

**TOWN OF MORAGA  
PLANNING COMMISSION MEETING**

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

June 15, 2015

7:00 P.M.

**MINUTES**

**1. CALL TO ORDER**

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

**A. ROLL CALL**

Present: Commissioners Carr, D'Arcy\*, Kovac\*, Kuckuk, Mallela, Woehleke,  
Chairperson Marnane

\*Commissioners D'Arcy and Kovac arrived after Roll Call

Absent: None

Staff: Ellen Clark, Planning Director  
Ella Samonsky, Associate Planner  
Brian Horn, Associate 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. Minutes of May 4, 2015**

**B. Minutes of April 20, 2015**

On motion by Commissioner Woehleke, seconded by Commissioner Mallela to adopt the Consent Agenda, as submitted. The motion carried by the following vote:

Ayes: Carr, D'Arcy, Kuckuk, Mallela, Woehleke, Chairperson Marnane

Noes: None

Abstain: None

Absent: Kovac

Although a motion had been made to adopt the Consent Agenda, there was a request for changes to the meeting minutes and the Planning Commission revisited the Consent Agenda at this time.

Commissioner Mallela requested an amendment to the second paragraph on Page 7 of the April 20, 2015 minutes, as follows:

*Commissioner Mallela also agreed with the staff recommendation to deny the variance request, recognized that the structure was intended to allow the family to enjoy their home, acknowledged the unfortunate situation, and expressed his hope that the architect could provide assistance to find a way so the updated structure would comply with the Town's requirements.*

Commissioner Kovac requested an amendment to the first sentence of the fifth paragraph on Page 6 of the April 20, 2015 minutes, as follows:

*Commissioner Kovac recognized that the applicant had no intention to impinge on other properties and acknowledged the support from Bev Matthews, one of the neighbors who had spoken to the applicants' character and intent.*

Chairperson Marnane requested an amendment to the first sentence of the fourth paragraph on Page 7 of the April 20, 2015 minutes, as follows:

*Chairperson Marnane commented that he had visited the property, found it to be a substantial building, with electricity, and if the structure were plumbed for water it would be large enough to be a nice guest home since it was insulated.*

Commissioner D'Arcy requested an amendment to the second paragraph on Page 2 of the April 20, 2015 meeting minutes, as follows:

*In response to Commissioner D'Arcy's question regarding legal consequences to residents who continue to build a non-permitted structure after those violations received, Ms. Samonsky clarified that if the applicant wanted to keep the building as currently constructed, and if the variance was approved, Hillside Development and Design Review Permits would be required along with a Building Permit to legalize the construction.*

In response to the Chair, Planning Director Ellen Clark advised that staff had not forwarded a copy of the May 4, 2015 Planning Commission minutes to the Public Works Director/Town Engineer because of the timing, although she had informed him of the Planning Commission's comments and concerns regarding the Capital Improvement Program (CIP)'s conformance with the General Plan.

On motion by Commissioner Woehleke, seconded by Commissioner D'Arcy to adopt the Consent Agenda, with the amendments to the minutes of the April 20, 2015 meeting, as shown. The motion carried by the following vote:

Ayes: Carr, D'Arcy, Kovac, Kuckuk, Mallela, Woehleke, Chairperson  
Marnane  
Noes: None  
Abstain: None  
Absent: None

#### 4. ADOPTION OF MEETING AGENDA

No motion was taken to adopt the meeting agenda.

#### 5. PUBLIC HEARING

##### A. Conduct a Public Hearing and Consider Adoption of PC Resolution -2014 Recommending Town Council Adoption of Amendments to Section 8.52.110 Conditional Uses, in Chapter 8.52 MOSO and Non-MOSO Open Space Districts, of Title 8, Planning and Zoning of the Town of Moraga Municipal Code (CEQA Status: Exempt from CEQA pursuant to Section 15061(b)(3): General Rule Exemption)

Associate Planner Brian Horn presented the staff report dated June 15, 2015, and recommended that the Planning Commission adopt a resolution recommending Town Council adoption of amendments to Section 8.52.110 Conditional Uses, in Chapter 8.52 Moraga Open Space Ordinance (MOSO) and Non-MOSO Open Space Districts, of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code (MMC).

Ms. Clark explained that while the request had come forward in conjunction with a use permit application for Adventure Day Camp that application was not before the Planning Commission at this time. The agenda item, if approved, would enable Adventure Day Camp to bring an application forward for consideration by the Planning Commission with all of the details of its operations. The only item under consideration at this time was the proposed zoning amendment, which would apply to all MOSO lands throughout the Town. The use permit for Adventure Day Camp would be considered as part of a separate action by the Planning Commission.

Commissioner D'Arcy understood the property where Adventure Day Camp planned to operate had been used as a for-profit operation since it had been conceived. She asked for clarification as to why the use would not be grandfathered-in.

Ms. Clark cited the history and background of the Moraga Tennis and Swim Club (MTSC), and described the for-profit and non-profit status which had evolved over time, where the Town had continued to allow the facility to operate, issuing permits for remodels and changes, with a vested right over time for various approvals. The facility had been vacant for a number of years, the use permit had lapsed, and Adventure Day Camp required a new use permit to re-establish the business, which would require consistency with the Zoning Ordinance in order to operate.

Ms. Clark emphasized that the prior use was a non-conforming use and since it had lapsed could not be grandfathered in. She reiterated that Adventure Day Camp was unable at this time to apply for a new use permit since the use was not consistent with

the Zoning Ordinance. In order to consider the application, a Zoning Text Amendment must move forward. Absent that action, Adventure Day Camp would not be able to submit an application.

Commissioner Woehleke affirmed the action being asked of the Planning Commission, clarified with staff the requirements of the California Environmental Quality Act (CEQA), and verified that the agenda item was exempt from CEQA pursuant to Section 15061(b)(3) General Rule Exemption. He suggested the use from the prior MTSC to Adventure Day Camp would represent a change in use since it would involve people being bused to the site creating an impact to the environment.

Ms. Clark responded that the Planning Commission was considering the change in allowed uses compared to those currently allowed. The change in zoning text would allow businesses or uses to operate under a different business model which could, in theory, encompass a similar range of uses, and which had been considered when reviewing the CEQA impacts. Any subsequent project would be subject to a conditional use permit application, and potentially a CEQA analysis, which would consider all potential impacts of that particular project. She reiterated that the Planning Commission was being asked to consider whether the Zoning Text Amendment would fundamentally change the range of uses currently permitted in the zone. She added that staff could not find a reason that would be the case.

Commissioner Woehleke referenced Attachment H, a letter from Clay Serrahn and Karen Mendonca, which had been included in the staff report. He clarified with Ms. Clark that the Town Attorney had been involved in this discussion and supported the staff conclusion regarding the CEQA finding.

Ms. Clark noted that many of the comments in the letter suggested the change by itself in the Zoning Text Amendment would bring into MOSO zones recreational uses fundamentally different from those currently allowed, but staff disagreed with that assertion. The Town Attorney, while not having reviewed Mr. Serrahn's letter had worked closely with staff when the item was brought to Town Council and the PC staff report reflected that direction. Staff was not in agreement with the statements in the correspondence since a future use permit application would be considered by the Town, would involve discretionary approval that would be conditioned, and would require CEQA review. Staff was also not in agreement that the points in the letter would create a CEQA issue. She added that references in the letter to modifications to three zoning districts were inaccurate. She reiterated that the only item before the Planning Commission was the Zoning Text Amendment for one specific zone, as described in the staff report.

Commissioner Carr spoke to her background as a lawyer, noted that MOSO was a voter Initiative, and while it was arguable whether the Zoning Text Amendment would fundamentally alter MOSO, she suggested there could be a legal argument that the issue was not something the Planning Commission had the power to decide, and should instead be put to the voting public.

Ms. Clark advised that staff, the Town Attorney, and the Town Council had considered that question. She recognized that any modification to the text of MOSO would require

a vote, although Staff's review of the MOSO initiative did not find any reference to the specifics of a for-profit versus a non-profit operation, and only a fleeting reference to recreational uses in general. The Town Council had expressed concern with a case of conflict with the intent of MOSO. Staff had been asked to provide text of the MOSO Initiative and MOSO Guidelines along with the General Plan policies implementing MOSO. The Town Council agreed that there did not appear to be any conflict with the intent of MOSO.

Commissioner Carr asked whether the Town had any legislative notes as to how the non-profit designation had been included in MOSO, to which Ms. Clark advised that in the 1990s the question had come up as to how that language had been included in the MOSO Open Space zones. She explained that it existed in the Open Space Zoning Districts prior to the adoption of MOSO, and the language had been carried forward into MOSO.

Responding to Commissioner Kovac as to what the Zoning Text Amendment would affect, Ms. Clark clarified that the Zoning Text Amendment would affect all land zoned as MOSO. The subject property was entirely zoned MOSO. She reiterated that the item under consideration was exempt from CEQA pursuant to Section 15061(b)(3) General Rule Exemption, as described in the staff report, and the "project" being referenced in the staff report was only the Zoning Text Amendment.

Commissioner Kuckuk stated that although she had declared no conflict of interest at the start of the meeting, as the Director of Marketing for an independent school in the Town which also operated a pre-school and summer camp, she acknowledged there had been a lot of discussion in the staff report about a pending application for a similar entity. At the time of use permit review for that item, she advised that she would recuse herself. At this time given the discussion for a broader land issue, she would participate. She asked staff to clarify that the MMC sections in question were those that implemented MOSO.

Ms. Clark affirmed that the MMC sections implemented MOSO. She further clarified, when asked, the intent of the language in the Zoning Text Amendment and that the Town Council had suggested some language to address the development footprint. Staff had been concerned the language was not specific enough to define what was meant by the development footprint and the reuse of the facilities, and the proposed language in the Zoning Text Amendment was intended to place a finer point on that issue. If that was too broad a category of existing facilities, she stated the Planning Commission may consider more precise and specific language. Staff was attempting to state, through the language, that there was a set of facilities that may include areas that were graded, but not paved, but areas that had clearly been disturbed or been modified by human activity, with the intent not to expand beyond the current area of disturbance.

Chairperson Marnane acknowledged a request from Commissioner Woehleke to go through the letter included in Attachment H from Clay Serrahn and Karen Mendonca, item by item, although that recommendation was not shared by the entire Commission.

Ms. Clark urged the Planning Commission to consider the item under discussion for the Zoning Text Amendment as opposed to a proposal from Adventure Day Camp. She

reiterated that any future application for Adventure Day Camp would involve a separate hearing before the Planning Commission. She recognized that the letter included points about the Zoning Text Amendment and issues regarding the potential Adventure Day Camp facility.

## PUBLIC HEARING OPENED

Karen Mendonca, 1160 Larch Avenue, Moraga, a former member of the Town Council and a former Mayor, explained that she and Mr. Serrahn had submitted the correspondence included in Attachment H. She highlighted the opposition to the proposed Zoning Text Amendment and suggested it would only serve to weaken current MOSO protections. The Town Council had stated it wanted to fast track the approval process for Adventure Day Camp's use permit application on this MOSO parcel, which she suggested would potentially weaken MOSO and leave the same protections in place for non-MOSO Open Space. She questioned the Town Council's motives in its decision to fast track the process for the subject parcel only and redirect the issue to the Planning Commission, suggested the revision would set a precedent and impact future open space development for MOSO and non-MOSO Open Space, and expressed concern with unintended consequences to the Town and its citizenry. She questioned the potential for a weakening of the current protections in MOSO to make way for a for-profit, multi-faceted recreational enterprise, which had proposed a pre-school, an amphitheater for 200 children, a yurt, creation of multi-use fields by converting existing tennis courts that could be rented to others for a fee, a rope course, and a multi-faceted operation to be open most days of the year from 7:00 A.M. to 10:00 P.M. in the middle of a quiet residential neighborhood, which she suggested could have profound impacts including increased traffic and on-street parking along Larch Avenue.

Ms. Mendonca noted that at no time in the Town's history had the parcel been used so expansively and for the purposes that had been proposed, which would forever change both the nature of the parcel and the surrounding neighborhood. She suggested the Zoning Text Amendment would be contrary to MOSO and the Town's General Plan. She asked that the Planning Commission specifically address the issues during its deliberations, and provide a rationale for the proposed text amendment. She also asked that the Planning Commission deny the MOSO Zoning Text Amendment and not weaken current MOSO protections.

Clay Serrahn, 1160 Larch Avenue, Moraga, suggested the request under consideration by the Planning Commission was an application that would take exception to the MOSO protections in place for more than 29 years. The proposed Zoning Text Amendment would allow increased use and would not define reasonable improvements and modifications, only that they be consistent with approved recreational use and the MOSO Initiative, a judgment call of the Planning Commission and the Town Council at the time. He pointed out the MMC provided specified zoned areas outside of open space and the majority of the residential areas allowing for commercial and for-profit activity. He suggested that allowing for-profit activity on MOSO land was inappropriate and asked that the Planning Commission deny the Zoning Text Amendment.

Mr. Serrahn read into the record MMC Title 8, Sections 12.080 and 12.100 as they related to the discussion, and suggested those administrative requirements should apply in this case. He suggested the Planning Commission and Town Council must have solid proof that the proposed text amendment was needed and was consistent with the planning objectives of the Town. In his opinion, the proposed Zoning Text Amendments did not meet the municipal requirements, and he highlighted the reasons why it should be denied as reflected in the correspondence included as Attachment H to the staff report.

Donna Ward, 1146 Larch Avenue, Moraga, asked that the Planning Commission not approve the Zoning Text Amendment which would allow a for-profit activity on MOSO land, and which could result in potential lawsuits. She commented that the passage of the Historic Preservation Ordinance by the Town Council had resulted in unintended consequences with the potential closure of the New Rheem Theatre, and changes in MOSO could also have unintended consequences for the Town. She referenced and read into the record comments from Suzanne Jones with Preserve Lamorinda Open Space (PLOS) during a recent Town Council meeting. She questioned a change in zone for one specific parcel in MOSO, and urged the Planning Commission to deny the Zoning Text Amendment which would allow Adventure Day Camp, a for-profit activity, to operate within MOSO.

Nina Vora, 1145 Larch Avenue, Moraga, reported that she had not been notified of the public hearing. She objected to Adventure Day Camp, which she suggested was too large with too many activities in a residential neighborhood, would operate year round, and could produce negative impacts. She noted that MTSC had been inoperable for years and the neighborhood had been quiet as a result. She did not consider Adventure Day Camp to be a continuation of the former use by MTSC, and opposed changes to MOSO, which could affect other properties in the Town. She urged that the language for "recreation" be more restrictive as to the potential recreational uses that could utilize the site, and requested references to teenagers and children as those who could utilize recreational facilities.

Andrew Baxter, 1144 Larch Avenue, Moraga, commented that he had also not received a notice of the public hearing, and questioned why all residents of Larch Avenue had not been notified of the meeting. He opposed the request for a for-profit business to utilize the site based on the potential for an increase in traffic on Larch Avenue, an increase in congestion, and unsafe conditions for those walking on the street. He spoke to the recreational activities offered by Adventure Day Camp at its current location in Walnut Creek, which he had visited; understood that site only operated during school periods as opposed to the proposal for Larch Avenue; and expressed his hope that the Planning Commission would consider the proposed activities for Adventure Day Camp, which would occur year around, all day, affecting everyone along Larch Avenue and potentially impacting property values. He pointed out that MOSO had been adopted in 1986 to maintain the rural Moraga environment, which the proposed business would contradict.

Suzanne Schmidt, Larch Avenue, Moraga, expressed concern with the potential impacts to the environment if the existing tennis courts were removed, which could shift the property she described as constantly moving. She questioned how such an

improvement would maintain the open feeling of the property if they were unable to plant trees and how the property would be created for a for-profit use while still maintaining the environment.

An unidentified resident of Moraga stated that the subject property had been intended for use by those living in the neighborhood, and she objected to the proposal, as discussed.

Another unidentified resident of Moraga expressed concern with the precedent that could be set if the Zoning Text Amendment was approved to allow a for-profit activity, and suggested legal advice should be provided prior to a decision.

Kevin Welch, the owner of Adventure Day Camp, recognized that while the agenda item was not about the Adventure Day Camp application, he wanted to address some of the concerns that had been raised by the residents. He suggested that many of the negative comments and aspects of the letter included in Attachment H were inaccurate; noted his project had not been portrayed correctly; clarified that the operation planned to operate during the summer months from September to June; and expressed a willingness to discuss specific numbers at any time. He advised that he and his wife were founders of a non-profit business, and if the Zoning Text Amendment was denied there remained an opportunity to continue with the use permit application. He suggested there was nothing that had been planned for the facility that could not be done with a non-profit operation. He characterized the non-profit versus for-profit status to be insignificant, and was otherwise more than happy to sit down with the residents to discuss their opinions at a later date if they were able to move forward.

#### PUBLIC HEARING CLOSED

Chairperson Marnane stated that most of the comments in opposition related to the Adventure Day Camp application which would be discussed in the future. The item before the Planning Commission at this time was only the Zoning Text Amendment and the issue of non-profit versus for-profit. He asked that the Planning Commission focus its comments on those issues.

Commissioner Carr recognized the unintended consequences of changing the zoning text from non-profit to for-profit, the impacts to the Town and its character, and whether or not it would ultimately lead to more development on MOSO lands.

Commissioner Woehleke found that the Zoning Text Amendment, regardless of how it had been worded, had been worded for a specific project and was not a general amendment or modification. Based on that, he could not see how the Planning Commission could fully evaluate the issue, which was why he had wanted to review the correspondence in Attachment H point by point, particularly since it lacked legal review. Fundamentally, he did not like making zoning text changes for a specific project and would be more comfortable with a revision to Section 8.52.110, Conditional Uses, subsection E: *As approved by Moraga Town Council for duly noted reasons*. He was also concerned with making the applicant go through a long process where the application could ultimately be denied.

Commissioner D'Arcy also expressed concern with a Zoning Text Amendment to MOSO and questioned whether the Planning Commission could make such a change to the voter-approved MOSO Initiative, suggesting that any changes should be made by the Town Council or the citizenry. Given that the project could not be grandfathered-in, she was uncertain whether inflexibility should be taken into consideration as well.

Commissioner Kuckuk commented that the voters had reviewed and passed an ordinance from which the MMC wording had been derived, which was more specific and which implemented the ordinance. She noted that there had been great discussion about for-profit and non-profit status or a lack thereof. The history of that issue had been included in the staff report, had come about in non-MOSO Open Space first, and had been referenced first in the 1970s when the Mulberry Tree Pre-School was a not-for-profit, as outlined in the staff report.

Commissioner Kuckuk acknowledged the fear that a for-profit entity could open the door to undesirable uses which was the last thing she wanted to happen to the semi-rural community and residential area. She suggested the potential applicant was unlimited in that he could pursue a for-profit or a non-profit operation, and could utilize the property in the same way. The legal structure of the business would also have very little impact on the use of the property. So if the concern related to undesirable uses, she requested that the Planning Commission conduct a comprehensive review of the policies as a separate project since it was clear that not-for-profit had been used in many sections of the MMC, not just in MOSO. Referencing the staff report, she spoke to the stated intent of the language of non-profit to allow for private clubs for the benefit of the residents of the subdivision or benefits of the Homeowners Association, which equated to smaller operations more for the use of the locals, with less impact on the community. She stated this was an inexact way to address a land use issue. She wanted to tighten that up through a more comprehensive review.

Commissioner Kuckuk was troubled by a policy change to the MMC in anticipation of one application for a single property. She objected to the piecemeal approach, found it would be limited and would not have the impacts beyond the one property, and suggested the continued use of the facility was in keeping with the intent of MOSO, while recognizing the application for Adventure Day Camp would involve a separate hearing that would include CEQA review. She recommended that non-profits and for-profits be treated the same throughout, and suggested the Commission could come up with a more exact way to protect against undesirable uses.

Commissioner Kovac suggested there were differences between non-profits and for-profits. He did not support the action requested of the Planning Commission, suggested it would not improve the quality of life in Moraga or benefit the Town, and supported the retention of the text in the MMC as is since it had been working.

Commissioner Mallela suggested the language of the Zoning Text Amendment for the development footprint was too broad. If the Planning Commission decided to move forward with the proposed language, he wanted the definition of development footprint to be more tightly written. He also spoke to the definition of uses versus corporate structure, and suggested the language on legal status missed the point of the discussion since the uses needed to be discussed and clearly defined so that the

language in the text amendment reflected all potential uses. He asked the Planning Commission to focus on that issue.

Chairperson Marnane understood that the Town Council had concluded that the Zoning Text Amendment would be in accordance with the General Plan, and legal under MOSO.

The Town Council had directed staff to initiate the Zoning Text Amendment, as outlined in the staff report. Chairperson Marnane asked staff whether a list of conditionally permitted recreational uses could be provided.

Ms. Clark commented that staff had made the same suggestion to the Town Council, since a business model was not a land use, and recreational uses was a broad category that could encompass a range of uses whether they were operated for-profit or not-for-profit. Staff had suggested the best planning approach was to be specific as to what type of recreational uses may be allowed conditionally or otherwise in MOSO Open Space, and she suspected that would narrow the list of recreational uses considerably. The Town Council had recognized that would be a larger discussion, but had decided to focus the Zoning Text Amendment, as proposed, and through the Hillside and Ridgelines Update could provide an opportunity to re-evaluate the use-related issues.

Chairperson Marnane understood the issues of for-profit versus non-profit, suggested there was no legal or other reason to prevent the Planning Commission from taking action on the staff recommendation which would allow the submittal of an application for Planning Commission consideration, and commented that much of the comment had been based on the future application for Adventure Day Camp. He supported the staff recommendation, as proposed.

As to what would occur if the Planning Commission denied the staff recommendation or no action was taken on the item, Ms. Clark stated there would be no resolution adopted in the form that had been presented by staff. She clarified, when asked, that the Planning Commission had been asked to adopt a Resolution, including findings, to support the recommendation to the Town Council for adoption of the ordinance change.

Commissioner Kuckuk commented that regardless of the action taken on the Zoning Text Amendment, she would like to see the Planning Commission request that Town staff and the Town Council undertake a comprehensive review of the policies and uses.

Ms. Clark affirmed that such direction could be made by the Planning Commission by minute order.

Commissioner Carr suggested the Planning Commission was being asked to make an amendment to the MMC, which the Commission agreed was ineffectual, would not reach the intent that was intended, would not fix the problem, and was not a good reason to move the item forward. She commented it was a distinction without a difference from a legal perspective when discussing the voter-enacted MOSO to alter the text of MOSO versus altering the implementation of MOSO, when the implementation and the MMC was under Town Council purview because it was policy. Since MOSO had overarching policy recommendations, she suggested a legal argument could be made that the Planning Commission did not have the power to

change the text of the implementation of those policies as directed by MOSO, which had been voted on by the people.

Commissioner Woehleke recognized there was no Commission majority to support the staff recommendation. He suggested that staff be directed to determine the implications of removing the word “non-profit” from the Zoning Text Amendment, and define “recreational” and how the recreational facilities could be implemented within MOSO.

On the discussion, Chairperson Marnane recognized that the Planning Commission was not ready to take action either way on the item given the comments, there was uncertainty of what was being asked of the Commission, and the potential ramifications of recreational uses was unknown. He recommended that the Commission take no action on the item at this time and provide direction to staff.

Ms. Clark affirmed that the Planning Commission may continue the item, request additional information, provide direction to staff, or refer the matter back to the Town Council with specific direction on different ways to approach the Zoning Text Amendment.

Chairperson Marnane suggested that staff review the meeting minutes on the discussion, rework the item, return to the Commission with something different based on the discussion and input, or possibly refer the matter back to the Town Council. He acknowledged that the Town Council had discussed and asked that recreational uses be permitted, which the Planning Commission had not addressed.

Commissioner Kuckuk suggested a recommendation for denial of the staff recommendation, with direction to return in a different way, whether with a removal of the term “not-for-profit” as opposed to adding in conditions for “for-profit” entities. Direction could also involve a more comprehensive review across the board, and addressing the more exact issue of permitted uses and permitted recreational uses in MOSO Open Space zones.

Ms. Clark understood the options the Planning Commission would like staff to return by way of the Town Council or directly would be to make a simplified amendment which would strike the word “non-profit” from the Zoning Text Amendment, consider the ramifications, and consider an approach that would provide a more precisely defined list of recreational uses that could be permitted in MOSO zones.

Chairperson Marnane did not want to put something out that would prevent the Planning Commission from considering a business interested in coming in to the Town, or deter someone from submitting an application. He objected to the placement of roadblocks that would prevent applications.

Commissioner D’Arcy found it a shame the use could not be grandfathered-in particularly if the development footprint had not changed.

Ms. Clark recommended that the item be continued to a date uncertain. The next Planning Commission meeting had been scheduled for July 20, 2015, and the item could be continued to that date although there were many items on that agenda and she

would be on vacation immediately before that meeting, providing limited time to gather the requested information.

When Chairperson Marnane recommended a continuance to the first Planning Commission meeting in September, Ms. Clark expressed concern with such a delay since there was an application pending a decision on the issue.

Ms. Clark affirmed that a second meeting during the month of July could be considered, some of the agenda items scheduled for the meeting of July 20 could be rescheduled, or a meeting could be held the first week of August.

On motion by Commissioner Kuckuk, seconded by Commissioner Woehleke to continue the public hearing for the consideration of amendments to Section 8.52.110 Conditional Uses, in Chapter 8.52 MOSO and Non-MOSO Open Space Districts, of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code, to the first Planning Commission meeting date in August 2015, with staff to provide information on alternate approaches in all zoning districts, business model versus land use, as discussed. The motion carried by the following vote:

Ayes:	Carr, D'Arcy, Kovac, Kuckuk, Mallela, Woehleke, Chairperson Marnane
Noes:	None
Abstain:	None
Absent:	None

Chairperson Marnane declared a recess at 8:45 P.M. The Planning Commission meeting reconvened at 8:50 P.M. with all Commissioners present.

## **6. ROUTINE AND OTHER MATTERS**

### **A. 1015 Country Club Drive: Study Session for a Conceptual Development Plan for a 7-unit, Small-Lot, Detached Single-Family Residential Subdivision** (SO, ENS)

Associate Planner Ella Samonsky presented the staff report dated June 15, 2015, for a study session to solicit feedback from the Planning Commission for a Conceptual Development Plan (CDP) for a 7-unit, small lot, detached Single-Family Residential subdivision located at 1015 Country Club Drive within the Moraga Center Specific Plan (MCSP) area. The property was approximately a third of an acre in size, zoned Suburban Office (SO), and designed for Mixed Office Residential. Residential was allowed in the Mixed Office Residential designation, although the site would have to be rezoned for Planned Development (PD), would require a CDP setting the standards and site plan for the project, and an amendment to the text of the PD District to add a density category since there was not a density category higher than 12 in the PD Zoning District.

Describing the project, the applicant proposed a 7-lot detached single-family residential subdivision with the residences laid out along two sides of a private auto court drawing access from Country Club Drive. There would be three buildings on the western side of

the auto court which would be oriented parallel to the driveway with the entries on the front of the residences. The four buildings on the eastern side of the auto court would be oriented perpendicular to the driveway and have entries on the side of the residences. The seven lots would be between 2,518 and 2,028 square feet in size, a portion of which would be the shared driveway. The auto court would serve as the pedestrian access to each unit, with each unit having two covered parking spaces and four additional guest parking spaces provided on-site.

Each home would have private rear and side yards, with the largest separations across the roadway at 25 feet, 20 to 25 feet where there were parking spaces, with a minimum of 10 feet from the property line of the adjacent two office uses, and 5-foot setbacks along the front and rear. The project met the majority of the standards in the MCSP, was within the density range at 19 dwelling units per acre (DUA), had 5- and 10-foot setbacks minimum from the property lines, the property designation allowed up to 45 feet of building height, the proposal was for a maximum building height of 35 feet and three stories, and the Floor Area Ratio (FAR) was under what would be allowed. While the lot coverage was less than indicated in the Mixed Office designation, the minimum building separations were not consistent with the MCSP. The staff report detailed options that could be considered to address that concern.

Responding to the Commission, Ms. Samonsky clarified that the site was a little over a third of an acre in size with a density range between 12 and 20 DUA. The Town's Design Guidelines included a recommendation for a variation in building height as outlined in the staff report and the project site was approximately 175 feet away from the scenic corridor and would be visible from Canyon Road, which was why the project would be subject to the Scenic Corridor Design Guidelines. The project was located within the MCSP area which included its own Design Guidelines and which did not limit the placement of three two-story homes adjacent to one another. Pursuant to the policies in the MCSP, there was a desire to expand the housing choices and include housing affordable to those who studied or worked within the Town but who may not be able to afford single-family homes.

Ms. Samonsky acknowledged a reference to the Orinda Grove development located in the City of Orinda, and affirmed it had been discussed that the proposed units be attached, although the applicant had expressed a strong desire to develop detached units which he believed were more desirable to homebuyers. The project would require approval of a CDP and she described the process to ensure good design through evaluation from the Design Review Board (DRB) and the use of the MCSP Design Guidelines for guidance.

Ms. Clark commented that the MCSP included guidelines and broad statements that public gathering spaces should exist but did not designate specific locations. The developer would be required to pay mitigation fees for parks.

Ms. Samonsky acknowledged concerns with the potential for a walled effect, and explained that one of the purposes of the study session was to obtain feedback on the proposal early in the process since the zoning designation did not provide a set standard for setbacks. The Planning Commission was being asked to consider the appropriateness of the project and to provide guidance.

Ms. Samonsky also described Area 17, which contained office uses, clarified the proposal was for a residential use although the zoning designation allowed a mixed use, and identified existing residential uses that were between and amongst existing office uses in the Town. She added that the proposal would not affect Area 17 in terms of its designation, and clarified Table 5: Mixed Office Residential District Standards, as shown on Page 7 of 9 of the staff report. She also clarified the site area pursuant to the MCSP whereby developments over 6-DUA lot size, floor area, and other standards were calculated at the pre-development lot size, as opposed to a post-development lot size. For higher density development, a pre-development lot size had been used as the standard as opposed to the subdivided lot sizes.

Ms. Clark pointed out it would be impossible to build a project at 6-DUA if calculating based on 10,000 square foot minimum lot sizes post development.

Doyle Heaton, DRG Builders, Inc. /Falcon Point Associates, LLC, 3496 Buskirk Avenue, Suite 104, Pleasant Hill, explained that the property had been on the market as an office building for several years with no takers. He spoke to his experience building in different counties and jurisdictions, and the different definitions for work-force housing. He cited the Orinda Grove development which had included some work-force housing but which had involved 70 plus units on a school site. Work-force housing would be almost impossible in the subject project given the small size of the property. A 7-unit single-family, three-story development had been proposed given that most projects that had been approved in the Lamorinda area involved condominiums or townhomes. The project would include a Homeowner's Association (HOA), which would maintain only the private drives and public landscaping.

Mr. Heaton noted that there had been an approved plan for a fairly large office building to be located on the site, which would have been two stories, and which would have had more of an impact on the scenic corridor than the proposed 7 lots with 40 percent lot coverage. He added that although an attached development had been considered, the developer had proposed a detached project which would allow side and rear yards. The thought was that buyers would prefer a detached unit with 10 to 20 feet separation between the homes, and he affirmed that data was available to support that statement. He clarified that the project would be designed for those in the Lamorinda area who may desire to downsize to a smaller home on a lot absent most of the maintenance of a typical single-family home, likely those 55 years or older.

## PUBLIC COMMENTS OPENED

Dave Schnayer, Moraga, a local Real Estate Broker, affirmed that the property had an office zoning and had been on and off the market for several years. Based on his professional opinion and experience in Moraga, there was no market for office use in Moraga. In terms of the building mass, he referenced the experience of the developer and recent decisions by the Town Council where there appeared to be a preference for detached single-family homes as opposed to one large building viewed from the scenic corridor perspective. He also understood that the project would not be age-restricted, and cited the bowling alley site as an example of another residential development in the Town located between commercial and residential uses.

An unidentified resident of Moraga suggested the density was an issue; the project was not consistent with the Town or the MCSP; and the project had been designed for profit and not for anything desired by the Town or by potential homebuyers. She was pleased the project would not be age restricted but suggested that an attached product would be better and could be more attractive for seniors and work-force housing. She otherwise spoke to her participation in a lottery for a unit in the Orinda Grove development where she had ultimately been unsuccessful in securing a unit.

## PUBLIC COMMENTS CLOSED

Commissioner Mallela shared many of the questions that had been asked and answered. Conceptually, he sought clarification on the general use and situations where office and residential uses had been mixed.

Commissioner Kovac acknowledged that from a design perspective the developer had maximized the use of the property; however, he found there were shortcomings in terms of the aesthetics related to the density and the potential walled-in effect. He sought more visual variety, and while he was informed by Mr. Schnayer that the commercial vacancy rate in the Town was between zero and five percent, he questioned why a mixed use had not been considered for the site.

Commissioner Kuckuk commented that she had served for six years as a member of the DRB and was very familiar with the property. Her primary concerns with the project site related to the scenic corridor and suggested that three stories or 35 feet in building height would loom over the area when the screening trees lost their leaves. With respect to the rear side of the property, she suggested the project would loom over the adjacent and future buildings at the back corner. Based on her perspective, a proposal for the site should include no more than four or five detached single-family homes. She suggested there would be no problem selling the product and she saw no problem with the proximity to the office uses. She offered a potential configuration for up to five homes on the lot, suggested more areas for pedestrians and a community meeting area, and recommended moving the parking to the rear where it would create further building setbacks and not loom over the hillside.

Commissioner D'Arcy expressed concern with the proposed density and three stories adjacent to a one-story development which would visually impact the area. She too expressed concern with the potential for a walled-in effect although the adjacent buildings were commercial buildings, and suggested that fewer homes no more than two stories in height would work better.

Commissioner Woehleke suggested that unless major changes were made, the project was a non-starter given inconsistencies with the MCSP standards. He supported attached as opposed to detached units at 10-DUA, although he noted that would likely not work in the Town in terms of density. He suggested the project was inconsistent with Moraga norms. While the MCSP called for detached units at a density of 10 to 12-DUA, with work-force housing, Moraga had apartments and condominiums at those higher densities. He cited Carroll Ranch as an example, with 10-DUA duplexes which had been well designed. He described the proposed project as radically different from that development, and while he understood the developer had a strong bias for a

detached product, he disagreed the project would be suitable for those downsizing, emphasizing the lack of properties in the Town with elevators. He suggested the buildings be downsized and the articulation be improved. He pointed out the developer had not provided any elevations towards Canyon Road, which was a concern given the potential visual impacts and a walled-in effect.

Commissioner Carr stated that most of her concerns related to density and the height of the buildings.

Mr. Heaton thanked the Planning Commission for the input.

Chairperson Marnane declared a recess at 9:45 P.M. The Planning Commission meeting reconvened at 9:47 P.M. with all Commissioners present.

**B. Consider and Accept Saint Mary's College Parking Management Plan Implementation Monitoring Report for 2014 Calendar Year**

Ms. Samonsky presented the staff report dated June 15, 2015, and asked that the Planning Commission review and accept Saint Mary's College (SMC) Parking Management Plan Implementation Monitoring Report for the 2014 Calendar year, with modifications to the Implementation Plan to postpone six of the measures by one year, and include the installation of bicycle lockers and restriping of the residential parking lots in calendar year 2015.

Ms. Clark clarified in response to Commissioner Kuckuk that SMC had expanded one of its other parking lots to pick up some of the non-residential parking spaces lost by the construction of the Alioto Recreation Center.

Commissioner Kuckuk clarified that the SMC Parking Management Plan Implementation Monitoring Report was part of a mitigation measure of the Environmental Impact Report (EIR) for SMC. She noted the need for a reduction in parking and traffic and commented that parking on campus was a concern. She expressed concern that the report was being submitted to the Planning Commission in June when classes were not in session. She noted that during the school year, a side lot from Moraga Road was parked with cars daily and created a dangerous situation when cars pulled out onto the road and expressed concern transferring the issue to another non-recognized parking area.

Ms. Clark suggested it was possible the dirt lot had been a temporary construction parking area.

Commissioner Kuckuk referenced correspondence from SMC dated May 28, 2015 to Town staff, which had been included in the staff report, and requested clarification and confirmation that SMC projected the non-residential lots would have been at 87.7 percent occupancy if not for construction activity, which staff confirmed.

Ms. Samonsky commented with respect to the lost parking spaces from the construction of the Alioto Recreation Center that some of the parking spaces used in the surface

parking lot were for construction staging but with the completion of the Alioto Center parking lots were expected to reopen.

Ms. Clark also clarified in response to Commissioner Kovac that the Town had installed a number of No Parking signs along St. Mary's Road to address overflow event parking.

Ms. Samonsky clarified that SMC restricted parking permits by parking lot. Parking permits were issued based on user groups (either students or faculty). SMC did not charge a fee for the permits at this time. Some residential parking lots were closer to the campus than those located in the canyon so students would drive from the dorms to campus. Since some students parked where they were not supposed to park SMC had been issuing tickets. She was uncertain of SMC's screening criteria for the parking permits.

Chairperson Marnane expressed disappointment with the report from SMC, suggested nothing had happened with the exception of some enforcement of students parking in the residential areas, the dirt lot at the tennis court areas were heavily used and at capacity, and at times vehicles were parked out to the street. If that area was graded and extended, he suggested it could accommodate 100 vehicles. He suggested nothing had changed since the Planning Commission had last seen the report but recognized that there was nothing the Planning Commission could do at this time. He recommended that staff forward the concerns from the Planning Commission with the suggestion that SMC could do better.

Commissioner D'Arcy was unaware of the history and that SMC had failed to meet its requirements. In her opinion, it was important to pay for parking, either through permits or another method, which had been successful in controlling parking in the City of San Francisco.

Commissioner Woehleke expressed the willingness to take a photograph of the dirt parking lot and send it to staff, although Commissioner Kuckuk pointed out it would be irrelevant since the school year was over.

Commissioner Woehleke disagreed that the Town should be involved with SMC's on-site parking, and recommended a focus on transit in and out of Town.

Chairperson Marnane pointed out the Town had become involved with parking along St. Mary's Road.

Commissioner Kuckuk reiterated that the report had been a mitigation measure of the EIR which was why the Town was involved.

Commissioner Kovac agreed with the analysis of 1.3 occupants per vehicle, as detailed in the staff report, with staff clarifying the counts were for vehicles both on and off campus. He suggested that SMC could spread out its classroom schedules to help meet its parking needs.

The Commission's comments were summarized, as follows:

- Multiple Commissioners expressed concern with the delay of implementing the measures;
- Parking fees were recommended;
- The Commission wanted SMC to do more, not wait on the Master Plan;
- Suggested that SMC consider managing the working hours of its students or consider other alternatives, such as modifying class schedules;
- SMC to increase the frequency of its shuttle service to provide more transit options and pick up from local businesses as well as the BART station; and
- Improve the dirt lot at the southwest entrance for use as a parking lot.

Ms. Clark understood that SMC's Master Plan was close to being in a complete draft form, with some study sessions anticipated in the fall. She understood that SMC had a legitimate concern to plan strategically for its parking needs. Staff would look carefully at the overall parking strategy and program as part SMC's Master Plan.

### **C. Planning Commissioner Training Requests**

Ms. Clark provided the Planning Commission information on upcoming opportunities for Planning Commission Training and engagement. Events included the upcoming American Planning Association (APA) Conference in the City of Oakland on October 3-6, 2015; League of California Cities Conference in the City of San Ramon on March 2-4, 2016; and U.C. Davis Extension Programs. She asked Commissioners to inform staff if there was any interest in attending any of the programs or if there was any interest for more information off-line.

## **7. REPORTS**

### **A. Planning Commission**

Commissioner Kovac reported that he had attended the monthly Liaison Meeting.

Chairperson Marnane reported that he had attended the Mayor/Chairs monthly breakfast meeting to discuss items of concern in the community; and the community meeting for the New Rheem Theatre sponsored by the theatre operators, noting that the Town Council had discussed the issue on June 11. He referenced a past study session for a residential project adjacent to the theatre which could be impacted by the status of the theatre. He had also attended the Town Council meeting when the SMC intramural field lights and noise from the field had been discussed. He understood that the Town's Noise Ordinance would be updated.

Ms. Clark reported that the Town Council had adopted new noise standards which would impact SMC. Staff would be appearing before the Town Council to solicit input as to whether more time and resources should be spent on a comprehensive update to the Noise Ordinance.

Commissioner D'Arcy reported that she had attended the latest DRB meeting, at which time the DRB had reviewed a proposal for a home in the Los Encinos development, and had expressed concern with a review of Los Encinos units on a piecemeal basis. The DRB had also discussed the need to require the use of recycled water during construction.

**B. Staff**

Ms. Samonsky provided an update on the status of an application for an accessory building located at 316 Calle la Montana. Staff had met with the applicant to discuss all options, with the applicant planning to submit a proposal to relocate the structure elsewhere on the property. The structure had not been demolished.

Ms. Clark provided an update on the Hillside and Ridgelines Steering Committee with three meetings scheduled to discuss policy issues, and with the recommendations from the Steering Committee to be presented to the Planning Commission prior to public meetings. She expressed the willingness to provide a more detailed report on the discussions with meeting minutes to be prepared and posted on-line. The MCSP Implementation Steering Committee had also recently met to kick-off the process, with the consultant to review concepts for design to be translated into standards.

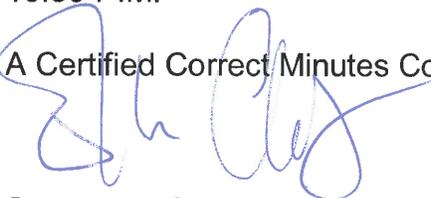
Ms. Clark added that the Pedestrian/Bicycle Master Plan Subcommittee had received ten applications for four spots. Godbe Associates would begin recruitment this week for participation in the focus groups for the Town-wide mail-in survey for the Livable Moraga Road Project anticipated to be distributed in July and brought back in early fall.

Ms. Clark also reported that petitions were being circulated for a Referendum for the City Ventures/Moraga Center Town Homes project. Once signatures had been gathered, delivered, and reviewed by the Town Clerk, they would be forwarded to the County Registrar's Office to verify voter registration. If the Referendum qualified, it would be brought back to the Town Council to make a decision whether to uphold or rescind the zoning. If the decision was upheld by the Town Council, the issue would go to a special election and vote of the people, who would then decide whether to overturn the Town Council decision.

**8. ADJOURNMENT**

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

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Secretary of the Planning Commission

