

**TOWN OF MORAGA  
PLANNING COMMISSION MEETING**

Hacienda de las Flores, Mosaic Room  
2100 Donald Drive  
Moraga, CA 94556

June 2, 2014

7:00 P.M.

**MINUTES**

**1. CALL TO ORDER**

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

**ROLL CALL**

Present: Commissioners Comprelli, Levenfeld, Onoda, Schoenbrunner,\* Woehleke,  
Chair Kuckuk

\*Commissioner Schoenbrunner arrived after Roll Call

Absent: Commissioner Marnane

Staff: Shawna Brekke-Read, Planning Director  
Ellen Clark, Senior Planner

**B. Conflict of Interest**

There was no reported conflict of interest.

**C. Contact with Applicant(s)**

There was no reported contact with applicant(s).

**2. PUBLIC COMMENTS**

There were no comments from the public.

**3. ADOPTION OF CONSENT AGENDA**

**A. May 5, 2014 Minutes**

On motion by Commissioner Woehleke, seconded by Commissioner Comprelli to move the minutes from the May 5, 2014 meeting to Item 7, Routine and Other Matters, as Item B. The motion carried by the following vote:

Ayes: Comprelli, Levenfeld, Onoda, Woehleke, Kuckuk

Noes: None

Abstain: None

Absent: Marnane, Schoenbrunner

#### 4. **ADOPTION OF MEETING AGENDA**

On motion by Commissioner Levenfeld, seconded by Commissioner Onoda to adopt the Meeting Agenda, as modified. The motion carried by the following vote:

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

#### 5. **PUBLIC HEARING**

- A. Consider Resolution No. \_\_\_\_-2014, Recommending the Town Council Adopt a Historic Preservation Ordinance (CEQA Status: Exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(3) and 15308 of the CEQA Guidelines. (Continued from April 21, 2014.)**

Planning Director Shawna Brekke-Read presented the staff report dated June 2, 2014, requesting consideration of a resolution recommending that the Town Council adopt a Historic Preservation Ordinance, and recommended that the Planning Commission adopt the draft Resolution shown as Attachment B to the staff report, subject to any modifications.

In response to the Planning Commission, Ms. Brekke-Read cited Section 8.164.030, Designation of Historical Landmarks, subsection C. Nomination Form for a proposed historic designation, and explained that the State Department of Parks and Recreation had forms documenting the importance of a building and the potential for historic designation of a building, which form would likely be used to determine whether a building met the criteria for historic designation and which would be part of any approval of a historic landmark. Any change to a building proposed by a property owner specified as an environmental change would require approval by the Town Council. In addition, there were Secretary of the Interior Standards related to the rehabilitation of an historic building which were very specific as to how a building could be remodeled while maintaining its historic significance.

Responding to the Commission's desire that the property owner should also sign off on the final agreement between the Town and the property owner and not just the nomination form for historic designation, pursuant to the language in Section 8.164.030, Ms. Brekke-Read recommended that the first sentence of Section 8.164.030, H. Decision be modified to read:

- H. Decision. Within 30 days after the conclusion of the hearing, the Town Council shall by resolution either designate the property as a landmark, subject to applicant or property owner approval, or reject the nomination.*

In addition, Ms. Brekke-Read suggested that either Section 8.164.030 G or H could be modified to include language requiring property owner consent; acknowledged a concern that the definition of *natural feature* under Section 8.164.020 Definitions had not been referenced elsewhere in the resolution.

Ms. Brekke-Read identified the process for nomination of a designation of historic landmarks, as shown under Section 8.164.030, Designation of Historical Landmarks, B. Nominations. She stated that section could be modified to reflect that the nomination was to be made to the Town Council by the bodies listed in Section 8.164.030 B.

As to the definitions for *landmark* and *owner* under Section 8.164.020 Definitions, Ms. Brekke-Read stated that generally a landmark would be physically located somewhere. She acknowledged there were statues in Commons Park which in that case were located on Town-owned property; and generally artwork would not be landmarked, although in some cases some items such as statues could be considered a work of art.

#### PUBLIC HEARING OPENED

David Bowie, Attorney, representing the property owner of the Rheem Theatre, thanked the Planning Commission for paying attention to the concerns raised at the prior hearing as to whether the property owner would be consulted on material impacts that could affect the valuation of the property. He appreciated the staff work to prepare a draft ordinance and he had no problem with the ordinance as proposed. He commented that it would be possible to have statuary or artwork that could be a potential landmark status and some things that could be removable and separable from a property not intended as a fixture of the real property, which issue could be addressed through a right title or interest-in to the property interest, and which would be sufficient. In addition, he noted that it would be important to be detailed in terms of the historic designation and suggested it did not have to be an all or nothing proposition. He suggested there could be elements of some things that were historic while the entire building may not be historic.

Mr. Bowie cited the Rheem Theatre as a good example and noted that the building was a large concrete block with few architectural features, although the neon marquee sign was an example of times past. He encouraged consideration of the preservation of historic features that were vibrant, would be economically feasible, and would be reflective of the community and its culture; recommended flexibility and not an all or nothing approach; and suggested the Town would likely be the first community to consider an historic designation in such a fashion which would be very effective. He suggested there was no rush given that CEQA applied to structures. He was confident the proposed ordinance would work since it included the property owner which was valuable to everyone, and expressed the willingness to work with Town staff to draft potential language for consideration.

Ms. Brekke-Read stated that she had also spoken with Dave Bruzzone who had been unable to attend the meeting to speak to this agenda item but who had supported the

inclusion of owner consent in the ordinance; and Saint Mary's College (SMC) had also supplied an e-mail expressing support for the ordinance.

## PUBLIC HEARING CLOSED

The Planning Commission discussed the Draft Historic Preservation Ordinance and offered the following comments and/or modifications to the Ordinance:

- Modify Section 8.164.020 Definitions: *Landmark* to read: *Landmark means any location, area, place, site, building, structure, district, monument, work of art and other object or thing, or portion thereof, which has been designated as a historical landmark pursuant to this chapter;*
- Concern expressed that a property owner may not be willing to sign the Nomination Form which may commit a property owner to future restrictions and costs, absent being able to have some sway over limits on the final resolution;
- Concern expressed with Section 8.164.060 Maintenance of Landmark, A. Criteria, in the event the property owner did not maintain the historic designation and whether that would mean the loss of tax benefit, and the enforcement arm that would ensure the maintenance of the historic designation; with staff clarifying that the maintenance of the landmark would be handled through the Town's Nuisance Abatement procedures;
- Concern expressed that the existing pear tree orchards in the Town had not been specifically addressed or identified in the Historic Preservation Ordinance, particularly the pear tree orchard located on Parcel C in the Camino Ricardo Subdivision.

Ms. Brekke-Read clarified that the Town's Tree Ordinance protected trees of a certain size that were native, orchard, or designated as heritage trees. Tree removal had been addressed through the approval process for the Camino Ricardo Subdivision, and the Moraga Center Specific Plan (MCSP) recognized existing orchards, while also recognizing that some trees may be removed as part of future development in the MCSP. Staff also clarified that the Historic Preservation Ordinance would allow the historic designation of an agricultural landscape pursuant to the definitions under *natural feature*.

Based on Planning Commission input, Ms. Brekke-Read recommended a further modification to Section 8.164.020 Definitions for *landmark* as follows: *Landmark means any location, area, place, site, building structure, or portions of a building structure, district, monument, work of art, natural feature, and other object or thing which has been designated as a historical landmark pursuant to this chapter.*

Additional comments and/or modifications to the Ordinance were added by the Commission, as follows:

- Modify the first sentence of Section 8.164.030 Designation of Historical Landmarks, A. Criteria, to read: *In considering the designation of any area, location, site, place, building, structure, district, natural feature, work of art, or similar object as a landmark, the Town Council shall apply the following criteria with respect to such property;*
- Modify Section 8.164.030 Designation of Historical Landmarks, B. Nominations to read: *Nominations for the designation of landmarks may be made to (1) the Town Council by the Planning Commission, Design Review Board, or Moraga Historical Society, and with the consent of the property owner or (2) the owner of the property proposed for designation;*
- Modify the first sentence of Section 8.164.030 Designation of Historical Landmarks, H. Decision, to read: *Within 30 days after the conclusion of the hearing, the Town Council shall, with property owner approval, by resolution either designate the property as a landmark or reject the nomination;*
- A typographical error was identified on the top of Page 6 with two items (6) shown under Section 8.164.030, Designation of Historical Landmarks, C. Nomination Form to be corrected; and
- Revise the date of the resolution to read *June 2, 2014*; and revise the effective date to read *June 13, 2014*; as shown on Page 1 of the resolution.

On motion by Commissioner Woehleke, seconded by Commissioner Levenfeld to recommend to the Town Council the addition of Chapter 8.164, Historic Preservation to Title 8, Planning and Zoning, of the Town of Moraga Municipal Code, with the modifications as shown. The motion carried by the following vote:

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

## 6. PUBLIC MEETING

A. **Study Session to Consider Housing-Related Amendments to Moraga Municipal Code (MMC) Title 8, Planning and Zoning, which include:**

- Amending MMC Section 8.04.020 (Definitions) to add definitions for Supportive and Transitional Housing and Emergency Shelters;
- Adding MMC Section to Allow Emergency Shelters by right in the Institutional District;
- Adding MMC Section to Allow for Reasonable Accommodation from the Zoning Ordinance for Individuals with Disabilities;
- Adding MMC Section to Allow for Density Bonus for affordable units consistent with State Density Bonus Law; and
- Amending MMC Section 8.142 (Secondary Living Units)

Senior Planner Ellen Clark presented the staff report dated June 2, 2014, and presented copies of a PowerPoint presentation that had recently been presented to the initial stakeholder meeting/public workshop for the Housing Element Update. She described the items under consideration as clean-up items allowing the implementation of the 2010 Housing Element, which would be subject to CEQA review, in the form of a Mitigated Negative Declaration (MND) with no additional CEQA review necessary for the proposed amendments. She asked that the Planning Commission review and provide input and direction to staff; with staff to prepare the ordinances for consideration at a noticed public hearing on June 16, 2014.

Responding to the Commission, Ms. Clark identified the definition of an emergency shelter pursuant to State law, as shown in the June 2 staff report, with the building allowed to be a long-term building although with the occupancy to be designed for short-term occupancy of six months or less.

Ms. Clark stated the Town may not define an “emergency” and the Town was required to provide emergency shelters. She commented that the Town was out of compliance with the State regulations given that the Zoning Ordinance had not been updated; the Housing Element had not been updated in the way it should have been; or something may have been missed. The items were clean-up items to ensure compliance with State law.

#### PUBLIC COMMENTS OPENED

There were no comments from the public.

#### PUBLIC COMMENTS CLOSED

In response to the Commission, Ms. Clark explained that further exacting requirements may not be imposed on supportive and transitional housing than would be imposed on any other type of housing and any modification of a building would require administrative design review or DRB review depending on the project. In terms of the

density bonus, she clarified that a developer would have to request the incentive from the Town, that State law had established the framework for a density bonus, and that the Town was required to accept what State law dictated, to be implemented in the Moraga Municipal Code (MMC).

Speaking to secondary living units, Ms. Clark commented that the intent was to have fairly stringent provisions, and if the project met all requirements it could be approved over the counter, but adding a second unit to a second story would still require additional design review.

Ms. Brekke-Read identified the ministerial process required pursuant to State law for secondary living units, with some cities having identified an extensive list of standards to ensure that secondary living units did not proliferate in neighborhoods; however, pursuant to State law, the Town could not impose regulations where it would make it impossible to build a secondary living unit. She acknowledged that a small manufactured home could be placed on a lot subject to meeting required criteria. She offered other examples, including a pending design review application for a garage with a second unit above which would have required a variance and DRB approval. Because of the variance, the property owner was still building the garage and the area above the garage through administrative design review and was calling the area above the garage a studio. The Town was unable to receive credit for that studio as a secondary unit and the property owner may not call it a secondary unit. Another example involved a minor renovation of a pool house with windows that did not meet the height requirement. In that case, the Town had also been unable to count the structure as a secondary unit and it was considered to be a pool house/wet bar.

Ms. Clark added that Design Standard 1.124.070 would not allow any special exceptions from the setback requirements, with the assumption the secondary living unit would be required to comply with the setback requirements.

Ms. Clark also clarified Housing Element Policy H2.3 Fair Share Housing, providing faculty housing, facilitating affordable housing opportunities, and allowing for the development of attached and detached secondary living units, where appropriate and feasible, for SMC and the Moraga School District (MSD) in the MCSP Area, which opportunities remained in place.

Ms. Brekke-Read added that the policy was similar to another policy in the 2002 General Plan.

Ms. Clark further explained that the Town did not regulate the renting of rooms/quarters in single-family homes; there was no special permit required; and it was a matter between the private property owner and the tenant. She also identified the default densities adopted by the Town in that the State would equate density to affordability. One of the requirements of the last housing cycle was that the Town must show through land zoned for higher density housing to reflect the housing need, which had been included in the Housing Element submitted to the State. She noted that it would be difficult to undo that decision absent scrutiny from the State.

In response to concerns with Bed and Breakfast uses, Ms. Clark stated that occupancy of less than three days was not considered to be housing, and the Town may not count convalescent or hotel housing units, as examples, in its housing count. She was also unaware of a need for hotel type of housing in Moraga at this time although transient occupancy had been an issue in other communities.

Chair Kuckuk re-opened the PUBLIC COMMENT at this time.

Sophie Lucacher, Moraga, asked whether a yurt would be considered a secondary living unit, to which Ms. Clark commented that as long as that structure met all criteria approvable by the Building Department, with fully operational bathroom facilities, it could be considered a secondary living unit.

Susan Sperry, Moraga, asked whether mobile homes would be considered a secondary living unit.

Ms. Clark advised that mobile homes or a manufactured unit on a permanent foundation were considered to be the same as single-family housing. Trailers were not allowed to be stored or occupied on a property.

Chair Kuckuk closed the public comments.

The Planning Commission discussed the proposed zoning text amendments and offered the following comments:

- Recommended revision to Attachment E, MMC Section 8.124 Secondary Living Units, Section 8.124.060 Development Standards G. to not state a maximum size of parking space and to eliminate that statement from the first sentence; to eliminate the phrase "...shall be located adjacent to the parking spaces for the existing primary unit and shall match the design of the existing primary unit parking spaces" from the second sentence of the same section; access to the secondary living unit parking should be to a driveway but did not have to be the same driveway; and concerns raised with the regulation of curb cuts;
- Concern with secondary living units over garages, the loss of owner occupied properties in the Town, and impacts on traffic; but a consensus for a non-ministerial process that would require design review; and encouragement of off-street parking;
- Recommended a threshold for secondary living units under Section 8.124.060 Development standards B, citing the formula used for Palos Colorados, to limit the impacts to one individual street; with staff recommending exploration of the potential distance as a standard with a design review process similar to a second story; and with staff to work in

cooperation with the Town Attorney to find an acceptable solution to address this issue; and

- Section 8.124.060 Development standards, J., staff to research if the standard had come from a staff report, with the standard to be revisited; and
- Parking spaces may be modified to allow tandem parking.

## **7. ROUTINE & OTHER MATTERS**

### **A. Consider Delegating Planning Commission Representative to Town Council, Consider Rules of Conduct for Planning Commissioners, Attending Town Council and other Public Meetings, and Discuss Town Council and Planning Commission Roles**

Ms. Brekke-Read presented the staff report dated June 2, 2014, and reported that the discussion before the Commission was a result of recent appeals of Planning Commission decisions, and in response to a request for representation from the Planning Commission to Town Council meetings when an appeal was to be heard. She asked that the Planning Commission delegate the Chair to attend Town Council and other public meetings, and in the absence of the Chair, delegate the Vice Chair or have the ability to designate someone else. The Planning Commission Rules of Conduct had also been outlined in detail in the staff report. She identified the staff recommendations for Planning Commission attendance and participation during Town Council meetings, and recognized concerns if a Commissioner who voted in the minority wished to address the Council which could be addressed with the Town Attorney, and where the Town Attorney had already advised that a Commissioner should speak only for himself/herself during a Town Council meeting, and not on behalf of the Planning Commission.

Ms. Brekke-Read stated that the Chair or delegate should speak on behalf of the Planning Commission, and advised that not more than three Commissioners should speak as private individuals. She added that usually copies of the minutes of Planning Commission meetings were provided to the Town Council at the time of an appeal, if available. She clarified the recommendation for the Commission Chair or delegate to represent the Planning Commission at Town Council meetings by formally communicating the Commission's vote on appeals and other items recommended by the Town Council, would include projects such as the recent recommendation for the Historic Preservation Ordinance. She described the process for an appeal before the Town Council and clarified that the presence of the Planning Commission Chair or delegate would not be agendaized as a speaker or specific item on Council agendas.

**PUBLIC COMMENTS OPENED**

Sam Sperry, Moraga, asked for a discussion of the Town Council and Planning Commission roles, and noted that as a retired member of city government and having observed the relationship between elected officials and advisory bodies, he had been distressed to learn of recent dynamics at the May 21, 2014 Town Council meeting. He expressed unconditional support for the position expressed by Commissioner Comprelli, but suggested Councilmember Metcalf was incorrect in suggesting that the Planning Commission had been insubordinate.

Sophie Lucacher, Moraga, identified herself as the local reporter who had been present during the May 21, 2014 Town Council meeting, and commented that the voice of the Planning Commission was often missing from Town Council meetings for appeals. She agreed it would be nice to have the voice of the Planning Commission Chair and/or delegate present on those occasions.

#### PUBLIC COMMENTS CLOSED

The Planning Commission discussed the Delegation of Planning Commission Representatives to the Town Council, the Rules of Conduct for Planning Commissioners Attending Town Council and other public meetings, Town Council and Planning Commission Roles, and offered the following comments and/or direction to staff:

- Support for the Planning Commission to send a representative to the Town Council to ensure direct communication; a discretionary action, as appropriate and as designated by the Chair; and it was not appropriate for the Chair or delegate to attend every Town Council meeting but was essential for the Chair or delegate to attend Town Council meetings in the event of an appeal;
- Recommended a rotation of Planning Commission attendance at Town Council meetings given the duties of the Chair, with appeals requiring the presence of the Chair;
- Staff recommended the preservation of Planning Commissioner attendance at Liaison Meetings; and
- By consensus, the Planning Commission appointed the Chair as the Planning Commission representative to Town Council meetings for appeals; with any other areas of concern at the discretion of the Chair.

Commissioner Woehleke offered a motion to appoint the Planning Commission Chair or delegate as the representative to Town Council meetings, mandatory for appeals, with consideration of any other areas of concern at the discretion of the Chair. There was no second to the motion.

Commissioner Levenfeld offered a new motion to appoint the Chair or his/her delegate as the Planning Commission representative for appeals, and at the discretion of the Planning Commission on any other items to be referred to the Town Council.

Ms. Brekke-Read recommended a further modification to Commissioner Levenfeld's motion to read: *Delegate the Chair or his/her delegate as the Planning Commission representative to the Town Council for appeals and for other items at the discretion of the Chair.*

Commissioner Levenfeld accepted the staff recommended revision.

On motion by Commissioner Levenfeld, seconded by Commissioner Onoda to delegate the Planning Commission Chair or his/her delegate as the Planning Commission representative to the Town Council for appeals and for other items at the discretion of the Chair. The motion carried by the following vote:

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

## **B. May 5, 2014 Minutes**

Commissioner Woehleke requested an amendment to the last paragraph of Page 11 of the May 5, 2014 minutes to reflect the discussion regarding the appeal of the Planning Commission action on two conditions of approval for the Camino Ricardo Subdivision Development Agreement (DA), had been intended to reflect his request that Planning Commissioners attend Town Council meetings to respond to the Council, if needed.

Chair Kuckuk asked that the discussion under Reports reflect Commissioners' names, and requested that staff re-listen to the meeting tapes to identify each member by name.

Ms. Brekke-Read commented that she did not recall the referenced discussion as being a report and noted that the minutes would be very lengthy if each speaker was called by name, although staff would re-listen to that portion of the meeting to reflect the accuracy of the statements made. She recommended that the meeting minutes of May 5, 2014 be brought back at the next meeting of the Planning Commission in a redline strikeout format.

## **8. REPORTS**

### **A. Planning Commission**

Commissioner Woehleke reported that he had attended the May 27, 2014 DRB meeting which had adjourned after 1:00 A.M., when a number of items had been discussed although the entire meeting agenda had not been completed and the Livable Moraga

Road Project presentation had been held over to the next meeting of the DRB. The DRB at that time had considered and approved applications for a new home at 5 Paseo Linares, a deck expansion for a residence in the Moraga Country Club, and design review approval of the park/open space for Parcel C for the Camino Ricardo Subdivision. He briefly described the discussions for each of the projects.

Commissioner Woehleke also reported that the DRB had reviewed the Moraga Town Center Homes project providing input to be forwarded to the Planning Commission, and the applicant had been given direction to address the project articulation and the parking arrangements for Country Club Drive, with staff directed to return to the DRB with a Draft Action Memorandum for approval. The Via Moraga Subdivision had also been presented to the DRB to solicit input, to be forwarded to the Planning Commission, and the applicant had been directed to remove one of the entrances, move the middle home back, and move the two side homes back at least equal to the veterinary office building.

Ms. Brekke-Read advised that the Via Moraga Subdivision would likely be presented to the Planning Commission in July, date yet to be determined.

Commissioner Woehleke stated that the DRB had further reviewed the proposed Town Freestanding Community Message Board Sign, provided input to staff on the draft design, and the project would now go directly to the Town Council.

Commissioner Woehleke also stated that since the May 5, 2014 Planning Commission meeting, he had learned more about the Brown Act. He referenced a situation where Commissioner Onoda had requested a substitute for the latest Liaison Meeting although that could not be discussed since it had not been agendized. As a result, he had sought the Town's authority and guidelines for the Brown Act, and had found there was none.

Commissioner Woehleke had then evaluated the League of California Cities Brown Act Guidelines for guidance, and read into the record a legal argument regarding the Brown Act, noting that some cities had developed their own guidelines. He requested a future discussion of the Brown Act.

Chair Kuckuk understood that issues such as the Brown Act would be addressed as part of an upcoming training session with the Planning Commission.

Ms. Brekke-Read acknowledged that some cities allowed a modification to the meeting agenda during a meeting although that had not been the practice of the Moraga Planning Commission. She advised that she could only pass on the legal advice that staff had been provided; acknowledged that the Brown Act would be addressed during the upcoming Planning Commission training session; and noted that Commissioners could request a future agenda item as part of comments under the Reports section of the agenda, which was transparent, and which ensured that a decision or declaration was not being made absent public participation.

## **B. Staff**

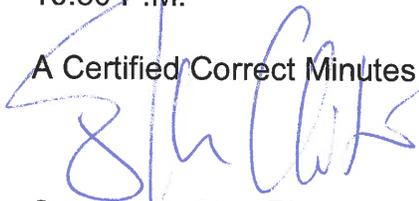
Ms. Brekke-Read reported that the Planning Commission did not have a meeting scheduled for August; with two meetings scheduled for June, one for July, one for September, and two for the month of October; however, an extra meeting would have to be scheduled since staff would like to move some items along. She asked that Commissioners consider an extra meeting to be scheduled either at the end of June, an additional meeting in July, or consider a meeting during the month of August, and asked that Commissioners contact Planning staff with available dates. She also reported that the Hillsides and Ridgelines Workshop would meet on Thursday, June 6, 2014 at SMC; with a special joint Planning Commission/Town Council meeting scheduled for August 27, 2014 to discuss hillsides and ridgelines prior to a regular Town Council meeting scheduled at 7:00 P.M. on that date.

Commissioner Onoda asked that a previous request to identify the potential traffic impacts on schools in the MSD, although not tied to a specific development, be provided to the Planning Commission at a future meeting.

## 9. ADJOURNMENT

On motion by Commissioner Levenfeld, seconded by Commissioner Schoenbrunner and carried unanimously to adjourn the Planning Commission meeting at approximately 10:30 P.M.

A Certified Correct Minutes Copy



Secretary of the Planning Commission

