

**TOWN OF MORAGA  
PLANNING COMMISSION MEETING**

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

July 20, 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 D'Arcy, Kovac, Kuckuk, Mallela, Woehleke, Chairperson Marnane

Absent: Commissioner Carr

Staff: Ellen Clark, Planning Director  
Brian Horn, Associate Planner  
Sean Kennings, Contract Planner

**B. Conflict of Interest**

Commissioner D'Arcy reported that while she did not have a conflict of interest, the architect for Item 5B, 1957 Joseph Drive, had been involved in designing a deck for her residence. She had also received a telephone call from one of the neighbors.

**C. Contact with Applicants**

Chairperson Marnane reported that he had met with the property owner, and with their permission had walked the property located at 1957 Joseph Drive. He had also spoken with some of the neighbors with respect to 1957 Joseph Drive.

**2. PUBLIC COMMENTS**

There were no comments from the public.

**3. ADOPTION OF CONSENT AGENDA**

**A. Minutes of June 15, 2015**

Commissioner Kuckuk requested an amendment to the second to last sentence of the third paragraph on Page 9 to add an additional sentence, to read:

*She [Commissioner Kuckuk] stated that this was an inexact way to address a land use issue.*

Commissioner D'Arcy asked that the record reflect that Associate Planner Samonsky had not exactly answered a question she had asked, as reflected on Page 3 of the minutes, and would clarify that information at a later date.

Commissioner Mallela requested an amendment to the third sentence of the last paragraph on Page 9, to read:

*He [Commissioner Mallela] also spoke to the definition of uses versus corporate structure and legal status, 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 on potential uses.*

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

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

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

On motion by Commissioner Kuckuk, seconded by Commissioner D'Arcy to adopt the Meeting Agenda, as shown. The motion carried by the following vote:

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

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

##### **A. Via Moraga Subdivision 9317**

Conduct a Public Hearing and Consider PC Resolution \_\_-2015 Approving the Precise Development Plan for the Via Moraga Subdivision 9317, a 17-unit Single-Family Residential Development (10-DUA-PD, BH)

Associate Planner Brian Horn presented the staff report dated July 20, 2015, for the approval of a Precise Development Plan (PDP) for the Via Moraga Subdivision 9317, a 17-unit Single-Family Residential development. Based on the proposed PDP's conformance with the approved Conceptual Development Plan (CDP), General Development Plan (GDP) and with the Moraga General Plan, he recommended that the Planning Commission adopt a resolution adopting the findings required by Moraga Municipal Code (MMC) Section 8.48.100, in accordance with the requirements of Section 8.48.120, and approve the PDP, subject to conditions.

Commissioner Woehleke clarified the square footage of the homes with staff, and questioned why the homes were now close to 3,000 square feet in size from what he understood had been a maximum of 2,500 square feet. He found that increase to be significant.

Planning Director Ellen Clark explained that the homes had the same building envelopes and dimensions that had been reviewed and approved by the Planning Commission as part of the General Development Plan (GDP). The change in square footage had occurred between the CDP and GDP approvals, with some shift in the floor plans as the plans had evolved. One significant change in the interior floor plan involved a previous open hallway space which had become a two-story habitable space within the home, and which had added to the square footage; however, the envelope of the home had not been expanded. She added that the square foot calculations included the garage pursuant to the criteria related to Floor Area Ratio (FAR) calculations.

Commissioner Kovac also clarified with staff the measurements from the back of the sidewalk; the side opposite the curb towards the property; the ten parking spaces on the site plan; the curb to be red curbed; no parking would be allowed in the 20-foot wide street; Parcel D was the bio-retention basin; the plans had been routed through the Moraga-Orinda Fire District (MOFD) early in the process, during the building permit phase, and prior to the Final Map, and the MOFD had reviewed the most current plans; a bench for bus patrons would be situated on the other side of the access towards the pedestrian crosswalk with the sidewalk more than four feet in width; and that the pedestrian crosswalk would include a raised median island in the middle and a beacon. The Public Works Department would be responsible for the final design of the pedestrian crosswalk.

Ms. Clark further clarified that the applicant was required to provide a crosswalk to be designed in conjunction with the Public Works Department, subject to the safety standards for such facilities. In addition, the landscaping by the sidewalk would consist of low level shrubs subject to the Town's ordinance to maintain sightlines as part of the landscape design. Further, Lot 1 had been set back quite a ways from the street with a landscaping area between that parcel and the street, creating a transition zone from the subdivision.

Commissioner D'Arcy also clarified with staff that the developer would pay for the crosswalk as a condition of approval for the project, to be installed prior to the first Certificate of Occupancy (COO). Staff also explained that the bulk of inspections for the project would be conducted by the Public Works Department to ensure that improvements had been installed correctly. The Planning Department has reviewed all building plans.

Commissioner Kuckuk questioned whether the MOFD had specified anything regarding the parking in the areas not designated as parking spaces. She preferred to see those areas be designated with red curbs as opposed to signage.

Ms. Clark suggested that could be added as a condition of approval.

Commissioner Mallela verified with staff the location of the sidewalk to the main entrance of the shopping center with a pedestrian path on the north side of the driveway, offering a good transition point.

Steven Miller, Signature Homes, Inc., 4670 Willow Road, Pleasanton, commended staff for the great job in preparing the staff report and identifying the details of the project. He had nothing further to add beyond introducing the consultants involved in the project who were present in the audience to address any questions.

In response to Commissioner Kovac, Ms. Williams, a representative of the architect, KTG Y Group, Inc. Architecture and Planning, explained that early renderings had been prepared that had shown the hillside beyond, which had not been included in the final package. She reported that the visual had been opened up and the homes along the street had been removed and backed up allowing more views up and over the homes to the hillside beyond.

Ms. Clark explained that elevations had not been part of the PDP but had been part of the CDP reviewed and approved by PC and Town Council on appeal. Renderings had been prepared to show the scenic corridor, and the Town Council had required modifications to show the sense of buffering and separation from the scenic corridor.

Ms. Williams confirmed that the project remained within the same building envelope with the largest home a couple of square feet larger. She stated the largest home had always been over 2,500 square feet and the notation on the plans was a leftover which had not applied since the last time the project had been approved. At the time of the statement, the homes had already been larger and had been approved at a square footage similar to what had been presented to the Planning Commission. Plan 3, while the largest home, was barely different from what had been approved. She acknowledged it would have been helpful to have included a map on the drawings to show that the garages, at 410 square feet, had been added to the living square footage, leading to the 2,900 square foot range. She stated the plan was 2,570 square feet in size.

Acknowledging Commissioner Woehleke's concerns with the discrepancy in the square footage, the fact the square footage had increased 20 percent, and there was no history to show how that figure had changed, Ms. Clark suggested it had been a misreading of the plans when the conditions had originally been drafted and included in the development standards. The FAR should have been identified as a higher number than it actually was because it would have matched and corresponded more closely to the plans. She added that staff had been looking at the entire package and not that one statement in the development standards.

Chairperson Marnane understood that the footprint of the homes had not changed, and Ms. Williams clarified that Plan 1 had taken over a volume space; the rooflines were the same as approved and the overall massing was the same.

Ms. Clark again described what she defined as misstated numbers in the early approvals. She emphasized that staff had reviewed what had been in all of the various submittals, from the CDP to the GDP to the PDP.

Ms. Clark reiterated that the footprint had not changed although the change from 18 to 17 total units had resulted in some changes to the lot sizes and smaller adjustments, with some minimums picked up that had not been picked up before.

Ms. Williams affirmed staff's understanding of the situation.

Ms. Clark also described in detail where measurements had been taken for the minimum setback and dimensions, which she characterized as complicated.

#### PUBLIC COMMENTS OPENED

There were no comments from the public.

#### PUBLIC COMMENTS CLOSED

Commissioner D'Arcy understood that the density had been reduced quite a bit and of the desirability for single-family residences, although as a new Planning Commissioner without sufficient knowledge of the application, she would abstain from a vote on the item.

Commissioner Kovac, also a new member of the Commission, expressed concern with some of the changes that had been discussed which had no basis, and noted that if the project had been approved the setbacks and square footages were different. While the homes appeared to be nice, he stated the FAR had increased for eleven of the homes. His impression was that the builder had pushed for every square inch detracting from the overall environment and that the density was maxed out.

Chairperson Marnane emphasized that the ratios had not changed from the last presentation and that the Planning Commission had spent a great deal of time on the details during prior discussions. He recognized the new members of the Commission but he encouraged everyone to have an open mind, and emphasized that the project had been seen on numerous occasions by the Planning Commission and the Town Council.

Ms. Clark reiterated that the Planning Commission was being asked to determine whether the PDP was substantially consistent with the CDP and the Town's General Plan. In staff's opinion, the PDP was consistent absent minor clerical errors, as identified in the staff report, which she acknowledged should have been caught in the earlier reviews. The 17-lot single-family home concept had previously been reviewed and approved.

Commissioner Kuckuk stated she had been part of the project process from the beginning and had no problem finding that the PDP was consistent with the CDP and the General Plan. She pointed out that the outer dimensions of the homes had not changed, the configuration of the lots had not changed, and the internal configuration had less of an impact on the scenic corridor and outside of the Town. She could not identify the difference in the 2,500 square feet for certain, suggested it could be a simple omission of the garage, and if so what had been presented was consistent.

Because the outer dimensions had not changed, she could not find the PDP inconsistent with the prior approvals.

Commissioner Woehleke appreciated the fact there were three new Planning Commissioners who had not been involved in the lengthy development of the project, and recognized there may be some who would abstain from a vote. He referenced Robert's Rules of Order related to a vote of a majority with a quorum, even if some members abstained from the vote. He had always been of the opinion the project was evolutionary, and not consistent with Moraga norms. He recognized the Town Council had made its decision and the changes highlighted by staff, even with the exclusion of the 2,500 square footage, were consistent with the project. As such, he could move forward with the project.

Commissioner Mallela expressed his confidence, even as a new Planning Commissioner, in moving forward. While he also had concerns with Moraga norms and how the development would fit in with those Moraga norms, particularly pedestrian safety suggesting that 20 or 50 feet was not enough space for a safe crosswalk for the roadway and its closeness to the shopping center, he was ready to move forward.

Chairperson Marnane asked that when all information was available with respect to the crosswalk that it be presented to the Planning Commission.

Ms. Clark explained that the applicant hoped to take the Final Map to the Town Council in the near future. The crosswalk had been discussed at great length and a number of engineers had opined on the safest possible design and location. The applicant was willing to provide that safe design to the Town.

Chairperson Marnane liked the project. He spoke to a tour the applicant had provided the Planning Commission of similar projects. He suggested that Via Moraga was the best of those that he had viewed. He supported the staff recommendation.

On motion by Commissioner Kuckuk, seconded by Commissioner Woehleke to adopt PC Resolution \_\_-2015, approving the Precise Development Plan for the Via Moraga Project (Subdivision 9317), a 17-Unit Single-Family Residential Development, subject to the findings and conditions as shown and subject to an additional condition, to reflect the following:

*Curbs shall be painted red for "No Parking" in all areas not designated to be a parking space within the development. "No Parking" signage shall not be used.*

The motion carried by the following vote:

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

**B. 1957 Joseph Drive**

Conduct a Public Hearing and Consider PC Resolution \_\_\_-2015 Approving Fence Permit (ZA 02-15) to construct a fence exceeding three (3) feet within the front yard setback (Study, ENS)

Ms. Clark presented the staff report dated July 20, 2015 to consider a resolution approving a fence permit (ZA 02-15) to construct a fence exceeding three (3) feet within the front yard setback. Because of the project's consistency with the Zoning Ordinance and General Plan, and with minimal impact to surrounding properties, she recommended that the Planning Commission adopt a resolution approving a six (6) foot high fence within the front yard setback at the property located at 1957 Joseph Drive pursuant to all required findings and conditions of approval.

Commissioner Woehleke clarified with Ms. Clark the conditions of approval to approve the fence but that it be relocated to, on, or behind the front property line of 1957 Joseph Drive and outside of the access easement for Joseph Drive, with a sizable portion of the fence to be relocated. Staff was unaware of any concerns with the existing oleanders and acknowledged the gate would have to be adjusted to be consistent with the relocation of the fence.

Commissioner Kuckuk clarified with staff that the private road was entirely owned by the owners of 1970 Joseph Drive; the requirements for the road width for fire access was generally 20 feet; and in this case the private road total width was approximately 58 feet and the width of the pavement was 22 feet.

Commissioner Kovac also clarified with staff the ownership of the easement had been recorded in writing; where Parcel C gained access from Joseph Drive; the easement was legally recorded against the property and ran with the land; the two parties affected by the fence had agreed it was an acceptable situation for both; and the obligations of the easement to provide access to the properties.

Ms. Clark noted that the easements did not involve the Town, the easements involved private agreements between the private property owners, although the Town had the ability to apply minimum width requirements even to private streets.

Commissioner D'Arcy suggested the six-foot high fence did not match the aesthetics of the area even with the changes recommended by staff given the solid mass of vegetation in front.

Ms. Clark noted that the oleanders had been in place for some time although the Planning Commission could require that they be thinned or removed.

Commissioner Mallela acknowledged some of the correspondence that had been received and included in the staff report. He clarified with staff the height of the iron gate and verified that staff had conducted a number of site visits and had been provided with information from the applicant on the fencing details.

Commissioner Kovac further clarified with staff that the opaque screening material would have to be removed from that portion of the fence located in the easement and setback, and that six feet was the maximum height of the fence requested.

Ms. Clark identified the location of the deer fence and the staff recommendation that the opaque material be removed.

Stanley F. Nielsen, Architect, P.O. Box 1982, Orinda, representing the applicants, Kristina and Eero Teerikorpi, 1957 Joseph Drive, presented a copy of a letter from Kelley Griest, 1970 Joseph Drive dated "Received" July 20, 2015. He described the property and its neighborhood as unique, with two vineyards, a winery, one of the largest home lots in the Town, and other smaller properties located in a Study District, which allowed one dwelling unit (DUA) to the acre. He spoke to the increase in vineyard use in the Town and stated there was no overlay zone to accommodate such use. The subject fence had been erected to provide protection for the use on the property; the property fronted a private drive owned by the Griest family; and the property lines did not extend to the center of the drive resulting in a unique situation. Access to the site was not owned by the Town but was maintained by the residents forming a quasi-homeowner association community, with landscape obstructions and fences exceeding the three-foot height limit on many of the properties in the area.

Mr. Nielsen explained that the applicants were aware of a zoning ruling by the previous Planning Director which had determined that the Captain property, which fronted the driveway from the Griest home, involved a sideyard setback. While there had been protest to the construction of a six-foot high fence, the Planning Director at that time had determined it could be done. The applicants had sought professional and legal advice when building their fence and had been informed they were capable of building the same six-foot high fence as had been allowed for the Captain property. The applicants had also signed an agreement with the Griests to build the fence on the Griest property because of the existing landscape hedge, that the fence be built up to the oleander hedge to provide the applicants a six-foot high fence to protect their vineyard from deer, and to provide the Griests a hedge to cover the fence. He emphasized that the oleander hedge had always been on the Griest property and there were many landscaping elements on the drive that exceeded three feet in height. While Town ordinances prohibited obstructions on busy streets, that was not the case in this situation given that the area did not have the traffic count or speed where such obstructions would become a problem. In addition, the green dust control fencing was a temporary situation and had been intended to remain in place until such time as landscape screening had matured.

Mr. Nielsen asked that the Planning Commission approve the fence permit for the fence, as constructed, with the parties who owned the land on each side of the fence in agreement with that action. The fence was compatible with the neighborhood, as stated in the staff report, and the MMC had identified the Griests as the responsible party for the fence in the event it became a nuisance, with that action already accommodated by the MMC as stated in the staff report. He suggested that the oleander hedge be approved as is since it was in the same non-conforming condition as other landscape elements in the neighborhood, and because the character of the private drive was not

the same as a busy street for which the ordinance had been written. He also asked that the green dust control fabric on the fence be allowed to remain in place for an additional year, or until the landscape screening had been able to fill in.

Eero Teerikorpi, 1957 Joseph Drive, Moraga, referenced the history of his vineyard, which required fencing. He had sought to follow the same heights allowed for the Captain property and other fences built in the neighborhood. He had reached out for legal assistance through a local land use lawyer who had set things in motion in late 2013.

Mr. Teerikorpi explained that by the time he had been approached by the Town about the fence he had been dealing with a severe medical issue in late 2013, and had not been fit to deal with the issue. The fence had been built since he was of the opinion he was within his rights to do so and the fence was consistent with the neighborhood. He asked the Planning Commission to make the same determination to allow the fence to remain as is. If the fence had to be relocated, as recommended by staff, it would place the fence in the middle of his yard and would become an eyesore.

In response to the Chair, Mr. Nielsen understood the existing oleanders had been trimmed.

#### PUBLIC COMMENTS OPENED

Jan Blumer, 1963 Joseph Drive, Moraga, stated his property was located on the other side of the green fence. He submitted correspondence to the Town dated July 13, 2015, and disagreed that the fence was compatible with the existing neighborhood of the Bluffs given that there was no fence or gate in sight until one reached what he described as a seven, not six-foot high fence with a wrought iron gate, and ten-foot high oleanders. He disagreed that the property should be treated differently from others in the Bluffs neighborhood, noted the applicant's property was less than one acre in size and with the easement a bit smaller, and having seen a plot map for the Bluffs, 22 of the properties in the neighborhood were the same size or larger than the applicant's property. He suggested approval of the fence would set a dangerous precedent.

Mr. Blumer reported that he was not the only neighbor to oppose the fence, and while he acknowledged that staff had worked hard over the years to address the situation, and the Town had worked hard to change its procedures and how it addressed code violations, he urged the Planning Commission to deny the fence request and require the applicant to construct a fence that met the needs of the applicants while complying with the requirements of the MMC.

Mary Lou Blumer, 1963 Joseph Drive, Moraga, commented that since the fence had been erected she had been in contact with the applicants evidenced by e-mails where she had urged the applicants to follow the Town's codes, and where the applicants had stated they would, which communication had occurred in late December 2013 and early January 2014. She noted the green material on the fence traveled approximately 400 feet along her property line, was unattractive, had blown off around her yard, and was decayed as evidenced by photographs she provided, and she urged that it be removed completely. She commented that most of the plant material on the applicant's property

was located on the side and rear yards, and it was possible that one or two plants might have to be sacrificed if the fence was relocated as staff had recommended. She urged the Town to enforce its rules and setback requirements, and not allow a change that would make it difficult for the Town to enforce its own rules.

David Griest, 1970 Joseph Drive, Moraga, clarified that the situation related not to a road or a street, but to a driveway. When Measure K had been implemented, it had been clear that it was their driveway and not under the purview of the Town since the Measure K improvements had stopped at the edge of their driveway.

Referencing the materials provided by the Blumers, Mr. Griest commented that the fence on Captain Vineyards' property had been approved up to his driveway. The subject property also abutted his driveway and the subject fence was the same design as the fence for Captain Vineyards. As a result, he suggested a ruling for the subject fence as for the fence allowed for Captain Vineyards should be the same. He reiterated that the driveway was not a private extension of Joseph Drive and was not under the purview of the Town; it was owned and maintained by the residents and by the owner of the property. In response to concerns with respect to the green material on the fence, he commented that he had seen the use of other materials to divide two properties, which was not under the governance of the Town unless there was a blight. He found there had been no blight infractions issued to any of the other residents of the area and to enforce such a restriction on the subject property would be unfair. He otherwise understood that a picket fence would be allowed along the side of one's driveway since it was not a street but a driveway.

Kelley Griest, 1970 Joseph Drive, Moraga, owner of the property since 1989, clarified that the easement, as shown, had been deeded to her property. The driveway was 22 feet in width and the paved area travelled south. She described the history of the proposal, and stated the applicants had approached her in 2013 to request permission prior to the construction of the fence/gate that would be located on her property, at which time she had considered the easement location and had offered her approval.

Ms. Griest advised that the staff report had been highly inaccurate in its reporting of the lot size; Lot 7 was 60 plus acres in size and should have been included in the average lot size. The staff report had also been inaccurate in the number of lots and property owners who had ingress/egress from her property. She was sorry there had been some opposition to the proposal since there had been a history of cooperation with the property owners throughout the somewhat ambiguous ownership and easement situation. She clarified that the neighborhood did not have a homeowner's association and when Measure K had been approved, the repavement of Joseph Drive had occurred only to her driveway and the property owners had shared in the cost of repaving. In addition, the oleanders had grown naturally with the neighborhood, had been planted approximately 25 years ago, and had created a massing that was consistent with similar massing in the area.

Sal Captain, 1969 Joseph Drive, Moraga, owner of Captain Vineyards, spoke to the discrepancies in the way the Town had done its job and the number of inaccuracies he had found in the staff report. He commented that lawns were common in the front yards of the homes in the area, several properties in the area had planted grapes and vines, and the Study District included ten blocks of a size that had not been accurately

identified in the staff report. Given the inaccuracies in the staff report, he questioned the ability of the property owner to have accurate information on this matter. Since the homes had been built in the 1970s and 1980s, he questioned the studies that were needed on the properties as discussed in the staff report. He referenced past discussions with the former Planning Director as related to the subject property, and at which time those in opposition had been informed of the property lines and setbacks that were located on the property line. He identified his and his neighbor's property lines.

Sara Captain, 1969 Joseph Drive, Moraga, referenced her family history and questioned the time spent on the minute detail and the nitpicking on such a minor issue as opposed to recognizing the great job the applicants had done for their beautiful front yard.

Mrs. Captain, 1969 Joseph Drive, Moraga, found the fence to be aesthetically compatible in the neighborhood as evidenced by the photographs, and that the green material had been used for privacy reasons. She commented that she and her husband had also considered the addition of fabric panels on their side of the property. She understood and sympathized with the applicants' plight and the need for privacy, and commented that her fence had been opposed by one neighbor at the time it had been approved, with the then Planning Director having informed her that trespassing on her private driveway had occurred. She was disappointed with the time spent on the application, questioned the Blumers' assertion that approval of the fence would set a dangerous precedent, disagreed that fencing and gates lowered property values, and emphasized that Captain Vineyards recognized the need to preserve and respect the environment which had led to their use of the most sustainable fence material suitable for protection of the agricultural investment. She was pleased the applicants had chosen to use the same material, and suggested the improvement would not compromise property values. If the fence was required to be relocated, she would object since it would not be as aesthetically compatible with the neighborhood.

#### PUBLIC COMMENTS CLOSED

Commissioner Mallela understood there had been consultation with the Town prior to the construction of the fence, and Ms. Clark reiterated the history of the application as depicted in the staff report. The Town had issued a notice while the fence was under construction although the applicant had completed the fence regardless.

Commissioner Woehleke characterized the problem as an unfortunate neighbor dispute. Since he did not have all of the answers, and given the questions as to whether the Town had any jurisdiction over this matter, he would defer to the owner of the land. He could not provide any other comments on the fence given that issue needed better clarification. He was disappointed the property owner had not addressed ownership jurisdiction prior to the construction of the fence. He also questioned whether the Town had jurisdiction over the rationale of a good neighbor fence. If the fence was located on the property of the owner of 1957 Joseph Drive, it was not for the Town to impose conditions on it.

Commissioner Kuckuk agreed that it was unfortunate the application was before the Planning Commission. In terms of jurisdiction, she understood a legal opinion had been

provided from the Town Attorney as to where the fence was located on a private street. She found that the fence had been well designed and was consistent with its surroundings. The fence was an open view fence other than the area where it was covered by the tarp, which could be removed. She had no issues with the fence on the side yard since it would be allowed as a solid good neighbor fence at that point.

Commissioner Kuckuk suggested since there was a private driveway owned by Lot 7, (the owner of 1970 Joseph Drive), she could see the placement of the fence up to the owners of 1957 and 1970 Joseph Drives, who were in agreement with the placement of the fence.

Commissioner Kuckuk also found the fence location to be extremely logical given that it had been placed at the edge of the lot, the edge of the curb, with the private driveway within the access easement more than adequate for fire safety purposes. She was not concerned setting a precedent with the way the fence had been constructed.

Commissioner Kovac expressed concern with a private roadway with a private driveway, and while not a major thoroughfare, suggested it could be a safety concern for emergency vehicles given the high vegetation and the fence where the road was not clearly visible.

Ms. Clark identified the conditions of approval to ensure that sight distance was maintained.

Commissioner D'Arcy could not find that the fence, as designed, was an open view fence given the oleanders and green screen intended for screening purposes. She too was concerned with the access of fire vehicles and was concerned that the applicants had consulted a lawyer but had not contacted the Town prior to the construction of the fence. Given that the Town had jurisdiction over the private road, she would like to ensure that access and visibility be maintained.

Chairperson Marnane was also disappointed that the application was before the Planning Commission; however, he found it had occurred because the applicants had ignored the Town's zoning regulations and rules of engagement. Similar situations had occurred in the past with other applications. He understood there were other neighbors opposed to the fence beyond those present. He suggested the oleanders were too high and he was surprised that the Planning Department had been as subjective as it had with the application. He found the fencing itself to be huge, and while he understood the desire to protect the vineyard, he personally would rather have seen the applicant start all over and place the minimum amount of fencing and view obstructions on the fence. Otherwise he could accept the staff recommendation to relocate the fence, subject to conditions.

Commissioner Mallela understood there had been consensus of the stakeholders outside of the neighbors, and understood the fence had been designed to produce minimal visual impacts. While he was not in favor of considering an application after the work had already been completed, given the support of most of the neighbors and stakeholders, he leaned towards leaving the fence as-is.

Commissioner Woehleke commented on the number of fences in the Lamorinda area that fronted properties and along roads which were opaque and which were six feet in height. In this case, the fence met the requirements of the MOFD, and even if did not meet the 20-foot width requirement; the property owner had provided a turnaround. He reiterated that whether a private roadway or driveway was involved remained in dispute.

Ms. Clark reiterated the Town Attorney had opined that the fence was subject to Town jurisdiction, was not a matter between private property owners, and the fence was located in the front yard setback and subject to the Town's code for fences.

Commissioner Woehleke understood there was a deed filed which may not agree with the assessment of the Town Attorney. He would like to see a legal opinion in writing.

Ms. Clark emphasized again that the Town Attorney had opined on the issue and that the fence fell under the Town's jurisdiction.

Commissioner Kuckuk had no problem accepting the Town's jurisdiction to enforce the setbacks for the fence construction along the private driveway. She suggested the fence had been constructed in a logical placement, it was an open view fence, and much of the fence was hidden behind pre-existing vegetation. Had the applicant come before the Planning Commission before the fence had been built and explained why it was being placed where it was, she would have approved it without the green covering. She reiterated that the fencing along the side of the home was outside the jurisdiction of the Planning Commission since it could be a solid six-foot high good neighbor fence. She recommended an additional condition to allow the landscaping to mature, with the green cover to be removed in a year.

On the issue of whether the Town had jurisdiction of the side yard fence, Ms. Clark explained that the Town had more latitude to regulate the appearance and design of the fence in the front yard area given the exception to the typical three-foot fence height.

Chairperson Marnane questioned whether it would be acceptable to leave the front fence as-is and remove the tarp from the side fence as a condition of approval. He suggested the oleanders could be reduced in height to three feet. He reiterated that he found the fence to be incompatible with the neighborhood.

Assuming the front yard setback was 25 feet from the center line of the existing paved road, Ms. Clark understood the Town had the ability to regulate the fence in the front yard setback area. She noted the Town did not issue permits for six-foot high fences in side yards and she affirmed that solid wood fences were not subject to design review on the side yard. She recommended that conditions be limited to the front fence from the front property line.

Chairperson Marnane recommended the addition of a condition that would require the tarp on the side fence to be removed after one year when the vegetation had matured. He otherwise suggested the applicant would likely have gotten exactly what he had wanted had he followed the rules.

Several Commissioners supported a requirement that the front fence be moved back, although Commissioner Woehleke suggested dealing with the reality. He was reticent to require the relocation of the fence and suggested the driver was not strong enough to require a relocation.

Commissioners Mallela agreed with Commissioner Woehleke.

Commissioner Kuckuk offered a motion to approve the fence at 1957 Joseph Drive in its current position, and that the side fence tarp within the 25-foot front yard setback be removed immediately, with the remainder of the tarp to be removed within a year after the landscaping matured.

Commissioner D'Arcy opposed the fence remaining where it was located.

Commissioner Kovac remained concerned with the safety of the driveway.

Commissioner Woehleke seconded the motion.

On the motion and in response to concerns with the safety of the driveway, Ms. Clark reiterated that as conditioned, the applicant would be required to reduce the height of vegetation within 15 feet of the driveway, and trim it down to no more than three feet pursuant to Condition 3 of the resolution.

Commissioner D'Arcy suggested it would be a bad precedent to undermine the Town's rules for private roads, and wanted to see those rules be enforced as opposed to considering an exception.

Chairperson Marnane agreed there should be some discipline enforced.

Commissioner Kuckuk restated her original motion to approve the fence at 1957 Joseph Drive in its current position, and that the side fence tarp within the 25-foot front yard setback be removed immediately, with the remainder of the tarp to be removed within a year to allow the landscaping to mature.

Ms. Clark added that the resolution would have to be modified to reflect that the fence would not have to be relocated. In that case, Condition 2 would be deleted and the second sentence of the first finding under Part 2: Findings in Accordance with Moraga Municipal Code Section 8.68.040 would also be deleted. She added that because the property owner of 1970 Joseph Drive owned the easement, the property owner could require the removal of the fence in the future. The planning approval ran with the land and applied to the property moving forward.

On motion by Commissioner Kuckuk, seconded by Commissioner Woehleke to adopt PC Resolution \_\_\_\_-2015 approving Fence Permit ZA 02-15, for 1957 Joseph Drive, in its current position, and that the side fence tarp within the 25-foot front yard setback be removed immediately with the remainder of the tarp to be removed within a year when landscaping matured, and subject to modification to the Resolution, as follows:

- Eliminate Condition 2; and

- Eliminate the second sentence of the first finding under Part 2: Findings in Accordance with Moraga Municipal Code Section 8.68.040.

The motion carried by the following vote:

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

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

Chairperson Marnane declared a recess at 9:24 P.M. The Planning Commission meeting reconvened at 9:30 P.M. with Commissioners D'Arcy, Kovac, Kuckuk, Mallela, Woehleke and Chairperson Marnane present.

[After the recess, the recorder was not immediately turned back on, and the audio tape for the meeting resumed after the staff report for Item D, 1180 Alta Mesa. There was no audio for the next item on the agenda for 1928 Saint Mary's Road, and the comments have been compiled from staff's notes on the discussion.]

**C. 1928 Saint Mary's Road**

Conduct a Public Hearing and Consider PC Resolution \_\_\_-2015 Approving Conditional Use Permit (UP 05-15) to Renovate the Interior, Construct an Interior Floor and Convert Existing Space to Office Uses within the Saint Mary's College Power Plant Building (Institutional, ENS)

Ms. Clark presented the staff report dated July 20, 2015 for consideration of a resolution to approve a Conditional Use Permit (UP 05-15) to renovate the interior, construct an interior floor and convert existing space to office uses within the Saint Mary's College (SMC) Power Plant Building. Due to the project's consistency with the Zoning Ordinance, SMC Master Plan and the Town's General Plan, with minimal impact to surrounding properties, she recommended that the Planning Commission adopt a resolution approving the Conditional Use Permit UP 05-15 pursuant to Section 8.56.030, subject to conditions of approval as contained in Attachment A to the staff report.

Diane Hardy, SMC Director of Construction, outlined the project and noted SMC's desire to creatively re-use existing space for needed offices. She described the nature of the space conversion in response to questions from the Commission.

In response to a question from Chairperson Marnane, a representative from the applicant's structural engineer, Fratessa, Forbes, Wong, confirmed that full structural design had been completed, and confirmed that the existing building structure could accommodate the proposed changes. He also stated that no seismic improvements appeared to be necessary for the existing vent stack adjacent to the building.

Motion and seconded to adopt Resolution \_\_\_-2015 approving Conditional Use Permit UP 05-15 for interior renovation and conversion of existing space to new office uses within the Saint Mary's College Power Plant Building at 1928 Saint Mary's Road, subject to the findings and conditions as shown. The motion carried by the following vote:

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

**D. 1180 Alta Mesa**

Conduct a Public Hearing and Consider PC Resolution \_\_\_-2015 Approving Conditional Use Permit (CUP 04-12) for a new wireless communications equipment building and three 13-foot high antenna towers for Verizon Wireless located northeast of the EBMUD Carter Reservoir water tank at the top of 1180 Alta Mesa Drive (OS-M, SK)

Contract Planner Sean Kennings presented the staff report dated July 20, 2015 for consideration of a Conditional Use Permit (CUP 04-12) for a new wireless communications equipment building and three 13-foot high antenna towers for Verizon Wireless located northeast of the East Bay Municipal Utility District (EBMUD) Carter Reservoir water tank at the top of 1180 Alta Mesa Drive. The project was consistent with the provisions of the Wireless Communications Ordinance, except as noted in the staff report, the Zoning Ordinance, and General Plan, and would have minimal impact to surrounding properties. He recommended that the Planning Commission adopt a resolution approving Use Permit 04-12, subject to the conditions of approval, as contained in Attachment A to the staff report.

Staff also recommended that the Planning Commission forward the application to the Design Review Board (DRB) for review of the proposed project's color scheme, equipment shelter design, and for additional landscape screening. Alternatively, the Planning Commission had the authority to approve the design as proposed without forwarding the application to the DRB.

(The audio resumed at this point in the meeting.)

Responding to the Commission, Mr. Kennings identified where the road ended, and where there was a gate at the end of Alta Mesa with a 10-foot wide paved access easement, which he expected would not be used by emergency vehicles. The applicant would have its own 10-foot wide access easement from the road to the facility. The road was in the easement and he was uncertain it would be afforded the same type of requirements for emergency vehicles. The MOFD had reviewed the project and had not offered any conditions.

Brendon Leonard, GTE Mobilenet, LP, d/b/a Verizon Wireless, c/o Complete Wireless, 2009 V Street, Sacramento, responded to the concerns expressed by staff and the Commission; clarified the landlord situation; and explained that Verizon had been unable to come to terms in this situation and had been unable to engage in a revised lease to continue operation of the facility. Given the impasse, Verizon had responsibility

to continue the service in providing the network, continue the reliability of the network, and offer service to the area.

Mr. Leonard walked through the coverage map for Verizon identifying the areas where Verizon had adequate indoor and outdoor coverage and throughput, areas of dropped calls, limited indoor/outdoor coverage due to terrain, and changes depending on the use of the network at the time, along with areas where there were continual unacceptable levels of service and where Verizon had been unable to provide service that customers demanded.

The Moraga Hills to the north of the Rheem Valley facility had a sector of antennas providing adequate indoor and outdoor coverage south to the Rheem Valley facility. Verizon had shown the antennas somewhat covering that area but was uncertain of the actual coverage given the terrain. The proposed facility would increase the coverage along the southern ridgelines and valley area to the northwest and provide complimentary service to the Rheem Valley facility. He explained that the nine antennas would provide three different types of band width, as reflected in the legend on the submitted plans. Verizon had exhausted all efforts with the existing and surrounding landowners to site the facility, and had demonstrated in the submittal materials that it had worked to find alternative sites in the area to provide coverage to the area.

Given the demand on the network, the number of users and devices that simultaneously used the network, one tower at 100 feet no longer covered an entire area. Mr. Leonard reported that legal counsel for Verizon had assured Verizon that access to the site had been perfected and there was a condition of approval that Verizon must demonstrate further compliance. Verizon would adhere to the language in the easement and would provide any further documentation to that effect if the Commission felt that was needed at the time of facility implementation. He also clarified the specific mechanics of the de-commission of the existing site, which Verizon would work out with staff prior to the issuance of a building permit.

Mr. Leonard further clarified the study results of a report prepared by Hammett and Edison, Incorporated, consulting engineers, acknowledged a request from the Chair for language modification to Page 3 of 4, to change the use of the term "is expected" to "will" and in the conclusion, to change the use of the term "can" to "will" (as it related to limiting exposure), and advised that he would forward the recommendation to the author of the report for consideration.

Chairperson Marnane commented that he had reviewed all of the sound equations and had found there were unknowns. He sought a report to show that Verizon would have an insulated enclosure for a diesel engine to minimize the amount of noise generated by the facility externally, including the air conditioning.

Mr. Leonard clarified that the air conditioning unit would be smaller than those used for a single-family residence. The air conditioners complied with code, as measured by all of the equations, and the conclusions were sound. The noise from the air conditioning unit had been shown on Page 2 of 3 of the Hammett and Edison study results, at 57 and 49 dBA respectively if the units were operating simultaneously. The air conditioning

units were manufactured pieces, and would be located inside, although he could provide information for the emergency generator technical specifications to show that the equipment would be in compliance. All effort would be made to ensure that the units were quiet.

Chairperson Marnane agreed that the application should be forwarded to the DRB for review of the project color scheme and the height of the building versus potential grading. He wanted the DRB to also consider the pros and cons of grading and a lower building in addition to reviewing the colors.

Mr. Leonard noted that there would be some limitations given the terrain and the ability to dig into the ground given the water tank and its foundation. Verizon could be flexible with the color scheme. He also clarified, when asked, that to his knowledge the other carriers at the site had not created noise problems. The Verizon facility was in compliance and an emergency generator would only be brought to the site in the event of an emergency. Given that no generator had been proposed as part of the application, an emergency generator would still comply with the code. He emphasized that Verizon would consider the least impactful generator which would also serve the facility. He described the different types of generator styles that could be considered for the facility.

#### PUBLIC COMMENTS OPENED

Dave Bruzzone, Moraga, reported that he had submitted an e-mail to the Planning Commission to explain that Verizon had been a Bruzzone tenant since the 1990s. He was uncertain what was going on although he understood Verizon desired to relocate its facility. He commented that at the last minute, a 10-year extension had been granted to Verizon in 2009 and the subject application had been submitted in 2012, but was only now before the Planning Commission. He commented that the site had been dedicated to EBMUD to allow the site. He identified the parcel line, stated the area surrounding it was Bruzzone property, the easement, and the area dedicated to EBMUD for the distribution and transmission of water. The easement crossed Bruzzone land and pursuant to the conditions of the easement to EBMUD, the Verizon facility did not fall under the uses dedicated to EBMUD, and Verizon did not have the right to cross the Bruzzone property and road for its use.

Mr. Bruzzone understood that the use permit had been grandfathered-in on the Bruzzone property. He questioned how the Town could take a use permit granted to the Bruzzone parcel and move it to another location and owner. While he had been informed by staff that the discussion related to a new use permit, he again questioned how an existing use permit, which had been grandfathered-in, could be transferred to another location. He would like Verizon to remain a Bruzzone tenant, had been surprised with the subject discussion, and pointed out inconsistencies with the application. While not the responsibility of the Bruzzone family, he provided written information to the Planning Commission on the parcel.

Mr. Bruzzone pointed out that the existing location was less visible, had less scenic impacts, Verizon had an agreement to use the existing property, but no agreement to cross the Bruzzone property for the Verizon facility. It was his desire to continue

working with Verizon and suggested the application should not move forward until Verizon could demonstrate it had the right and ability and its wireless facility met the criteria set by EBMUD.

## PUBLIC COMMENTS CLOSED

Commissioner Kovac acknowledged that the EBMUD parcel was an island.

Commissioner Kuckuk clarified with Ms. Clark that the East Bay Regional Communications System Authority (EBRCSA) transmission facility for emergency providers was a public facility located on the EBMUD property.

Commissioner Kuckuk explained that the EBRCSA facility had been heavily scrutinized at the time it had been considered by the Planning Commission and the Town Council. Access to that facility had not been raised as an issue, nor had EBMUD, the lessor, raised any issues. As conditioned, the subject applicant would be required to provide verification of all access easements to be satisfied prior to the issuance of any permits for construction.

In response to Commissioner Kovac, Mr. Leonard explained how the current easement worked to reach the current antennas, and how the alignment of the fiber optics would use existing easements and transfer through the Bruzzone property similar to the way cable was transferred through public ROWS. In this case, Verizon was a customer of another utility as anyone would be in their individual homes. He disagreed with Mr. Bruzzone's interpretation that Verizon did not have the right to cross the Bruzzone property to access the facility.

Mr. Bruzzone questioned how the existing conditional use permit could be transferred. He noted the statement that this was the only location for the Verizon facility to be placed was incorrect in that Verizon had an existing operating facility.

Ms. Clark reiterated that there would be no transfer of a conditional use permit but a new conditional use permit. She also clarified that it was not strictly true that the conditional use permit had been grandfathered-in, in that the previous approvals of other wireless facilities in the vicinity had relied upon a decision that other utilities ought to have the right of equal access to the site based on a previous approval, with subsequent use permits approved for wireless facilities based on similar findings. Since Verizon had been unable to reach an acceptable lease agreement for the existing site, Verizon had determined it was unable to have enough certainty for the operation of the existing facility and wanted to move to another site in the vicinity.

Commissioner D'Arcy questioned whether there were any federal laws in terms of public interest that Verizon must continue operating if Verizon was unable to reach an agreement with the existing landlord. She questioned whether there was any federal law which would allow Verizon to relocate to the EBMUD site and protect its need to transmit and the public interest that it served, allowing Verizon to circumvent the easement to allow the facility to operate on the EBMUD property.

Ms. Clark commented on the federal laws regarding a local jurisdiction's ability to regulate or completely prohibit wireless communications facilities, intended to protect the public interest of having wireless and cellular communications.

Mr. Leonard read into the record the Federal Communications Commission (FCC) language regarding Protective Prohibition of Services as it related only to decisions of local jurisdictions. Since Verizon would be unable to continue, or renew its existing lease, the existing site would have to be shut down. When that occurred, there would be a gap in service, as illustrated in the materials provided, and where the FCC had stated if all potential alternatives had been exhausted and with no other potential landlords in the area to serve the valley, a gap in service would be created.

As such, Verizon must design a site in the least intrusive means possible, at the local agencies discretion, to ensure that all alternatives had been exhausted. If the local agency denied a use permit, prohibiting service, there could be a cure under the law.

Commissioner Woehleke found the issue of the easement and ownership to be out of the Commission's jurisdiction, and suggested the conditional use permit had addressed that issue.

Commissioner Kuckuk suggested it would be far superior to have a taller structure and ensure through the DRB process that structure was adequately screened as opposed to going through permanent changes to the hillside which would occur through grading. She otherwise supported the application as presented.

In response to Commissioner Kovac, Ms. Clark reiterated that the use of the EBRCSA facility, which leased space from EBMUD, had received approval for the facility through the Town process, was used by public agencies for emergency responders, and had made use of the easement as well.

On motion by Commissioner Kuckuk, seconded by Commissioner Woehleke to adopt Resolution \_\_-2015 approving Conditional Use Permit 04-12 for a new wireless communications equipment building and three 13-foot high antenna towers for Verizon Wireless located northeast of the EBMUD Carter Reservoir water tank at the top of 1180 Alta Mesa Drive, subject to conditions. The motion carried by the following vote:

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

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

There were no Routine and Other Matters.

## **7. REPORTS**

### **A. Planning Commission**

Commissioner Kuckuk reported that she had attended the latest DRB meeting with review of a home on Sandringham Drive. She asked the Commission to consider discussing or agendaizing for a future meeting, the setting of parameters for the Planning Commission Liaison to the DRB. During her attendance at the latest DRB meeting, she had been asked to comment first on an application before DRB members, which she found could be misinterpreted as leading, or leading a discussion in an inappropriate way, particularly for an application which may also come before the Planning Commission.

**B. Staff**

There were no reports.

**8. ADJOURNMENT**

On motion by Commissioner Woehleke, seconded by Commissioner D'Arcy and carried unanimously to adjourn the Planning Commission meeting at approximately 11:00 P.M.

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Secretary of the Planning Commission

