TOWN OF MORAGA
PLANNING COMMISSION MEETING

Council Chambers & Community Meeting Room
335 Rheem Boulevard
Moraga, CA 94556

September 6, 2016

7:00 P.M.

MINUTES

1. CALL TO ORDER

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

A. ROLL CALL

Present: Commissioners D'Arcy, Korpus, Kovac, Kuckuk, Marnane, Chairperson Woehleke

Absent: Commissioner Mallela

Staff: Ellen Clark, Planning Director
Holly Pearson, Senior Planner

B. Conflict of Interest

There was no reported conflict of interest.

C. Contact with Applicants

There was no reported contact with applicants.

2. PUBLIC COMMENTS

There were no comments from the public.

3. ADOPTION OF CONSENT AGENDA

A. July 18, 2016 Special Minutes

On motion by Commissioner Marnane, seconded by Commissioner Kuckuk to approve the Consent Agenda, as amended to reflect an adjournment time of 6:45 P.M. The motion carried by the following vote:

Ayes:	Commissioners D'Arcy, Korpus, Kovac, Kuckuk, Marnane, Woehleke
Noes:	None
Abstain:	None
Absent:	Commissioner Mallela

4. ADOPTION OF MEETING AGENDA

On motion by Commissioner Kuckuk, seconded by Commissioner D'Arcy and carried unanimously to adopt the meeting agenda, as shown on the dais. The motion carried by the following vote:

Ayes:	Commissioners D'Arcy, Korpus, Kovac, Kuckuk, Marnane, Woehleke
Noes:	None
Abstain:	None
Absent:	Commissioner Mallela

5. PUBLIC HEARING

There was no Public Hearing.

6. ROUTINE AND OTHER MATTERS

A. Conduct Study Session and Provide Direction to Staff on Approach to Proposed Focused Zoning Code Amendments Related to Non-Conforming Uses, Structures and Lots; Regulation of Accessory Buildings and Structures; Reorganizing the One, Two, and Three Dwelling Unit Per Acre Residential District Chapters; and Definition of Family

Holly Pearson, Senior Planner, presented the staff report dated September 6, 2016, for the study session review of proposed focused code amendments to improve the clarity and interpretability of regulations for those items that had most consistently created a lack of clarity in terms of how the regulations should be applied to specific projects under review by the Town.

Chairperson Woehleke clarified that each subject item would be considered separately in the study session review.

Non-Conforming Uses, Structures and Lots

Ms. Pearson identified the issues with the current non-conforming chapter in the zoning code in that the existing regulations did not distinguish between non-conforming uses and non-conforming structures and buildings; did not address non-conforming lots; were not explicit in terms of the types or extent of modifications or improvements allowed to non-conforming buildings or structures; residential buildings constructed prior to the Town's incorporation that exceeded the Town's current maximum allowable density were not considered to be non-conforming and had been excluded from all of the provisions of the non-conforming uses chapter; and a clause allowed the Planning Commission to revoke the right to continue a non-conforming use upon making a finding that requiring a change to a conforming use would not infringe on an owner's Constitutional rights.

Ms. Pearson identified the changes proposed to address those concerns as shown in the staff report, and asked the Planning Commission to opine on the recommendations.

The Commission asked questions and requested clarifications.

- Section 8.20.050 related to rezoning or changes to district boundaries had not been included in the proposed amendments, and staff explained that section had not been carried over into the new text and had been rewritten but could be added back in, as requested. (Commissioner D'Arcy)

- Verified with staff with respect to non-conforming lots that there were a number of issues where lots could be non-conforming, although slope restrictions as a type of non-conformity were dealt with elsewhere in Town regulations. (Commissioner D'Arcy)

- Asked if there had been a problem related to discontinued use to justify the need to extend the period from 120 days to 180 days, and staff advised that a six-month timeframe was more typical based on a comparison with other cities' and towns' regulations and a specific clause had been proposed to better define 'discontinuance.' (Commissioner Korpus)

- Requested clarification of Section 8.20.020 B defining the non-conforming structures and buildings, and verified with staff that the non-conformity would relate to the standards applicable to the particular zoning district but not to the entire Zoning Code. (Commissioner Korpus)

- With regard to the 75 percent threshold for a building's replacement value to allow a damaged non-conforming building to be rebuilt, asked about the rationale for that designation and the impact to property owners, and staff described the intent to strike a balance over time to ensure that conditions were incrementally brought into conformance. (Commissioner Korpus)

- Asked why small residential additions up to 250 square feet involving the continuation of an exterior wall that did not conform to a current setback requirement had been proposed, and staff noted that had been based on a modest sized addition, although it could be changed to a percentage, linear feet of extension, or total square footage. (Commissioner Korpus)

- Expressed concern for potential insurance-related ramifications related to non-conforming homes. (Commissioner Marnane)

- Before making a change to the percentage of damage for a building's replacement value wanted to know the industry standards. (Commissioner Kuckuk)

- Noted the various non-conformities under discussion and asked how many lots would be affected; staff clarified the intent to protect, in particular, the multifamily housing stock, which could be rebuilt if 100 percent damaged. (Commissioner Kovac)

- Requested that some examples be provided of instances where the 75 percent threshold proposal for rebuilding a damaged nonconforming building had worked, and clarify the provision for 250 square foot residential addition continuing on exterior wall with a non-conforming setback. (Chairperson Woehleke)

PUBLIC COMMENTS OPENED

There were no comments.

PUBLIC COMMENTS CLOSED

Commission recommendations on the approach to the proposed focused Zoning Code Amendments related to Non-Conforming Uses, Structures, and Lots:

Commissioner Korpus did not support the 75 percent threshold given that it would place a burden on homeowners; suggested the multifamily properties should not be treated differently and all should be able to be replaced; and while she agreed with the need for properties to generally move towards conformance over time she wanted to leave in the right of the Town to revoke subject to Constitutional rights to retain the Town's flexibility. She was also amenable to an additional length of time for a discontinued use and was open to longer than 180 days; with respect to small home improvements, stated the Town should do its best to roll the county setback provision into the non-conforming use regulations and treat it as a single body and be clear that the physical expansion of the property could not expand the non-conforming use of that structure and the expansion should be limited to follow the smaller setbacks and limit the linear feet that could be expanded; and suggested the definition in Section 8.20.020 B needed to be narrowed to remove the ambiguity as to how many rules would be grandfathered in under the provision.

Commissioner Kovac suggested while allowing non-conforming properties to expand, the Town needed to encourage properties to conform to the current zoning regulations and rules; he did not want the process to allow a gaming of the system; any conversion of unconditioned space to habitable space should be a public process; and with respect to deleting Section 8.20.060 regarding revocation of non-conforming uses, he did not see a need to release control of subsections A and B.

Ms. Clark commented that staff's research indicated very few if any communities had language similar to what had been included in subsections A and B. She had not yet discussed that clause with the Town Attorney to determine whether those provisions were enforceable.

Commissioner Marnane noted that almost all the subjects under discussion had come up in previous projects. He commended staff for a reasonable approach to address the concerns.

Commissioner Kuckuk referred to the definition section related to 'rear yard' and suggested that definition could be improved and tightened; with respect to 'retail business' and the term 'unconditioned accessory building,' she noted that term had not

been defined and should be; and with respect to 'structure,' she had a concern with structures that were prefabricated and placed, such as a shipping container or a cistern, and she sought guidance in that regard. Speaking to Section 8.20.050 and the small home addition, she commented that it was reminiscent of the non-conforming homes in the Rheem Manor and noted the onerous process in that regard. As such, she supported a limit on an increase in the exterior wall extension not necessarily tied to square footage and supported a linear measurement. She also suggested adding continuity with Section 8.68.060 related to County setback provisions.
With respect to the linear wall extension, Commissioner Kuckuk supported more clarity in the language and wanted to look into the industry standards related to the threshold for allowing rebuilding of a non-conforming structure, noting that changes to a building's foundation, for instance, would be expensive and therefore a significant issue.

Chairperson Woehleke commended staff for the proposal, noted that the Town was becoming more infill which made non-conforming situations more challenging to address, and agreed that applying the 75 percent rule could be a challenge.

Ms. Clark acknowledged the consensus that 100 percent rebuild was preferable over the proposed 75 percent.

Regulation of Accessory Buildings and Structures

Ms. Pearson identified the issues related to the regulation of accessory buildings and structures and stated the current regulations for the location and height of accessory structures was somewhat limited; there was not a provision that allowed for reduced setbacks of accessory buildings; the regulations were only applicable in the single-family zoning districts and were not applicable in the higher density residential zones; there were no clear regulations or definitions for decks; and the current regulations and review processes for fences were inconsistent.

Ms. Pearson identified the changes proposed to address those concerns as shown in the staff report, and asked the Planning Commission to opine on the recommendations.

The Commission asked questions and requested clarifications.

- Asked what would happen to accessory structures that were not in compliance with the requirements, staff responded that they would be non-conforming accessory structures. (Commissioner Korpus)

- Referred to maximum height for primary buildings in the single family residential zoning districts and noted that Moraga's maximum height appeared to be excessive, to which staff noted that this issue would be discussed with the next item. She asked how often it would be applicable that a side yard fence could be 7 feet 6 inches in height and under what circumstances that could occur in the front of a property, to which staff explained that would be rare. (Commissioner D'Arcy)

- Verified with staff that if an applicant requested requesting a floor area ratio (FAR) greater than the standards established in the Town's Design Guidelines,

such a request would have to be granted by the Design Review Board. (Commissioner D'Arcy)

- With respect to fences and walls, asked if they were permanently attached and staff confirmed; verified that Section 8.68.060 obstruction in yard areas did not apply to a patio structure and recommended that be clarified; suggested Section 8.68.070 could be a problem in that only 30 percent of a rear yard could be covered by an accessory structure and suggested that could be too restrictive using the currently proposed definitions of "accessory structure"; and verified with staff that things that were not above grade such as tennis courts and pools could be exempted and treated through other regulations. She referenced a number of other concerns and verified with staff those concerns had been considered and verified with staff why decks were regulated. (Commissioner Korpus)

- Referred to the definitions and found some of them to be confusing such as the difference between a court and a yard, the definition of frontage particularly on a curve, and the definition of boundary line. Ms. Clark agreed that the definition section of the Zoning Code could be improved, particularly the definition of the height of a fence. (Commissioner Kovac)

PUBLIC COMMENTS OPENED

Richard Yan, 5 Kimberly Drive, Moraga, stated he planned to build an accessory shed in his backyard and had met with staff to discuss some difficulty with the placement of the shed in conformance with the Town's setback requirements.

PUBLIC COMMENTS CLOSED

Commission recommendations on the approach to the proposed focused Zoning Code Amendments related to Regulation of Accessory Buildings and Structures.

Commissioner Kuckuk stated her biggest concern was for the prefab type of fixtures that had a height that could cause a visual distraction or an issue with a neighbor, such as storage containers and other aboveground improvements, and whether or not the amendments had adequately covered things that could be placed on the property and could be moved. With respect to sheds, she supported allowing existing sheds that are located within required setbacks to be conforming instead of deeming them to be non-conforming.

Ms. Clark advised that staff had proposed some relaxation of height and setback regulations for small accessory buildings such as sheds, and asked if a larger than 80 SF should be allowed.

Commissioner Kuckuk stated she could support a shed larger than 80 square feet to have reduced setback requirements if well designed. She commented that the need to move a shed three feet away from a fence on the property line was an odd requirement.

Commissioner Korpus agreed that a larger shed should be allowed, up to a size requiring a building permit (120 square feet), and noted the importance of quality

design. She also suggested a height requirement should be considered that would be appropriate for a structure located at the side or rear property line. She suggested the Town was overreaching if attempting to regulate temporary structures and suggested the regulations should only be applicable to structures permanently attached.

Commissioner Marnane repeated his earlier comment that almost all the subjects under discussion had come up in previous projects, and suggested the proposed regulations would clarify and simplify project review and would therefore reduce the staff workload.

Ms. Clark explained that anything that could be done to improve the clarity of the regulations would be a benefit to staff, the public, the Planning Commission, and the Design Review Board.

Commissioner D'Arcy suggested the regulations related to the size and placement of a shed or greenhouse were unclear.

Commissioner Kovac received clarification from staff that the regulations related to sheds; the height, placement, allowable size and location.

Chairperson Woehleke suggested that many of the changes were good in that they clarified and resolved inconsistencies of the past, although he had concerns related to non-conforming sheds which were driven by the reality in Town. He did not support overregulation with respect to accessory structures and urged staff to consider whether some of the regulations were necessary.

A recess was taken at 9:00 P.M. The meeting reconvened at 9:05 P.M. with Commissioners D'Arcy, Korpus, Kovac, Kuckuk, Marnane and Chairperson Woehleke present.

Reorganizing the One, Two, and Three Dwelling Unit Per Acre Residential District Chapters

Ms. Pearson identified the issues related to reorganizing the one, two, and three dwelling unit per acre Residential District chapters and stated there was no maximum building height currently specified for the One Dwelling Unit Per Acre Residential District; and there was currently one chapter for one dwelling unit per acre zone and another chapter for the two and three dwelling units per acre zones, and each was similar enough to include all the regulations for all three into a single chapter, Chapter 8.24.

Ms. Pearson identified the changes proposed to address those concerns as shown in the staff report, and asked the Planning Commission to opine on the recommendations.

The Commission asked questions and requested clarifications.

- Noted that subsection E, supportive and transitional housing, had been omitted from Section 8.24.030, and asked why, to which Ms. Pearson suggested that use type had been replaced by subsection G, operation of a foster home, and may have come out of the update to the Housing Element, offering a better definition

consistent with State law to allow for small group homes in residential zones. Ms. Clark stated staff would confirm whether that was the case. (Commissioner Korpus)

- Under conditional uses, golf, tennis or swimming clubs appeared to be eliminated and she asked why that was the case, and suggested that would have an adverse impact on the Moraga Swim and Tennis Club, to which Ms. Clark explained that particular club was in the Moraga Open Space Ordinance (MOSO) and not in the single-family residential zoning districts. She also noted that subsections A and B were duplicative, and subsection C had been eliminated because it would be regulated in the new accessory building and structure section. (Commissioner Korpus)

- As to whether separate chapters of the zoning ordinance were being created to define development standards based upon densities, Ms. Clark reiterated that the 6 and 12 dwelling units per acre zoning districts were quite different and should continue to have their own chapters, the One, Two, and Three Dwelling Unit Per Acre Residential Districts were nearly identical except for standards related to lot sizes and setbacks and it seemed unnecessary to have three separate chapters for these regulations. (Commissioner Korpus)

- Referred to Section 8.24.040 regarding conditional uses, which stated the types of uses that would require a Conditional Use Permit (CUP) and asked why the efforts to spell out what required a CUP because the bottom line was anything that was not a permitted use could potentially be considered as a conditional use. She did not see a need and suggested it complicated things, to which Ms. Clark stated it was often helpful in the non-residential zoning districts but she agreed it may make less sense for residential zones. However from a planner's perspective it could be helpful for something that did not quite fit into the definitions of permitted uses. Ms. Pearson suggested that an alternative to this approach would be to include more detailed definitions of different uses, and without the clause allowing the Planning Commission to consider similar uses as potential conditional uses, almost any imaginable land use that could be proposed would have to be identified and defined. (Commissioner Kuckuk)

- Asked if there was a need to consider a health and safety issue with multiple people in a single-family home, to which Ms. Clark clarified that state law required jurisdictions to allow for some kind of group homes in residential districts and issues of crowding and occupancy would generally be addressed by Building and Fire Codes. (Commissioner Kovac)

PUBLIC COMMENTS OPENED

There was no one to speak.

PUBLIC COMMENTS CLOSED

Commission recommendations on the approach to the proposed focused Zoning Code Amendments related to reorganizing the One, Two, and Three Dwelling Unit Per Acre Residential District Chapters.

Commissioner Korpus supported the combination of the chapters and supported the inclusion of the statement within Section 8.24.100 as shown, that the Town's Design Guidelines would have to be considered but preferred that it be closer to the beginning of the chapter.

Chairperson Woehleke wanted to make sure that the Design Guidelines addressed how to define building height, although Ms. Clark stated that had was included in the definitions section of the code, under "Building Height."

Definition of Family

Ms. Pearson identified the issues related to definition of the term "family" in the Zoning Code pertaining to residential land use, and explained that when the Town had updated the Housing Element of the General Plan in 2015 one of the implementation actions was to bring the definition into consistency with the definition used in State Housing Law.

Ms. Pearson identified the changes proposed to address those concerns as shown in the staff report, and asked the Planning Commission to opine on the recommendations.

The Commission asked questions and requested clarifications.

- Verified that the definition had no impact on the Town. (Commissioner Korpus)

PUBLIC COMMENTS OPENED

There was no one to speak.

PUBLIC COMMENTS CLOSED

Commissioner Kovac questioned the exclusion of fraternities, sororities or clubs from the definition of family and expressed concern over the impacts to the character of a single-family dwelling.

Ms. Clark reported that the next steps would be to consider the Commission's comments, refine the proposal, and return with options at a Planning Commission public hearing.

B. Review and Discuss Planning Commission Roles and Procedures

Chairperson Woehleke presented a document he had prepared related to Planning Commission Roles and Procedures and opened the discussion on each point in the document.

Ms. Clark clarified that the Planning Commission was a body whose duties were defined by State Law and State Planning Codes.

Chairperson Woehleke asked that those duties, as defined by the State, be provided to members of the Commission.

The Commission reviewed the document, offered recommendations to make the process easier and more productive, noted the need on occasion to receive additional information from staff and if possible the distribution of staff reports earlier than currently provided, to have more time to make a decision, and when there were appeals to a Planning Commission action sought a better explanation for the appeal.

PUBLIC COMMENTS OPENED

Sam Sperry, 172 Valley Hill Drive, Moraga, thanked the Commission for its service to the community and asked if the Town Attorney was a member of staff in terms of the references to staff in the document.

7. REPORTS

A. Planning Commission

Commissioner Korpus reported on the Home Based Winery and Vineyard Subcommittee which had recently visited Deer Hill Winery in Lafayette. Another meeting would be scheduled in the near future to bring information to the Commission in the next month or two.

Commissioner Kovac stated that the Pedestrian Bicycle Master Plan Update was in process with a report expected to be submitted to the Planning Commission in the near future.

B. Staff

Ms. Clark reported that the final Community Advisory Commission (CAC) meeting for the Walk/Bike Plan would be submitted to the Planning Commission within the month for a recommendation to the Town Council for approval, and next week the Town Council would hold a study session on amendments to the Medical Marijuana Ordinance that would be submitted to the Commission in October. In addition, the Hillsides & Ridgelines Regulations would be submitted to the Commission to consider draft regulations to a number of Town documents, hopefully to be considered at a special meeting on October 5, 2016, with an additional special meeting if required.

4. ADJOURNMENT

On motion by Commissioner Marnane, seconded by Commissioner D'Arcy and carried unanimously to adjourn the Planning Commission meeting at 10:35 P.M.

A Certified Correct Minutes Copy

Secretary of the Planning Commission