

**TOWN OF MORAGA
PLANNING COMMISSION MEETING**

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

August 3, 2015

7:00 P.M.

MINUTES

1. CALL TO ORDER

Vice Chairperson Kuckuk called the Regular Meeting of the Planning Commission to order at 7:03 P.M.

A. ROLL CALL

Present: Commissioners Carr, D'Arcy, Kovac, Woehleke, Vice Chairperson Kuckuk

Absent: Commissioner Mallela, Chairperson Marnane

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)

Commissioner Woehleke reported contacting the Planning Director to discuss Public Hearing Item 5 B, MOSO Zoning Text Amendment.

2. PUBLIC COMMENTS

There were no comments from the public.

3. ADOPTION OF CONSENT AGENDA

There was no Consent Agenda.

4. ADOPTION OF MEETING AGENDA

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

Ayes: Carr, D'Arcy, Kovac, Woehleke, Kuckuk
Noes: None

Abstain: None
Absent: Mallela, Marnane

5. **PUBLIC HEARING**

A. **Bella Vista Subdivision (Rancho Laguna II Subdivision 9330)**

Consider Approval of PC Resolution ___-2015 for a Conditional Use Permit (UP 04-15) for the Temporary Use of Lots 23, 24, and 25 of the Bella Vista Subdivision (Subdivision 9330) as a Sales Office and Model Home Facility and Associated Signage (N-OS-PD, ENS)

Associate Planner Ella Samonsky presented the staff report dated August 3, 2015 for a Conditional Use Permit (UP 04-15) for the temporary use of Lots 23, 24, and 25 of the Bella Vista Subdivision (Subdivision 9330) as a sales office and model home facility with associated signage. Due to the project's consistency with the Zoning Ordinance and General Plan and minimal impact on surrounding properties, she recommended the Planning Commission adopt a resolution approving the Conditional Use Permit pursuant to Section 8.52.040 of the Moraga Municipal Code (MMC), subject to conditions of approval.

Commissioner Woehleke clarified with staff that the developer of the Via Moraga Subdivision had used flags with no messages, and that banners were not allowed absent a permit.

Commissioner D'Arcy clarified with staff that Lots 23, 24, and 25 had been designed in such a way where the homes would not be visible, would be one to two stories, and the pole-mounted banners would be no taller than the homes themselves.

Commissioner Kovac also clarified with staff the purpose of the banner signs for those driving to the model homes sales facility. The banners would not be visible from St. Mary's Road or Rheem Boulevard. All proposed signage was intended to be displayed 24 hours a day, would not be illuminated, and would be removed at the same time the temporary sales office was removed when the use ceased.

PUBLIC COMMENTS OPENED

John Hickey, Development Manager, SummerHill Homes, 300 Executive Parkway, Suite 450, San Ramon, presented a slide presentation of the proposal; described the temporary sales facility to be located in the garage of an existing model; stated the garage door would be temporarily changed to entry doors to the temporary sales facility; and there would be an on-site pad for the temporary toilet facility. He identified the location of the parking for the sales facility to be located on Lot 25, with a walking pad to the sales facility. The purpose of the signage was to highlight the location of the model homes to create more visual interest and excitement for the area.

In response to the staff recommendation to limit the number of pole-mounted banner signs, Mr. Hickey expressed a desire to have seven pole-mounted banners, as proposed, but understood the staff recommendation given the parameters of the MMC which limited the site to four pole-mounted banners.

Mr. Hickey suggested that four single-sided, pole-mounted banners would work, and stated the back of the banners would be a simple color to avoid a bare, blank appearance. He identified the hours of operation for the temporary sales facility as Mondays from 3:00 to 5:00 P.M., and Tuesdays through Sundays from 10:00 A.M. to 5:00 P.M. He reiterated that the sales facility would be temporary during the period when the units were for sale.

Mr. Hickey clarified, when asked by Commissioner Kovac, that there would be only one entrance to the site, with entry signage to identify the location of the temporary sales facility to potential homebuyers. He also identified the location of the staging areas; the fact the road would be constructed at the time the models were built, intended as a safe road for travel once the models were open; with signage to direct potential homebuyers to the parking for the temporary sales facility; and with a temporary private sidewalk to prevent anyone from walking in the street. There would also be on-street parking with an eight-foot wide parking buffer between the private sidewalk and the travel surface. Once the homes had been constructed, the banners would be important to identify the sales facility and which units had already been sold. No permanent signage was permitted at the intersection of Fay Hill Road and Rheem Boulevard although a temporary sign would be utilized in that area.

Mr. Hickey referenced a recent Supreme Court case which would could affect the Town's Sign Ordinance as related to the difficulty in distinguishing between A-frame and directional road signs. He clarified that the A-frame signs would be of average size and would be in place when the temporary sales office was open.

Ms. Samonsky advised that up to four temporary real estate signs, and one on-site standard real estate sign would be allowed on the corner of Rheem Boulevard without a permit.

Mr. Hickey clarified in further response to Commissioner Kovac that the only reason for the Conditional Use Permit was that one of the units would be used as a temporary sales office, the two adjacent units would be model homes, and the temporary parking lot was located on Lot 25. He did not see there would be a safety hazard for potential homebuyers given the for-sale nature of the use that would bring people to the area. The majority of the sales activity would be on the weekends, at which time the large construction truck activity would not be on the road. There would be little overlap. The roads were private and the Town would not be liable for the traffic on the private roadway.

Mr. Hickey explained in response to Commissioner Woehleke that the name change from Rancho Laguna II to Bella Vista would be more in keeping with Moraga's Spanish heritage. The street names would also be derived from some of the Town's original founders. He added that during the course of the repair work on Rheem Boulevard, a portion of the road would be closed but access to Fay Hill Road would remain open.

Mr. Hickey affirmed that the site preparation would be complete prior to the opening of the model homes to ensure safe access to the models; trunking and trenching for the underground utilities would also be completed, although the sewer would be in two

different locations. Site grading had already commenced. The temporary sales office facility would not be open until the model homes had been constructed.

Mr. Hickey acknowledged in response to Commissioner D'Arcy that a protected tree, Tree No. 74, had been removed and the developer was looking into that situation to determine what had occurred. The unintended tree removal had been discussed with Town staff and the actions to be taken address the situation. He affirmed that the project involved over 200 conditions of approval and the developer would ensure compliance with all conditions.

In response to Commissioner Kovac, Mr. Hickey identified the temporary landscaping to be removed as part of the home construction, with the landscape plants to be reused as much as possible. He also affirmed that the Moraga-Orinda Fire District (MOFD) had reviewed and approved the plans including the fire plan for the development.

Ms. Samonsky clarified that real estate signs and flags would be allowed without a permit and the developer may use all signage that was normally allowed. She acknowledged that an A-frame sign may be placed at the Moraga Road/Rheem Boulevard intersection for a period of an hour before and an hour after the temporary sales office facility was open. The sign must be portable and could not be installed into the ground.

PUBLIC COMMENTS CLOSED

Commissioner Woehleke was generally in favor of the Conditional Use Permit although he requested an additional condition that prior to the opening of the temporary sales office facility the applicant shall install the permanent utilities, and grade the top area and the final road. He wanted to prevent a situation where immature site preparation had occurred in the past, and to ensure that heavy construction activities did not occur at the same time when potential homebuyers would be in the same area.

Commissioner D'Arcy expressed concern with the removal of Protected Tree No. 74, as discussed, which had been a mature tree. She sought assurance that the developer would follow, and not deviate, from the approved plans. She was otherwise pleased that the pole-mounted banners would not be visible from Rheem Boulevard.

Commissioners Kovac and Carr advised that they could make the findings to approve the Conditional Use Permit although they both had concerns with safety given the heavy grading equipment being in use at the same time as potential homebuyers were in the area.

Vice Chairperson Kuckuk could also make the findings to approve the Conditional Use Permit but sought input from staff on Commissioner Woehleke's recommended condition of approval.

Planning Director Ellen Clark did not recommend a condition to state specifically what should be in place prior to the opening of the temporary sales office facility. If the intent was that the road be in a safe and serviceable condition to allow proper safety

precautions to allow for the crossover between model home customers and construction equipment that should be how the condition should be worded.

Ms. Clark did not want to bind the developer to something outside of its construction schedule. It should be sufficient if the road was constructed to the proper width, with stable surfacing, road markings, and signage.

Mr. Hickey pointed out the MOFD would not allow the project to open until there was a road surface safe for MOFD equipment, which would also be safe for passenger vehicles. In response to the continued concerns with respect to safety, he described the project as a fairly small one that was wide open where phasing would not be difficult and where the sales staff would work and model facilities would be open at the same time as construction activities. He added that site development and construction teams were well practiced to ensure the safety of customers to the model facilities. In terms of the sequence, the units would not be sold until the models were open. The developer would not have a situation with people wandering around the site prior to the opening of the model homes, and the model homes would not be open until the road was ready for travel. Also, the lower lots would not be open for potential customers and would be the first phase of construction.

Given the testimony from the applicant, the views of staff, and the review input from the MOFD, Commissioner Woehleke waived his recommended additional condition at this time.

On motion by Commissioner Carr, seconded by Commissioner Woehleke to adopt PC Resolution ___-2015 approving Conditional Use Permit (UP 04-15) for the temporary use of Lots 23, 24, and 25 of the Bella Vista Subdivision (Subdivision 9330) as a sales office and model homes facility and associated signage, subject to conditions. The motion carried by the following vote:

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

Vice Chairperson Kuckuk identified the 10-day appeal process of a decision of the Planning Commission in writing to the Planning Department.

B. MOSO Zoning Text Amendment

Conduct a Public Hearing and Consider Adoption of PC Resolution ___ - 2015 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) (*Hearing continued from June 15, 2015.*)

Planning Director Clark presented the staff report dated August 3, 2015 for a public hearing to consider the adoption of a resolution recommending Town Council adoption

of amendments to Section 8.52.110 Conditional Uses, in Chapter 8.52 MOSO [Moraga Open Space Ordinance] and Non-MOSO Open Space Districts, of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code.

The item was exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 (b) (3): General Rule Exemption), and had been continued from the Planning Commission hearing held on June 15, 2015.

Ms. Clark detailed the comments from the Commission and the public during the June 15 hearing, as outlined in the staff report, and emphasized that the item was only the text amendment and not a specific application. She recommended that the Planning Commission adopt the resolution, as further modified by staff as reflected in the August 3, 2015 staff report, and recommend 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 MMC.

Commissioner D’Arcy thanked staff for the quick turnaround on the item and clarified that the text amendment would only apply to uses that were permitted prior to the adoption of MOSO, and would not apply to anything moving forward or that had been approved since 1986 on MOSO lands.

Commissioner D’Arcy recommended a modification to the last sentence of Section 2, Section 8.52.110 Conditional uses, E as shown on Page 3 of the resolution, to read:

The development footprint is defined as the area of disturbance for a legally established recreational facility or use established prior to MOSO and its ancillary uses such as parking, circulation and landscaping.

Commissioner Kovac clarified with staff the intent of the item and the background of the former Moraga Tennis and Swim Club (MTSC), as reflected in the staff report, and the fact the Zoning Amendment would allow an application for the use of the former MTSC property to proceed to the Conditional Use Permit process.

Commissioner Carr also clarified with staff the role of the Planning Commission and the direction from the Town Council to the Planning Commission as detailed in the staff report, and suggested the issue was a policy question that had been brought to the Town Council. The Planning Commission was being asked to provide input on the wording of the text amendment and consider the nuances of the text amendment. The Town Council would be the ultimate decision making body.

PUBLIC COMMENTS OPENED

Andrew Baxter, 1144 Larch Avenue, Moraga, clarified with staff that everyone within 500 feet had been notified of the public hearing. He suggested the proposed zoning text amendment would not benefit the residents of Larch Avenue or the Town of Moraga given the published activities proposed for Adventure Day Camp. Given that no Planning Commissioner resided on Larch Avenue, he sought a draft ballot circulated to the residents of Larch Avenue to vote on the proposed zoning text amendment, or that the item be placed on a vote for all Moraga residents. He sought to retain the semi-rural character of the neighborhood and did not want to see it be developed into

something different. He pointed out that two vehicles parked on either side of Larch Avenue made it difficult for vehicles to pass, leading to residents' concerns with emergency response to the neighborhood.

Clay Serrahn, 1160 Larch Avenue, Moraga, suggested the staff report had not met the burden of proof for the item in that the proposed text amendment did nothing to protect MOSO and MOSO Open Space; there was no proof the zoning text amendment would not weaken the zoning protections; contrary to the claim in the staff report, the proposed zoning text amendment would set a precedent for similar future actions in other zoned areas including non-MOSO Open Space, Institutional Districts and most of Moraga's residential areas; and there was no need for the text amendment in that MOSO and the associated zoning protections had worked well for the Town for more than 29 years. He referenced comments made during the June 15 Planning Commission meeting that even if the proposed zoning text amendment was denied there remained an opportunity to continue with the use permit application. If that was the case, he questioned why the proposed zoning text amendment was being considered.

Mr. Serrahn commented that although staff had made revisions to the proposed zoning text amendment, he found the revisions remained unclear. He cited the use of three phrases that had been used in the proposed zoning text amendment, as reflected in the staff report, with no quantification for the use of those terms. He expressed concern that contrary to the direction from some of the Planning Commissioners on June 15, staff had left some of the acceptable uses to the Hillsides and Ridgelines Steering Committee to determine in the future, with no guarantee that the committee would do that, and the staff recommendation had not been included in the draft resolution submitted to the Planning Commission. He urged the Planning Commission to honor the intentions of MOSO and Town zoning founders and deny the proposed zoning text amendment.

Karen Mendonca, 1160 Larch Avenue, Moraga, a former Mayor and member of the Moraga Town Council, understood the issue being considered at this time to allow Adventure Day Camp the opportunity to submit an application for a for-profit use permit for property located at 1161 Larch Avenue. The current language for zoned MOSO Open Space would not allow the application to proceed under a for-profit designation, although the business applicant, Kevin Welch, had already recorded during the June 15 Planning Commission meeting he and his spouse were founders of a non-profit and whether the ordinance was amended in any way, he would still apply to operate at 1161 Larch Avenue either as a for-profit or a non-profit entity. If so, she questioned why the Zoning Ordinance had been proposed for a change, which if approved would set a precedent.

Ms. Mendonca suggested if the Town Council wanted to be responsible for changing the text of the long-established MOSO, it should do so and not the Planning Commission. She urged the Planning Commission not to weaken protections that had been in place for many years by approving any text amendments to the current language applicable to MOSO and non-MOSO zoned open space.

PUBLIC COMMENTS CLOSED

Commissioner Woehleke commended staff for following through on what he characterized as challenging direction given by the Town Council since MOSO was silent on such applications. He also commended the Town Council for being receptive to ideas to make good use of the currently defunct and abandoned facility.

While he understood the direction to the Planning Commission, Commissioner Woehleke suggested if the Commission could not reach a consensus on the item, the Commission's input should be provided to the Town Council since the Town Council would make the determination.

Commissioner Woehleke understood the concerns of the neighbors and the desire to minimize any potential negative impacts of a future use to the neighborhood. He preferred that the language in the resolution be modified to address many of the concerns. At this time, he could not vote for the resolution as written.

Commissioner Woehleke recommended that any new use functionally be the same as the present or past use, and not exceed the previous impact on the surrounding neighborhood given that MOSO specifically stated that "...the character and feel of the Town of Moraga is contingent upon the preservation of open space...and the regulation and development of sensitive open space areas..." with a focus on the character and feel of the Town of Moraga, and when MOSO had been passed the commercial property had been in operation as a particular commercial operation. If a new clause was added to read that "any new use, functionally be the same as the present or past use, and not exceed the previous impact on the surrounding neighborhood," the Commission would be closer to grandfathering-in a use, which had been raised during the Planning Commission meeting of June 15.

Commissioner Woehleke commented that he was surprised that the property in question was in MOSO since it was a commercial operation and did not fit his idea of open space, something he had discussed with the Planning Director this date. He noted that Section 8.52.110 E of the ordinance, as currently written, would allow a range of potential applications beyond what had been discussed, such as a motocross racing facility. Such a facility could meet the conditions and the footprint of the site. While such a challenging application would not likely be allowed, he suggested the Commission should consider reasonable parameters for authorizing a future use. He noted the former MTSC had a viable membership, with hours of operation, which could be used to set limits on any impacts to a neighborhood. If that was something the Planning Commission would like to pursue, he could recommend modifications to the language to allow that to occur.

Commissioner D'Arcy reiterated her recommended language modifications to the ordinance. She suggested the language in the ordinance, as currently proposed and as revised by staff, would not allow new for-profit development on undeveloped MOSO land. She acknowledged the concerns of the neighbors, although she suggested the permits and processes for Adventure Day Camp would be further modified as an application went through the Town's review process. She supported the zoning text amendment with the language change she had recommended and urged caution in defining a list of approved activities given that activities could change in the future.

Commissioner Kovac commented that he had attended the Town Council meeting, at which time the applicant for Adventure Day Camp had appeared before the Town Council and had discussed the potential discounted use of the facilities by the Town in exchange for a fast track approach to Town approval.

Commissioner Kovac questioned why the Town Council was pushing the application, suggested the case had not been made that a for-profit operation was the same as a non-profit operation, understood the applicant had a non-profit business, and therefore questioned why the Planning Commission was considering the zoning text amendment. He suggested the prospective use of the property would have a greater immediate impact on the neighborhood and the community than the former MTSC, and given that reality he supported the requirement of an Environmental Impact Report (EIR) since he suggested the application would represent a different use of the property. He did not see that the request before the Planning Commission served the welfare of the Town.

Commissioner Carr, an environmental attorney by training, suggested an EIR would likely be necessary for a future use permit application. As to whether a list of approved uses on MOSO lands should be prepared, she understood the direction from the Town Council although she suggested the attempt was to amend something that did not work. She was not comfortable forwarding the issue to the Hillsides and Ridgelines Steering Committee since the issue might never be resolved, and was also not comfortable forwarding a positive recommendation to the Town Council, as recommended by staff, even if the Town Council revisited various uses on MOSO lands. She expressed concern the Planning Commission could give away its only leverage to make good policy and the policy may never change since there was no incentive for the Town Council to make the changes. She could not support the zoning text amendment as currently written.

Vice Chairperson Kuckuk supported the intent to evaluate applications regardless of a for-profit or a non-profit status since a wide range of recreational land uses could be operated under either business model. She suggested the proposed zoning text amendment would not be inconsistent with MOSO since it would still enable the Town to use discretion in a conditional use permit process to approve or deny a use permit application if found to be inconsistent with MOSO. She was personally unable to recommend approval of the proposed zoning text amendment to MOSO because she suggested it was the wrong way to approach policy decisions.

Vice Chairperson Kuckuk found the changes proposed to be an inexact way to evaluate impacts to properties based on land use. She agreed the issue should be studied by the Hillsides and Ridgelines Steering Committee, and agreed with staff that was the comprehensive effort where it would be appropriate to study the range of recreational land uses allowed under MOSO to reduce ambiguity. As presented, she did not support a recommendation to the Town Council to approve the zoning text amendment, and instead would rather send the comments from the Planning Commission to the Town Council. She strongly agreed with Commissioner Carr and did not want to give away the Planning Commission's only leverage to make good policy.

Commissioner Woehleke identified a typographical error on Page 3 of the resolution under Section 8.52.110 Conditional uses, C. While he agreed with the Vice Chair's

recommendation, he also recognized that the Town Council had now sought input from the Planning Commission on two separate occasions. He wanted the Town Council to receive the message and the concern for potential impacts to the neighborhood, with some control over that aspect of a particular or similar sites.

Commissioner Woehleke reiterated his recommendation for consideration of language that “a new use functionally be the same as the present or past use, and not exceed the previous impact on the surrounding neighborhood.”

Vice Chairperson Kuckuk acknowledged that four Commissioners were of the opinion not to support the draft resolution and forward comments to the Town Council. She asked staff whether a motion and vote to that effort was necessary, or whether comments could simply be forwarded to the Town Council.

Ms. Clark commented that if the Planning Commission took no action on the recommended resolution it would be appropriate to forward the comments from the Planning Commission to the Town Council.

Vice Chairperson Kuckuk advised of the consensus of the Planning Commission to forward the comments from the Planning Commission to the Town Council with no formal recommendation taken.

Ms. Clark summarized the comments from the Planning Commission, as follows:

- Suggested the proposal was not the optimal way to resolve the deficiencies of this particular section of the MMC, and something that more precisely articulated the desired nature and character of the recreational land uses would be more appropriate;
- Changes should consider neighborhood impacts relative to the previous existing uses. Commissioner Woehleke provided his notes to staff on the specifics of how he would like this recommendation worded;
- Vice Chairperson Kuckuk expressed a willingness to provide a copy of her notes to staff to reflect her comments, as previously stated for the record;
- The issue of for-profit versus non-profit was not the deciding factor; and
- In the event the issue was returned again to the Planning Commission, Commissioners would like the Town Council to deal with the issue of permissible uses or acceptable uses for previously designated MOSO land for commercial use.

6. ROUTINE AND OTHER MATTERS

There were no Routine and other Matters.

Vice Chairperson Kuckuk declared a recess at 8:36 P.M. The Planning Commission meeting reconvened at 8:41 P.M. with Commissioners Carr, D'Arcy, Kovac, Woehleke, and Vice Chairperson Kuckuk present.

7. REPORTS

A. Planning Commission

Commissioner Kovac reported that he had attended a meeting of the Wayfinding Plan Citizens Advisory Committee.

B. Staff

Ms. Clark affirmed Planning Commissioner responses from the staff invitation for a site visit to the Carr Ranch property, the south end of Camino Pablo, which had been proposed for annexation for a 13-lot subdivision. A study session had been scheduled for a Planning Commission meeting in September. The application would include geotechnical and grading information which would be provided to the Commission prior to the meeting. She clarified that as long as there were no more than three Commissioners participating in each site visit, there would be no violation of the Brown Act. Site visits would be scheduled with two to three Commissioners along with staff to allow the entire Commission the opportunity to view the site.

Ms. Clark updated the Planning Commission on the Lamorinda Service Plan, intended to consider various transit alternatives for the Lamorinda area, with outreach efforts conducted through surveys. A meeting had been held this date with the Lamorinda Program Management Committee (LPMC) to prepare an Implementation Plan which staff anticipated would be presented to the Town Council. She also updated the Commission on staff's efforts for an ordinance to allow chickens and small farm animals which would be a study session item for future Planning Commission consideration.

8. ADJOURNMENT

On motion by Commissioner Woehleke, seconded by Commissioner D'Arcy and carried unanimously to adjourn the Planning Commission meeting at approximately 8:55 P.M.

A Certified Correct Minutes Copy



Secretary of the Planning Commission

