility for the maintenance of the trail and the parking lot.

Scott Tandy, 16 Kings Crown Court, Moraga, explained that the homes on his street had direct visibility of the proposed project site, potential streetlights, the parking lot, roads and traffic, and he expressed concern with the potential visual impacts. He understood that a portion of the subdivision would have access to a road that would be visible to his neighborhood with the only traffic on that road intended to access the reservoir. He expressed concern with any change to the nature of the ridgeline since he understood the Town had an ordinance that prevented ridgeline development. He urged the Planning Commission to consider the potential impacts to the community.

Suzanne Jones, 1285 Bollinger Canyon Road, Moraga, representing Preserve Lamorinda Open Space (PLOS), reported that since the March 17, 2014 Planning Commission meeting, PLOS had continued to work with SummerHill Homes and was happy to report that concerns with the oak woodlands and the wildflower fields lying within the backyards of the easternmost lots had been addressed with proposed modifications to Conditions 27 and 246. PLOS had also been successful in addressing concerns with the existing oak trees, wildlife fencing and the like. She thanked SummerHill Homes and staff for working to address PLOS' concerns.

Ms. Jones otherwise asked that the Commission consider the appropriateness of the streetlights since she was not convinced of the safety and need, particularly for the streetlights proposed at the intersection of "B" and "C" Courts. She asked that the Commission consider the parking area on the ridgeline and the contour lines of the existing grade since the parking area appeared to rest on the crest of the ridgeline. She commented that the General Plan allowed a road across a ridge in order to accommodate orderly development although that was not intended to accommodate a parking area, and while it may not be visible from Rheem Boulevard it would be visible from other public view point perspectives pursuant to views obtained from Google Earth. Ms. Jones suggested the configuration for parking along Rheem Boulevard, as shown in the staff report, may not be the best since it would require cuts, grading, and a retaining wall. She recommended that the area along Rheem Boulevard be designated as a turnout only which would not require grading or retaining walls, and she questioned the need for eight parking spaces for the Lafayette-Moraga Regional Trail.

Ken Markey, Lafayette, identified his property as 28 acres located to the right of the project site primarily within Moraga Open Space Ordinance (MOSO) land. He expressed concern with the path proposed along the MOSO space parallel to his

property line as close as ten feet to his property line. Given the area had been an attractive nuisance in the past for young people he asked for a fence along his property line to protect his horses and to prevent access to the high wire towers. He had been informed that Palos Colorados planned to install barbed wire fencing but asked for non-barbed wire fencing solutions to keep cattle and people out of his property.

David Fuhrman, 362 Birchwood Drive, Moraga, understood that 20 years ago the Town had adopted an ordinance which indefinitely prevented ridgeline development, and as such the proposed development would be prohibited and was therefore illegal.

The unidentified resident of 277 Birchwood Drive, Moraga, expressed concern with the potential visual impacts on the ridgeline development and asked whether residents of Birchwood Drive would be mitigated from any visual impacts from homes or parking along the ridgeline.

Roger Poynts, 147 Donald Drive, Moraga, commented that the staff report had not included a copy of the Vesting Tentative Map nor had it been available on-line. He was informed that the map had been included in the March 17, 2014 staff report. He asked for clarification of the location of the sewer connections since the plans had not shown a connection, and clarification of Condition 91 regarding the GHAD. He suggested the Town did not need a GHAD given that there was only one developer. Pursuant to the language in Condition 91, he suggested it was not appropriate for the Planning Commission to direct the Town Council to form or annex into a GHAD, and he recommended that the condition be amended to, eliminate the use of the term "shall," to be replaced with "may" form or annex into a GHAD.

Jane Russell, 273 Birchwood Drive, Moraga, stated that she had attended a recent Town meeting intended to provide residents with more information on hillsides and ridgelines. She too asked for clarification of the appropriateness of development on a ridgeline, or allowing roads on a ridgeline, with many in the Town of the opinion that such development was unacceptable and non-conforming since residents had previously expressed the desire for no development on ridgelines.

Bill Vaughn, Moraga, a former member of the Planning Commission and Town Council, clarified the project had never been approved by the Town Council, which had acted on an appeal of the decision of a prior Planning Commission, with only two Councilmembers voting to deny the appeal.

Mr. Vaughn pointed out that the General Plan laid out specific protections and standards for ridgelines from development which language was separate and distinct from the language in MOSO. If the regulations were unclear, he suggested a review of the minutes from the Town Council meeting on April 15, 2002; suggested the project did not adhere to the General Plan standards to protect ridgelines and minimize visual impacts; and suggested the Planning Commission use its legal authority as the defender of the General Plan to make changes to the project so that it would conform to the language in the General Plan.

David Griest, 1970 Joseph Drive, Moraga, a resident of The Bluffs neighborhood, stated that his property would have a clear view of the Rancho Laguna II site. He opposed the placement of a parking lot at the top of the ridgeline crest given the visual impacts; expressed concern with the fact that runoff would travel to the existing leeching pond which could be an Environmental Protection Agency (EPA) liability; and along with runoff from other developments could be another liability by polluting the streets and wetlands; expressed concern with the ever changing water tables in the canyons; and expressed concern that a road on the ridge would only serve to encourage more development on the ridgeline.

Kelly Griest, 1970 Joseph Drive, Moraga, asked whether the hiking trails would be open 24/7 or operate consistently with the hours of use for East Bay Regional Park District (EBRPD) trails. If the parking lot and public access trails were open after dark, she questioned how the area would be illuminated for safety, and she asked that the fixtures for the streetlights direct illumination to the roadway with minimal outward, lateral, and upward glare. She also questioned whether the trail would be gated with appropriate signage for public access.

Scott Andre, 263 Birchwood Drive, Moraga, also expressed concern with the potential visual impacts from the ridge and nighttime light pollution from automobiles.

REBUTTAL:

Mr. Ebrahimi advised that the originally approved CDP had shown the roadway on the ridge, and in working with staff and the community the revised plan had shifted the roadway off the ridge towards the north with much of the roadway on the other side of the hillside. He noted that alternative parking had been provided on Rheem Boulevard and the developer would work with his engineers to remove the excessive grading and retaining wall elements if the Planning Commission chose three to four parking spaces along Rheem Boulevard. As to the trail path parallel to the property line, fencing would be provided and required as a condition of approval, with the developer to work with the neighbors on the fencing material to be used to be mutually agreeable. He noted the sewer connections for the project had involved extensive meetings with the Central Contra Costa Sanitary District (CCCSD) and a report had been prepared by the project engineers and submitted to the CCCSD, which had approved the report in writing, and which had been forwarded to the Town's Engineers for review.

Mr. Ebrahimi reiterated the details of the GHAD and stated the Town Council had the authority to decide whether to act as the GHAD Board, consider five homeowners within the community to serve as the GHAD Board, or consider annexing to another GHAD. The trails would be open for use from dusk to dawn, a typical standard, subject to direction from staff and the neighborhood, and a light fixture design had been submitted to the Public Works Department, with the light fixtures to consist of 14-foot high lights to be labeled Dark Sky design where the lights would only shine downward.

Mr. Armstrong detailed the process for the approval of the CDP, Environmental Impact Report (EIR), and California Environmental Quality Act (CEQA) requirements, which process had involved extensive review and public input. It had been made clear that

views of concern were those from public locations not views from private residences, with the analysis prepared based on that determination. The Town Council had granted the appeal. Subsequent to the appeal, the Planning Commission had made changes that included changes to the road alignment with access from Fay Hill Road, a proposal from the Town Council that had been supported by the applicant. There had been a great deal of discussion from the public and others on what constituted ridgeline protection. The project had also been a subject of the Measure K Initiative, which measure had failed. The Town had followed MOSO and the General Plan analysis, and the question of General Plan consistency had been resolved at the CDP stage.

Chair Kuckuk closed the public comment portion of the public hearing at this time.

Mr. Ebrahimi further clarified, when asked, that none of the current projects would be allowed to discharge any water that had not been cleaned to any location off-site or to creeks; the project had been designed with bio-retention basins to cleanse the water prior to discharge. The ground water would not be contaminated because of the required cleansing process and pursuant to C.3 Clean Water requirements. He also identified the future connection point and signage location to the Lafayette-Moraga Regional Trail, Trail "A" and Loop Trail "B," which would end up being one big loop to Palos Colorados; the ridgeline road; and the location of the sewer lines evaluated by the CCCSD and reviewed by the project and Town engineers, with the sewer line by "B" Court determined to be the best location. As part of the CDP approval, trees were not intended to be planted as a screening mechanism which could block the sky or ridgeline; the landscape plans would require Design Review Board (DRB) review and approval; the intent was to keep the views of the ridgeline open; and there had been a request for a photo simulation of views up Rheem Boulevard to be provided as part of the Precise Development Plan (PDP) phase. He added that the curbs had been changed to be mountable curbs; and individual mail boxes had been proposed, to be reviewed as part of the DRB's review of the landscape plans.

Ms. Brekke-Read described the three-step review process for Planned Development projects (lots of ten acres or more) including a CDP, General Development Plan (GDP), and Precise Development Plan (PDP), with the PDP to be considered at the same time as a Final Map. The CDP established what would be allowed on the site and laid out the site plan arrangement, density, lot locations, circulation, and the engineering and submittal requirements to be provided to the Town.

The project had gone through an approximate eight-year process, having gone to the Planning Commission first, with the Planning Commission's approval of the project having been appealed to the Town Council, and with the Town Council having ultimately approved the 27-lot CDP. As part of the CDP approval, there was a condition of approval that stated that changes to the conditions could be made if agreed upon by the applicant. The Town's PD regulations stipulated that if a GDP is consistent with the CDP, the project shall be approved. The project had been deemed consistent with the CDP and the applicant now proposed the entitlements before the Planning Commission.

On the issue of streetlights, trail parking, and wildlife passable fencing, the Planning Commission offered the following comments and/or direction to staff:

- Streetlights - After a lengthy discussion, by consensus the Planning Commission supported a full-sized streetlight at the Rheem Boulevard and Fay Hill Road intersection, and reflector and other signage at the top of "E" Street where it intersected with Fay Hill Road.

Based on the discussion, and the consensus reached, Ms. Brekke-Read suggested a modification to Condition 65, as follows:

A streetlight shall be installed at Fay Hill Road and Rheem Boulevard. Reflectors shall be installed at Fay Hill Road and "E" Street. The Town's Traffic Engineering Consultant shall review the location of the lights and reflectors. Streetlights shall comply with the Town of Moraga's current standards and specifications, or may be of a more decorative type, subject to Town Planning Department review and approval.

And to the first sentence of Condition 66, to read:

Streetlights, and reflectors, subject to the limitations described in Condition 65 above, shall be installed and operational prior to the issuance of a Certificate of Occupancy for the first home in the Project.

- Wildlife passable fencing - The Planning Commission commented that cattle could go through any fencing material and there was uncertainty that non-barbed wire fencing would be effective against cattle; and while there was no consensus, there was some agreement that Condition 27, as written, was acceptable.

Mr. Ebrahimi commented that in speaking with PLOS they had considered a modification to the design for the wildlife fencing. He was uncertain that non-barbed wire fencing material would be effective and he had concerns limiting the type of fencing material since he was not versed on those materials. He requested the flexibility to consider different methods.

Chair Kuckuk again opened the floor to public comment on the topic of wildlife passable fencing.

Mr. Markey spoke to his experience with such fencing materials and commented that the use of barbed wire on two sides of fencing had caused damage to people, children, and horses, with barbed wire fencing illegal in many places. He suggested there were other strong fencing materials that could be considered to slow cattle and that the individual maintaining the cattle herd on Palos Colorados should be contacted to obtain more information since he would defer to a cattle expert.

Susan Sperry, Moraga, commented on her experience with the use of barbed wire fencing, suggested the bottom wire could be non-barbed, and based on her experience noted that oftentimes animals had been caught on the bottom and middle wires.

John Zettner, Biologist for SummerHill Homes and a Manager of a Non-Profit Land Trust, spoke to his experience managing lands for habitat purposes. He was always

looking for ways to keep cattle out of their lands, had used barbed wire fencing in the past, and did not like it although it was difficult if the fence was not barbed since cattle oftentimes tried to reach an area to graze on the other side of a fence and would push against the fence loosening the barbed wire. Three or four strands of barbed wire fencing with the lowest strand non-barbed wire had been used in the past. He agreed it would depend on the quality of the wire and the strength of the fence post.

Suzanne Jones, PLOS, supported fewer barbs wherever possible and noted that the condition had been worked out with SummerHill Homes as a compromise. She suggested the condition could be rewritten where at a minimum an acceptable alternative could be implemented at a later date.

Mr. Ebrahimi asked that the condition be flexible.

- Trail parking - The Planning Commission discussed the fact that the General Plan allowed a crossing of the ridge if found to be necessary but did not state that a parking lot would be allowed on the ridge, and suggested the parking be placed down below. Concerns were expressed for a pathway along Rheem Boulevard where vehicles travelled at a high rate of speed, faster than the speed limit; suggestion for a reflector at the top of Fay Hill Road interacting with the parking area; suggestion to defer the matter of the trail parking to the DRB to resolve the design details; some support for the staff recommendation for trail parking; and some opposition to allow parking on Rheem Boulevard given the fact that it was a scenic corridor to be left in its natural condition as much as possible; with objections to parking over the crest of the ridgeline; suggestion to keep the trail parking where it was not visible from the scenic corridor; suggestion to allow use of the trail dusk to dawn; suggestion for a better solution with some means to provide informal parking for access to the trail; suggestion for a gravel surface and located in such a way to avoid problems for residents or result in significant visual impacts.

On the discussion, Ms. Brekke-Read and Ms. Murphy recommended the second, third and fourth sentences of Condition 20 be modified, to read:

The easement shall include a trail as shown on Sheet VTM 10 and shall follow the general alignment shown on revised Sheet SE 30 accepted by the Planning Commission on April 21, 2014.

The trail shall be restricted to 1 to 3 feet wide, depending on the topography, within a 20-foot easement.

An informal gravel parking area shall be provided and shall be located to minimize visual impacts from the public right-of-way and impacts from residents and shall be subject to Design Review Board approval. The proposed public trail easements and parking shall be formally designated on the Precise Development Plans and the Tentative and Final Subdivision Maps and all other final filed plans.

And revise the last sentence of Condition 27 (e), to read:

The remaining wire on cattle fencing shall be installed in a manner to use as minimal barbed wire as possible to the extent acceptable to the neighboring land owner and Town staff.

In response to concerns with the revision to Condition 27 (e) placing a burden on the developer to negotiate with numerous adjacent land owners, Ms. Murphy recommended a further modification which would place the onus of the requirement on Town staff, with Condition 27 (e) to now read:

The remaining wire on cattle fencing shall be installed in a manner to use as minimal barbed wire as possible to the extent acceptable to Town staff.

Ms. Brekke-Read referenced Condition 84 and recommended that the second sentence be modified to read:

Painted curbs or no parking signs where painted curbs are not feasible, shall be installed along these portions of the roads subject to the review and approval of Public Works and Planning Departments.

As to the recommended revisions to Condition 246 as read into the record by staff, Ms. Brekke-Read advised that the change had been submitted to staff from the applicant this date.

Mr. Ebrahimi explained that the modification to Condition 246 had come from a suggestion from PLOS and the developer had agreed to the revised condition.

On a further discussion of Exhibit 1, Conditions of Approval, the Planning Commission and staff discussed further modifications to:

- Condition 24 (b) to add the language "whichever is less" at the end of the condition;
- Condition 27 (c), to delete the reference to Lots A and B;
- Condition 28 (b) to be deleted;
- Condition 115, the applicant clarified the reference to "A" Way referred to a roadway and was a marker for a location;
- Condition 177, the applicant clarified that the language in the condition had come directly from the CEQA requirements;
- Condition 224, the table as shown was incomplete and had not shown all information completely in the conditions of approval; and

- Condition 87, staff clarified the applicable Contra Costa County and State of California standards for curb ramps and pedestrian facilities pursuant to Public Works Department standards.

Ms. Murphy identified a correction to the last paragraph under Section 6. Project Approvals, as shown on Page 14 of Attachment A, the Draft Resolution Approving the GDP, Vesting Tentative Map, Hillside Development Permit, and Grading Permit for the Rancho Laguna II Subdivision, with reference to the Conditions of Approval attached as Exhibit 2, to be revised to read *Exhibit 1*.

On motion by Commissioner Marnane, seconded by Commissioner Onoda to adopt Resolution next in number to approve General Development Plan, Vesting Tentative Subdivision Map, Hillside Development Permit, and Grading Permit for the Rancho Laguna II Subdivision, as revised, and subject to additional revisions to Conditions 20, 24, 27 (c) and (e), 65, 66, 84, 224 and to replace Condition 246, as read into the record by staff, the elimination of Condition 28 (b), and with the correction under Section 6. The motion carried by the following vote:

Ayes: Comprelli, Marnane, Onoda, Schoenbrunner, Woehleke, Kuckuk
 Noes: None
 Abstain: None
 Absent: Levenfeld

Ms. Brekke-Read identified the 10-day appeal process of a decision of the Planning Commission in writing to the Town Clerk.

Chair Kuckuk declared a recess at 10:18 P.M. The Planning Commission reconvened at 10:20 P.M. with Commissioners Comprelli, Marnane, Onoda, Schoenbrunner, Woehleke, and Chair Kuckuk present.

On motion by Commissioner Woehleke, seconded by Commissioner Schoenbrunner to recommend that the Town Council amend Moraga Municipal Code Section 8.48.040. The motion carried by the following vote:

Ayes: Comprelli, Marnane, Onoda, Schoenbrunner, Woehleke, Kuckuk
 Noes: None
 Abstain: None
 Absent: Levenfeld

C. Consider Resolution __-2014, Recommending the Town Council Adopt a Historic Preservation Ordinance

Ms. Brekke-Read presented the staff report dated April 21, 2014. She recommended that the Planning Commission adopt a resolution recommending the Town Council adopt a Historic Preservation Ordinance.

Responding to the Commission and acknowledging concerns with the absence of property owner consent of a historic designation in the proposed Historic Preservation

Ordinance, Ms. Murphy explained that issue had been discussed by the Town Council. She suggested it was a policy decision. In the event a property owner did not consent, and if there was a historic designation where a property owner was not in agreement, it would be similar to a land use and zoning designation which could affect the ability to develop a property. The proposed ordinance would include due process considerations, with adequate noticing, a public hearing, and findings to be made to designate a historic landmark.

Ms. Brekke-Read walked the Planning Commission through Exhibit A, Proposed Chapter, 8.124: Historic Preservation Ordinance; clarified Section 8.164.040 Preservation Incentives; and identified the many options that could be considered for the Rheem Theatre and the Hacienda pursuant to the Building Department working with reasonable accommodations pursuant to the State Historic Building Code.

PUBLIC COMMENTS OPENED

Tim Farley, Director of Community and Government Relations, Saint Mary's College (SMC), clarified although the staff report had stated that SMC had been contacted about the proposed Historic Preservation Ordinance, the staff report neglected to mention that SMC was opposed to the idea of a historic designation absent property owner consent. He expressed concern that one of the potential incentives that had been identified in the ordinance was the use of the Mills Act, which SMC as a non-profit would not be able to utilize. He asked that the Planning Commission take into consideration SMC's strong and consistent opposition to the absence of non-owner consent in the proposed ordinance.

Mrs. Bruzzone opposed a Historic Preservation Ordinance and took exception to the suggestion that the Bruzzone family had been consulted, when she had not been contacted about this issue. She reported that she had learned of the issue in 2013 when the Rheem Theatre was under consideration and when the Town Council had discussed a desire to have property owner consent, but if there was not consent, suggested there were other ways to obtain that consent.

Mrs. Bruzzone stated it was disquieting that a property owner could lose control of his/her property, and emphasized that this could be one more way to control private property rights, which she strongly opposed. She emphasized that the concept of private property was a Constitutional right and she would hate to see anyone deprived of that right. As a resident of the City of Lafayette, she was unaware that Lafayette's Historic Preservation Ordinance also included a non-owner consent clause, and she asked that be clarified prior to stating that was a foregone conclusion in Lafayette.

Dave Bruzzone stated that when the issue had been raised in May 2013, he had written a letter to the Town Council identifying concerns with the potential impacts to Moraga Ranch, and had emphasized the importance of the Moraga Center Specific Plan Area (MCSP). He suggested a Historic Preservation Ordinance, if adopted, would dismantle the efforts of the MCSP by adding another level of review. He noted that the Town of Danville had similar development to Moraga Ranch and required non-owner consent in its Historic Preservation Ordinance. He emphasized the need for ownership buy-in, and

questioned the potential impacts to a property owner if the ordinance was adopted. He added that many properties in Moraga Ranch were exempt from CEQA, and if the ordinance was adopted, those properties would no longer be exempt and would be specifically subject to CEQA. If the Town had issues with the Rheem Theatre, and desired improvements to the Theatre, he suggested the Town should work with the Theatre owner and not include SMC and Moraga Ranch in the mix.

David Bowie, Attorney, representing the Rheem Theatre property owner, suggested the Town of Moraga did not have to take any action for historic preservation. He referenced State and Federal Historic Registers which both required owner consent; found the proposed Historic Preservation Ordinance to be poorly written; and would have no objection with the document as long as it was subject to owner consent. Without owner consent, he was adamantly opposed to the proposed Historic Preservation Ordinance.

Mr. Bowie referenced CEQA requirements whereby even with exempt projects any unusual circumstances would trigger CEQA investigation and inquiry, which included the historic elements of a property, and if CEQA applied would not require owner consent. He read into the record the provisions under Section 8.164.030 Designation of Historical Landmarks, which provisions he described as nonsensical, suggesting that the framework of the ordinance should be changed. He questioned the criteria to be applied which listed a number of uncertainties and ambiguities, questioned the definition of historic, and stated that the ordinance was non-specific making almost anything able to be designated as historic, which he found to be unacceptable.

Mr. Bowie also questioned the non-owner consent provision where the property owner was compelled to make the property historic, compelled to maintain the property as historic, and if the property owner failed to do so could be charged with a misdemeanor, straying into elements of private property rights. He suggested that if the Planning Commission were to make a designation that a project was historic absent property owner consent and there was no economic viable way to maintain that property, which may be the case with the Rheem Theatre, the Town could be faced with a serious lawsuit of inverse condemnation with serious financial impacts to the Town.

Mr. Bowie added that he had recent experience with the City of Lafayette on a similar ordinance, and detailed the legal case of an historic property in Lafayette which had recently been settled through mediation at great cost to all parties. He suggested the ordinance made no sense and he strenuously objected to it in terms of the manner in which it was currently stated.

Susan Sperry, representing the Moraga Historical Society, advised that no one at the Historical Society archives had been contacted about the proposed ordinance. She pointed out that properties in Moraga had already been designated as historical landmarks, and the Society would be more than willing to work with the Town in any form on this matter.

Ms. Brekke-Read advised that the ordinance had been prepared at the direction of the Town Council; included a table outlining the different historic resources in the Town including the Moraga Historical Society; she had met with Margaret DePriester with the

Moraga Historical Society many months ago, had called the Historical Society this week, and had left a message for the Bruzzone family in the last week; and that this was a public hearing which had been noticed pursuant to the Town's noticing requirements.

Mrs. Bruzzone questioned whether the Planning Commission may act independently of the Town Council; questioned the intent to alienate property owners; questioned why private property rights were under discussion and could be impacted absent owner consent; and suggested it was obvious the Town Council wanted action taken to adopt the ordinance absent owner consent. She suggested the topic deserved more time than it had been given at this late hour.

Ms. Murphy added that the General Plan included a policy for the preparation of a Historic Preservation Ordinance, as detailed in the staff report. She noted that the ordinance also contained language regarding the criteria for historic landmarks, which the Commission may evaluate.

PUBLIC HEARING CLOSED

The Planning Commission discussed the proposed Historic Preservation Ordinance and offered the following comments and direction to staff:

- By consensus, the Planning Commission supported a provision for owner consent in a Historic Preservation Ordinance; and
- The Planning Commission sought more time to further research the proposed Historic Preservation Ordinance.

Ms. Murphy clarified, when asked, that the Town Council had directed the preparation of a Historic Preservation Ordinance at its Town Council Goal Setting Session, with the Town Council to weigh in on all issues with respect to the ordinance.

Ms. Murphy stated the way the ordinance had been written, including the non-consent clause, had been discussed at prior Town Council meetings and would be discussed when the matter was brought back to the Council. During the Town Council Goal Setting Session earlier in the year, the direction was only to prepare a Historic Preservation Ordinance with no specific direction regarding all of the specifics to be brought back to the Town Council.

Mr. Bowie stated that he had been present during the Town Council meetings in 2013, and he refuted the accuracy of the statement from the Town Attorney in that the Town Council had made no definitive statement on the issue one way or another.

- The Planning Commission expressed concern imposing the unilateral will of a historic designation on property owners absent owner consent, an imposition on the rights of citizens by the government; and

- The Planning Commission recognized that the ordinance, as written and while a new concept, could be improved upon, tightened up, and modified subject to owner consent; and Commissioner Woehleke recommended that the proposed Historic Preservation Ordinance, as written, be denied without prejudice to allow it to be redrafted.

Ms. Murphy suggested that another option could be to direct staff to continue the item subject to any modification.

- There was opposition to Section 8.164.030 Designation of Historical Landmarks, A. Criteria, which provision may allow a historic designation for property which was less than 50 years of age; with a recommendation for the ordinance to include an owner consent provision not to be overridden by the Town Council in any circumstance; and
- Request of staff to provide copies of the minutes of Town Council meetings regarding the discussion of the Historic Preservation Ordinance.

On motion by Commissioner Marnane, seconded by Commissioner Onoda to continue to June 2, 2014, consideration of a resolution recommending that the Town Council adopt a Historic Preservation Ordinance subject to the direction offered by the Planning Commission to modify the Historic Preservation Ordinance to include an owner consent clause; tighten the criteria for historic designation; modify Section 8.164.030, Designation of Historic Landmarks, A. Criteria, with the Commission opposed to the inclusion of a clause that may allow for potential historic designation of landmarks less than 50 years of age (which the Commission found was too young in that half of the inventory in the Town was less than that age); and seek input from the Moraga Historical Society on the potential criteria. The motion carried by the following vote:

Ayes: Comprelli, Marnane, Onoda, Schoenbrunner, Woehleke, Kuckuk
 Noes: None
 Abstain: None
 Absent: Levenfeld

VI. ROUTINE & OTHER MATTERS

- A. Review Annual Planning and General Plan Implementation Report and Provide Input on Planning Department 2014-15 Work Program Priorities**

The Planning Commission acknowledged receipt of the Annual Planning and General Plan Implementation Report and the Planning Department 2014-15 Work Program.

Associate Planner Ella Samonsky and Ms. Brekke-Read acknowledged requests to modify the following:

- Page 7 of 29 of the Annual Planning and General Plan Implementation Report, to provide a more recent update for the Camino Ricardo Project;

- The table for the Implementation Report, for Intergovernmental Coordination, L12, Coordination with Utility Providers, to include information for undergrounding utilities and funding opportunities as future goals; and
- The Planning Commission discussed the numerous implementation programs as contained in the Implementation Report; staff clarified many were ongoing programs related to CEQA; some of the implementation programs could be condensed to make the report easier to read; staff recognized the implementation programs were ambitious; a Wayfinding Signage Program would be included in a future report; and some of the projects may require amendments to the Zoning Ordinance.

VII. REPORTS

A. Planning Commission

Ms. Brekke-Read advised that an appeal of the Planning Commission decision for Hetfield Estates would be considered by the Town Council on April 23, 2014 with the appeal initiated by the Town Council; Planning Commissioners may but were not required to attend the meeting; and when asked, she identified the streetlight requirement for the Hetfield Estates project if required for safety purposes by the Public Works Department.

Commissioner Marnane reported that he had attended the April 14, 2014 DRB meeting at which time the remodel of 331 Rheem Boulevard had been reviewed and approved.

B. Staff

Ms. Brekke-Read reported that the Park and Recreation Commission training had been scheduled for May 17, 2014, with full Town Board/Commission training to be scheduled soon and with Commissioners to be apprised of the meeting date.

VIII. ADJOURNMENT

On motion by Commissioner Woehleke, seconded by Commissioner Marnane, and carried unanimously to adjourn the Planning Commission meeting at approximately 11:30 P.M.

A Certified Correct Minutes Copy



Secretary of the Planning Commission

