

DESIGN REVIEW BOARD MEETING AGENDA

MEETING DATE: MONDAY September 13, 2010, at 7:00 pm

LOCATION: Moraga Library Meeting Room, 1500 St. Mary's Road, Moraga, CA 94556

NOTE: Applicants or their representatives are required to attend the meeting. An applicant's presentation should not exceed ten minutes. Agenda items, which the Board has not acted upon prior to 10:00 p.m. may be continued to the next open agenda, unless the Board chooses to discuss the item after 10:00 p.m.

I. CALL TO ORDER AND ROLL CALL

Design Review Board

- A. Glover, Kline, Kuckuk, Sayles, Zhu
- B. Conflict of Interest

II. ADOPTION OF MEETING AGENDA

III. PUBLIC COMMENTS

NOTE: This part of the agenda is limited to comments regarding matters that are not on this agenda. Action cannot be taken on public comments at the meeting but they may be referred to a subcommittee for response.

IV. PLANNING COMMISSION LIAISON REPORT- Commissioner Socolich

V. ADOPTION OF THE CONSENT AGENDA

Consent agendas consist of items that are considered to be non-controversial and routine by the Town Planning Department. Anyone attending the meeting that would like to discuss an item listed on the consent agenda should request the Board to move the item from the consent agenda to the regular agenda when the Chair presents that option to the audience. Any member of the Board may also direct that a consent agenda item be placed on the regular agenda for consideration and discussion by the Board. Items that are not removed from the consent agenda are approved under one motion by the Board, and are not subject to individual debate and discussion.

A. APPROVAL OF MINUTES for July 26, 2010

VI. DESIGN REVIEW

Opening remarks by an applicant shall not exceed ten minutes. Comments by others shall not exceed three minutes. The purpose of a public hearing is to supply the Design Review Board with information that it cannot otherwise obtain. Please limit testimony and presentation to the supplying of factual information. In fairness to everyone in attendance, please avoid redundant, superfluous or otherwise inappropriate questions or testimony. Thank you. Moraga Design Review Board.

- A. **DRB 08-10 – Dan Wood (Applicant and Owner) 120 Moraga Road:** An application for design review approval for a new 3,259 square foot two-story craftsman style residence, with a 771 square foot garage on a 33,715 square foot lot addressed as 120 Moraga Road. This project was reviewed at the July 26, 2010 DRB meeting and action was continued to the September 13, 2010 meeting for the applicant to provide improvement plans for the 30-foot wide access easement to the property. The applicant was also asked to study the feasibility of providing a new access road from Corte Santa Clara and submit a site section to show the angle of view from the second floor bedroom windows. The property is zoned 1-DUA (one dwelling unit per acre single family residential). APN 255-511-001.

VII. OTHER MATTERS – None

VIII. STAFF REPORT

IX. BOARD MEMBER REPORTS – Glover, Kline, Kuckuk, Sayles and Zhu.

X. ADJOURNMENT

Next meeting: Monday, September 27, 2010 at 7:00 pm at the Moraga Library Meeting Room located at 1500 Saint Mary's Road, Moraga, CA 94556.

Design Review Board meeting Agendas are posted at 2100 Donald Drive – Hacienda de las Flores, Moraga Commons Park, and the Moraga Public Library.

NOTICE: If you challenge a town's zoning, planning or other decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Design Review Board at, or prior, to the public hearing. Judging review of any town administrative decision may be had only if petition is filed with the court not later than the 90th day following the date upon which the decision becomes final. Judicial review of environmental determinations may be subject to a shorter time period for litigation, in certain cases 30 days following the date of final decision.

The Town of Moraga will provide special assistance for disabled citizens upon at least 24 hours advance notice to the Planning Department (925-888-7040). If you need sign language assistance or written material printed in a larger font or taped, advance notice is necessary. All meeting rooms are accessible to disabled.

Copies of all staff reports and documents subject to disclosure that relate to each item of business referred to on the agenda are available for public inspection on the Monday before each regularly scheduled meeting located at the Planning Department, 329 Rheem Blvd, Moraga, CA. Any documents subject to disclosure that are provided to all, or a majority of all, of the members of the Board regarding any item on this agenda after the agenda has been distributed will also be made available for inspection at 329 Rheem Blvd, Moraga, CA during regular business hours.

**TOWN OF MORAGA
DESIGN REVIEW BOARD MEETING
MINUTES**

July 26, 2010

I. CALL TO ORDER AND ROLL CALL

A regular meeting of the Design Review Board (DRB) was called to order by Chair Sayles at 7:03 P.M. in the Moraga Library Meeting Room, 1500 Saint Mary's Road, Moraga, California.

Present: Boardmembers Glover, Kline, Sayles, Zhu
Absent: Boardmember Kuckuk
Staff: Senior Planner Richard Chamberlain

Conflict of Interest

Chair Sayles and Boardmember Zhu reported that they needed to recuse themselves from Item VI. – B. (DRB -09-10 Moraga Country Club HOA).

Senior Planner Richard Chamberlain stated that the DRB needed to use the Rule of Necessity in order to have a quorum.

Chair Sayles explained that in order to enact the Rule of Necessity they would put two names in a hat and draw one out.

II. ADOPTION OF MEETING AGENDA

On motion by Boardmember Zhu, seconded by Boardmember Glover and carried unanimously to approve the July 26, 2010 meeting agenda, as presented.

III. PUBLIC COMMENTS

There were no comments from the public.

IV. PLANNING COMMISSION LIAISON REPORT – Commissioner Driver

Planning Commissioner Driver reported that since the DRB last met the Planning Commission had two meetings where they reviewed two Conditional Use Permit applications for the Moraga Country Club. One application was for a temporary golf club and pro shop facility to be used during construction of the new clubhouse and the other application was for temporary use of club's swim functions at another facility (the former Moraga Swim and Tennis Club at 1161 Larch Avenue). Both applications were approved.

V. ADOPTION OF THE CONSENT AGENDA

A. APPROVAL OF MINUTES for May 24, 2010

On motion by Boardmember Kline, seconded by Glover to approve the minutes of the May 24, 2010 meeting, as submitted. The motion carried by the following vote:

Ayes: Boardmembers Glover, Kline, Sayles, Zhu
Noes: None
Abstain: None
Absent: Boardmember Kuckuk

VI. DESIGN REVIEW

A. DRB 08-10 – Dan Wood (Applicant and Owner) 120 Moraga Road:

An application for design review approval for a new 3,259 square foot two-story craftsman style residence, with a 771 square foot garage on a 33,715 square foot lot addressed as 120 Moraga Road. The 2,210 square foot first floor includes a living room, dining room, kitchen, laundry room, half bath, master bedroom and master bathroom. The 1,049 square foot second floor includes three bedrooms and two bathrooms. The highest roof ridge is 25-feet 6-inches. No existing native trees will be removed and seven new 15-gallon coast live oak trees will be planted on the hillside between the new home and Moraga Road. Eight Monterey pines, four Eucalyptus trees and one Poplar tree were cut down along the southeast and southwest sides of the former EBMUD water tank property to accommodate the new home. A permit was not required to remove the non-native trees. The property is zoned 1-DUA (one dwelling unit per acre single family residential). APN: 255-511-001.

Mr. Chamberlain reported that the Planning Department had received an application for design review approval for a new 3,259 square foot two-story residence, with a 771 square foot garage on a 33,715 square foot lot addressed as 120 Moraga Road. Construction of the new residence on the property was categorically exempt under Section 15303(a) where up to three single-family residences could be constructed in a residential zone in urbanized areas.

The application required DRB approval because it was a new home and the project site was within the Moraga Road scenic corridor. There were no requested exceptions to the design guidelines. Most of the proposed building site was level and the grading for the home would be less than 50 cubic yards and would not involve any cuts into the hill or retaining walls; therefore, a grading permit would not be required. The project site was previously used for an East

Bay Municipal Utility District (EBMUD) water tank, which was removed prior to the sale of the property to the current owner.

Written notices of the application were mailed to all property owners within 300 feet of the subject property on July 16, 2010. There was an existing paved access road to the site that was within an access easement on three adjacent properties at 3763, 3767, and 3771 Via Granada. The Town had received two letters from the neighbors at 126 Moraga Road and 3763 Via Granada objecting to the application and specifically to the increased use of the access easement. Apparently EBMUD only used the easement several times a month during weekdays and never at night. The neighbors contend that the increased use of the access easement would adversely impact the privacy of their homes and diminish their property values.

Mr. Chamberlain said the proposed craftsman style home was to have 2,210 square feet on the first floor, with a living room, dining room, kitchen, laundry room, half bath, master bedroom and master bathroom. The 1,049 square foot second floor included three bedrooms and two bathrooms. The highest roof ridge was 25-feet 6-inches. The siting of the home on the lot was moved further to the south to accommodate a fire truck turnaround at the north side of the lot. On June 24, 2010 the Town approved a lot line adjustment between the subject property and the adjacent property at 4 Corte Santa Clara. The adjusted lot lines conformed to the Town's General Plan land use density of one dwelling unit per acre and minimum lot size of 30,000 square feet.

The design aspects listed in Planning Commission Resolution 16-01 were discussed in Exhibit D attached to the staff report. The proposed home complied with the lot coverage and building setback requirements. The height of the home was less than the 28-foot guideline for two-story homes. Project compliance with the Scenic Corridor Ordinance was also discussed in Exhibit D. There were two gaps in vegetation along Moraga Road where the story poles for the new home could be seen. The new home was about two hundred feet from Moraga Road and much further from the road than other existing homes. The second floor was setback from the first floor to reduce massing of the home on the site.

General Plan policy LU1.1, Neighborhood Preservation, stated that projects should not have adverse impacts on existing residential neighborhoods. The new home generally exceeded the minimum building setbacks and the existing trees along the north, east and west sides screened views of the lot. Nevertheless, the main concern of the neighbors who wrote letters was the adverse impact of the vehicles driving on the access easement. If the project was approved, they would want to have solid wood fencing along the easement. They were also concerned that the Monterey Pines that presently give some screening of views from the driveway were nearing their expected lifespan and

additional landscaping would be necessary to maintain privacy along the driveway.

General Plan policy CD4.3 stated that new residential development in existing neighborhoods should reflect the size, scale, height, setbacks, and character of existing development and should not detract from the overall neighborhood character. Lots larger than 20,000 square feet were not subject to the Town's floor area ratio guidelines; however, the proposed floor area of the home was not unusually large and did not exceed the allowed maximum floor area for a 20,000 square foot lot.

The applicable Town design guidelines were listed in Exhibit E. The design of the home complied with the design guidelines; nevertheless, the following guidelines were the basis for some of the recommended conditions for approval: In accordance with guidelines L2.3, ID12.5, SFR2.14 and ID9.1, drain pipes from the roofs of the new home were to be routed to landscaped areas for bio-filtration prior to discharge to storm drain inlets. The applicant would need to submit the drainage plans to the Town Engineer for approval prior to release of the building permit. As required by guideline ID13.13, the plans submitted for a building permit for the new home would need to demonstrate that the design and building materials complied with the Build It Green point system.

Mr. Chamberlain articulated that Planning Commission Resolution 16-01 listed four findings which needed to be made in order for the Design Review Board to approve the application. To disapprove an application, a finding had to be made as to why one or more of the standards have not been satisfied:

1.) The proposed improvements would conform to good design as set forth in the Town of Moraga Design Guidelines, and in general would contribute to the character and image of the town as a place of beauty, spaciousness, balance, taste, fitness, broad vistas, and high quality. In staff's opinion, the proposed craftsman style home appeared to be well suited to the project site and the partial second floor centered over the lower floor did not present a large building mass. The architectural design of the home was compatible with the architectural style of the residential neighborhood.

2.) The proposed improvement would not have a substantial adverse affect on neighboring properties or the community due to poor planning; neglect of proper design standards; or the existence of building and structures unsuitable to and incompatible with the character of the neighborhood and the character of the community. The proposed 4,030 square foot home was only 827 square feet larger than the average floor area of the homes on the surrounding lots and the design and placement of the home on the lot did not appear to have any adverse impacts to neighbors. However, the primary question was whether the increased

use of the access easement would substantially impact the neighbors along the driveway.

3). The proposed improvement would not lower property values; discourage the maintenance and improvement of surrounding properties; or preclude the most appropriate development of other properties in the vicinity. After the recent drop in housing values due to the collapse of the "housing bubble", the planned improvements to the subject property would not be considered a significant factor in either raising or lowering the value of the adjacent homes. Nevertheless, one of the neighbors had consulted a realtor who claims that the increased use of the access easement would reduce the value of their home by \$75,000 to \$100,000.

4.) The proposed improvement would not impair the public health, safety or welfare. The building plans would be reviewed by the Lamorinda Building Department and the new home would be built in accordance with the California Building Code. The letter from Thomas and Selma Mirante at 126 Moraga Road stated that a gate had been installed across the access road at Moraga Road by EBMUD and that this gate had been removed by EBMUD at the request of Mr. Wood when he purchased the property. The letter raised concerns of safety on the use of the road and in particular they objected to the road being used by another neighbor at 3771 Via Granada, who had a contracting business. They cited an incident where one of the contractor's trucks almost overturned onto their property.

The Permit Streamlining Act required a decision on the project within sixty calendar days after a project had been found to be exempt from CEQA. The staff report was written on July 14, 2010 at which time the project was determined to be exempt from CEQA. Therefore, the application must either be approved or disapproved by September 12, 2010 unless both the Town and the applicant agreed to a one time ninety-day extension.

Mr. Chamberlain explained that the issue of the legal access rights to the easement and whether or not the proposed use of the driveway for access to a single family home would be an "increase in the use of the easement in a manner that imposes a greater burden on the servient tenement" was a legal matter between the affected property owners. Staff did not expect that this legal issue would be resolved prior to the September 12th deadline for action. The project could be approved with a condition that this issue be resolved prior to any release of a building permit for the project. If a court determined that access to the easement cannot be increased and that an access driveway would need to be constructed from Corte Santa Clara on the south side of the lot, the entire project would need to be redesigned. Undoubtedly, the fire truck turnaround would then have to be on the south side and the home would have to be moved to the north side of the lot.

Staff had recommended approval of the application with draft findings and conditions of approval in Exhibit F. In light of the concerns raised with the use of the access easement, the draft conditions should be amended to include conditions to address the concerns of the neighbors, such as fencing and landscaping along the access driveway, gated entry, and restricted access to any other lot owner other than 120 Moraga Road.

Boardmember Kline asked if the project would need to come back to the DRB for approval if it was determined that the easement was not allowed to be used as a driveway.

Mr. Chamberlain responded that the home would need to come back for approval since it would have to be completely redesigned.

Dan Wood, Applicant/Owner, introduced himself, his family, and his architect, Peter Gilbert. He read a brief letter signed by ten of his neighbors and Moraga residents which stated that they had all reviewed the plans for the proposed home and agreed that it was well suited to the lot. He said that the neighbors were present at the meeting and wanted to speak on his behalf.

Mr. Wood told the DRB that when his wife, Julie Wood, was pregnant twenty-two years ago, they had faced the question of where they wanted to live and raise a family. They decided to move to Moraga in 1988 and a year later purchased the lot at 4 Corte Santa Clara where he built his present home. Over the last twenty years, he made improvements to his home and beautified the surrounding hillside and area with landscaping. In 2005 EBMUD removed the water tank on the property behind his home and decided to sell the lot after the installation of the water pipeline on Moraga Road. In September 2009 a notice of public option to purchase was sent to all adjoining properties and interested parties. At that time he confirmed with Mr. Chamberlain that the lot was zoned one dwelling unit per acre and suitable for a single family home. Access to the home was on a driveway that ran within the 30-foot roadway easement which was being sold with the lot. On March 9, 2010 he became the owner of the parcel and began to design a new home with his architect.

PUBLIC COMMENT OPENED

Vicki Lucas, 3793 Via Granada, had been a Moraga resident for 13 years and was close family friends with the Woods. Mr. Wood had been the contractor and Mr. Gilbert had been the architect for a master suite addition she had done three years ago. She praised both men for their excellent work. She trusted their judgment and was in favor of the new home at 120 Moraga Road.

Donald Lucas, 3793 Via Granada, added that he agreed with the staff report and was in favor of the new home. He said it was an improvement to the area and was glad that the Woods would be closer neighbors.

Mary Beth Henningsen, 2180 Sky View Court, had been long time friends with the Woods. She believed that the findings in the staff report were met and that the scenic corridor would be enhanced as a result of the new home. She had complete faith that all landscaping and fencing would be taken care of on the easement portion of the property. The pictures Mr. Wood showed were a testament to the beautiful work that would be done. She said that both she and her husband, Phil Henningsen, both supported the project.

David Marshall, 11 Corte Santa Clara, introduced his wife and children and said that he had lived in Moraga since 1995. He believed that the Wood house was the nicest house on the court and made everyone else's house look better. He liked that the Woods took barren land and landscaped the entire front making it enjoyable for everyone. The Woods were great Moraga citizens who did good work around the Town. He was delighted that they were going to retire in Moraga and build another nice house in the neighborhood.

Claude Persons, 3763 Via Granada, stated that he was an impacted homeowner and that his neighbor, Ronald Holmes who resided at 3767 Via Granada, agreed with his statements. He bought his home in 1989. The easement that ran through his backyard, that was adjacent to the Mirante home at 126 Moraga Road, was granted in 1954. When he bought his home from the original owner he was told that the easement was going to be used a couple times a month, week days only, and never at night to solely access the water tank for inspection purposes. Ever since he bought his home he thought that the easement in his backyard was going to be used as a driveway for accessing the water tank. The new home was a complete change of use. The new driveway, which would be used day and night, created issues of noise and physical intrusion. The driveway looked directly into his backyard and he could see the story poles from his bedroom. He had consulted a real estate broker from Orinda who told him that it would affect the value of his home. He stated that he was not against a home being built on the lot but rather that he was against the extreme invasion of privacy on his property and his neighbors. He acknowledged that there would be a huge expense to the Wood family if they had to move the easement but that it would be a viable means to solve the problem. Moving the driveway to the other side of property and moving the two story home closer to his property would benefit the impacted neighbors.

Tim Toupin, 3771 Via Granada, stated that he was another impacted neighbor who had wanted to buy the parcel but his life had changed unexpectedly and he was unable to afford it. The property at 120 Moraga Road was meant to have a house on it since the water tank was no longer there. He believed that the

proposed home was very nice and was glad that Mr. Wood was the owner/builder. He liked Mr. Wood's work and appreciated his willingness to work with the neighbors. The driveway easement went across his property and even though he did not like it he knew someone was going to eventually build there.

Jerry Long, 1331 Camino Pablo, opposed the project because he thought it was visible from the Moraga Road scenic corridor. He believed that the DRB had an obligation to mitigate any impact on other people and that it was not right to change the utility access to a regularly used driveway.

Kevin Johnson, 132 Moraga Road, said he had lived in Moraga for 12 years with his wife Dillma. He was impacted on the north side of property by the utility easement. His main concerns were accurate plan drawings and drainage coming down the hill since the proposed house was to be built above his. The story poles could be seen from his bedroom, family room and kitchen but he had had talked to Mr. Wood and they agreed that trees would help solve the problem.

Selma Mirante, 126 Moraga Road, moved to Moraga in April 1999, and had the same concerns expressed previously by her neighbors. She believed that the project was an invasion of privacy on her property since people driving by could see into her backyard. All the neighbors, including present and future, were affected by the use of the easement. Her and her neighbors had a right to privacy. She was in favor of moving the driveway and added that she was not opposed to a new home beautifying the property.

Mr. Wood questioned why his neighbors did not contact EBMUD about the issues regarding the access easement or object to the sale of the lot. He did the necessary due diligence to acquire the lot. He had contacted EBMUD who told him that there were no restrictions on the use of the road. The language in the grant deed did not specify the use of the access easement; it was bought by EBMUD who used it to access the tank site. They could have chosen to do whatever they wanted with it. Although he had a right to use the road he could not build on or landscape it. Since the new home impacted his house at 4 Corte Santa Clara the most he planned to install landscaping in order to buffer the two residences. He believed that he did everything to mitigate the impact of the new home and reiterated the fact that the roadway had been there since 1954 well before anyone else.

Peter Gilbert, Architect, said that in regards to the impact on the scenic corridor they were going to plant trees which would eventually hide the new home. He thought that relocating the driveway to Moraga Road would have a greater impact the scenic corridor. The invasion of privacy was minimal because there were no windows on the second floor that directly faced the neighbors. Fencing and intensive landscaping along the roadway would create a barrier for all

parties. He said that having special conditions for additional landscaping would be a good solution.

Eleanor Persons, 3763 Via Granada, mentioned that when she bought her home the real estate agent told her that the EBMUD lot was always going to have a water tank. Never did she think that it was going to be removed for a new home. She was upset about it because the easement went through her backyard and affected her privacy.

Mr. Wood commented that he would have liked to have seen documentation to back up his neighbors' claims. He spoke with his neighbor, Ron Holmes, last Saturday who was misinformed on two points. Mr. Holmes thought the project was a spec home and that part of the Toupin property was being purchased for a large turn around. Mr. Wood wished Mr. Holmes had been present at the meeting so he could hear all the facts.

Boardmember Kline asked Mr. Wood if he had responded to the Miller Starr Regalia letter dated March 31, 2010.

Mr. Wood stated that he had spent almost \$3,000 on legal fees in responding to his neighbors' letters. In addition to the letter dated March 31, 2010 he received another letter, dated April 7, 2010, which addressed trees that had been trimmed along the easement. Mr. Wood explained that he had cut some of the overhanging branches since they had scraped his car every time he accessed the road. He read his response letter dated April 9, 2010 which described his attempts to work with the neighbors and resolve the issue with the gate. The next communication with the neighbors was their interest in buying the easement and encouraging Mr. Wood to build a new driveway from Moraga Road. He sent another letter, dated May 31, 2010, which described the difference between the existing access road and the alternative driveway from Moraga Road. The alternative driveway would be 390 feet and would require a 100-foot long retaining wall and a number of native trees would need to be removed. A new survey, legal description, and address would need to be generated along with a soils report and a grading permit. This would generate costs of up to \$150,000 and would be impractical. The simpler solution would be to use the existing roadway which had been in use for over fifty years. That was the last correspondence he had with the neighbors and had received no additional letters.

PUBLIC COMMENT CLOSED

Boardmember Kline thought the parcel was a great lot and had a nice view. The only problem he had was with the driveway which was a serious issue. He said that Mr. Wood needed to reach an agreement with the neighbors and if that

meant more fencing and landscaping than fine. He was not comfortable approving the project without some sort of protection for the neighbors.

Boardmember Glover asked about the design of the driveway. He wanted to know if there were going to be any improvements.

Mr. Wood responded that the Moraga-Orinda Fire Department required a 16-foot access driveway for all new homes in Moraga. The existing 12 foot driveway would need to be widened by 4-feet. As for mitigating the access road, he said he had no legal right to build anything on it.

Boardmember Zhu said that the sticking point was the driveway. Like Boardmember Klein, he had no problem with the home itself. Regardless of the use, the property had to be accessed and that would need legal interpretation.

Boardmember Glover inquired as to whether water and sewer were going to have to be brought up to new the home.

Mr. Wood replied that he had a quick claim deed from EBMUD granting him the rights to an existing utility easement.

Chair Sayles believed that the application was incomplete because the plans did not include the entire site. He wanted to see the driveway and its relation to the other lots. He was also concerned about the relationship of the new home to the neighbors and asked why a study session had not been done. If the plan had been flipped then there would be less of an impact to the neighbors. One of the design findings the DRB had to make was whether the project would adversely impact the neighbors and given the testimony at the meeting it would be a tough finding to make. He thought that the second story windows looked directly down at the neighbors. He questioned the driveway and the two story home on the hill since most homes in scenic corridors were one story. He encouraged Mr. Wood to explore the possibility of relocating the driveway to Moraga Road because it had less of an impact on the neighbors. He commented that both the architect and the contractor had done a terrific job on the design of the home.

Boardmember Glover said that he had not seen everything he wanted to see on the application. He did not understand why there had not been a greater effort to reach consensus with the neighbors about what needs to be done in order to build a home on the property. A study session would have been helpful.

Commissioner Driver noted that the biggest sticking point was the legal rights over the use of the access road. If it were to come before the Commission, he would want to have more of a definitive answer before they dealt with the mitigation issues. If the owner had legal rights to the easement then that would

provide more of a framework for the neighbors to work toward a solution. Since that was still in dispute then he would have trouble acting on the application.

Chair Sayles concluded that the DRB had three choices; they could continue the item for additional information, they could deny it without prejudice based on the privacy issues and impact on the neighbors, or, they could approve it as presented.

There was no consensus in approving the project as presented but there was interest in continuing it for more information.

Mr. Gilbert proposed that they come back with a survey of the driveway and show how they were going to mitigate the impact on the neighbors with fencing and landscaping. He mentioned that the second floor windows did not directly affect the neighbors since they were about 70 feet away from the houses below.

Boardmember Kline voiced that in addition to wanting the legal rights of the easement resolved, he also wanted to see plans of the driveway with fencing and plantings that would mitigate the impact on the neighbors. Or, he wanted to see a plan that showed a driveway someplace else.

Chair Sayles expressed that he wanted a full understanding of the easement and how they planned to develop it. He wanted a site section that started through the house and went down the hill and to the neighbors. He also wanted to see if the second story windows were going to impact the neighbors. The DRB needed to continue the project to a date certain and have the applicant return with a full site plan showing the relationship of the property to the adjacent homes.

Mr. Chamberlain explained that he would need revised plans by August 18, 2010 in order to write the staff report for the next DRB meeting since he was going to be on vacation from August 27th to September 7th. If the applicant could not make that date, then a onetime 90-day extension could be granted.

On motion by Boardmember Glover, seconded by Boardmember Kline, to continue the application to the September 13, 2010 DRB meeting where the applicant would provide complete plans for the new home at 120 Moraga Road showing all development, driveway improvements, and the topography associated with sightline between the second story windows and the neighboring properties.

The motion carried by the following vote:

Ayes: Boardmembers Glover, Kline, Sayles, Zhu
Noes: None

Abstain: None
Absent: Boardmember Kuckuk

B. DRB 09-10 Moraga Country Club HOA (Applicant and Owner) Temporary Golf Club and Pro Shop Facility 1600 St. Andrews Drive:

An application for design review approval for a 2,880 square foot trailer building to serve as a temporary golf club and pro shop facility for the Moraga Country Club on the northwest side of St. Andrews Drive opposite the intersection with Cypress Point Way. The single story 60-foot by 48-foot trailer building includes a kitchen, dining area and restrooms in addition to the pro shop and MCC Homeowners Association offices. The project also includes a 60-foot by 18-foot exterior deck for casual seating and dining. The facility will have an ADA compliant ramp for disabled access and will be built over the southwest end of the driving range parking lot. The temporary facility will be used for the period of time when the existing clubhouse is demolished and the new clubhouse is under construction. On June 21, 2010, the Planning Commission approved the Use Permit for the temporary building. The project site is zoned 3-DUA (Three Dwelling Units per Acre). APN: 257-470-004.

Chair Sayles and Boardmember Zhu had to recuse themselves because of their conflict of interest with the project; however, due to the rule of necessity Boardmember Zhu was elected to stay in order to maintain a quorum. Chair Sayles left the meeting and Boardmember Glover resided as Chair.

Mr. Chamberlain reported that this was an application for a 2,880 square foot trailer building to serve as a temporary golf club and pro shop facility during construction of the new Moraga Country Club clubhouse. Public notice was mailed on Friday, July 16, 2010 to all property owners and residents within three hundred feet of the project site and staff had received no correspondence on the application. The project happened to be located in Zone 3 where a private recreational facility was allowed under a conditional use permit. The Planning Commission approved a use permit for the temporary clubhouse subject to the conditions listed in Resolution 06-2010 on June 21, 2010.

Mr. Chamberlain stated that the single story 60-foot by 48-foot trailer included a kitchen, dining area and restrooms in addition to the pro shop and offices for the Moraga Country Club Homeowners Association offices. The project also included a 60-foot by 18-foot exterior deck for casual seating and dining. The facility was to have an ADA compliant ramp for disabled access and was to be built over the southwest end of the driving range parking lot so that it would cover existing impervious surface having minimal impact on drainage issues. The temporary building would be used for the period of time when the existing clubhouse was demolished and the new clubhouse was under construction.

Condition 3 from Planning Commission Resolution 06-2010, Mr. Chamberlain continued, required review and approval by the DRB. Condition 3 addressed the following items: some additional native and drought-tolerant landscaping needed to be submitted in order to mitigate views of the trailer from Moraga Way; the location and design of a dumpster to accommodate waste from the kitchen needed to be shown on the project plans; additional landscaping was needed to buffer light and noise from the clubhouse and to help screen the temporary trailer from view of the homes across the street; the number of seating in the dining area needed to be shown on the plans; and plans for any new signage needed to be submitted. In regards to the dumpster, the applicant stated that the trash would be picked up and transported to the maintenance facility as needed and that there would be no outside trash dumpster at the temporary clubhouse building.

Mr. Chamberlain told the Board that they would also need to consider temporary power poles for the interim clubhouse. It would need a 600 amp above ground service for power. The proposal from the electrical contractor was to have three wires on poles that would go from the main switch board at the northeast front corner of the existing clubhouse building across the creek to the temporary building. Staff suggested that at least four trees should be planted along the east side of the temporary building to screen the view of the HVAC units along the side of the building.

Approval of the application was recommended by Mr. Chamberlain in accordance with the findings by Planning Commission Resolution 16-01 and with the recommended conditions of approval listed in the Draft Action Memorandum.

Boardmember Kline noted that the Planning Commission was very specific in what they wanted the DRB to review. He wanted to know if the DRB had all the materials they needed in order to address those items.

Mr. Chamberlain replied that the DRB had not been given everything they needed which was why he inserted comments after the conditions.

Gregor Markel, Project Architect, Dahlin Group, relayed that Frank Melon, Operations Manager of the Moraga Country Club, was unable to attend the meeting and that he would be able to address any concerns or questions. He was happy to install whatever landscaping that the DRB felt was necessary. If permanent plantings were preferred then they suggested Los Altos redwoods since they were already common on that side of the site. The redwoods were good, fast growing trees that would create a barrier along St. Andrews Drive. Screening opportunities along Moraga Way were at the far end of the parking lot or at the front of the deck with large box trees. They were limited in what they could do because of the asphalt but they saw the project as a temporary facility and would be returning the area to its original grandeur when the new clubhouse

was completed. They were anxious to move the project forward and were willing to do whatever was needed in order to make that happen.

PUBLIC COMMENT OPENED

There were no comments from the public.

PUBLIC COMMENT CLOSED

Boardmember Kline was concerned by the fact that the Planning Commission had required certain items which were lacking in the submittal. He was ready to approve the project but wanted to see the conditions that had been asked for.

Commissioner Driver was confused as to why the project was before the DRB if it was not ready. The Planning Commission had specifically wanted to see those conditions which they thought were straight forward and not hard to meet.

Mr. Chamberlain said he handled the lack of information by putting in comments to address each issue. Landscaping needed to be addressed in order to get project the moving. The main item the applicant did not provide was signage.

Commissioner Driver inserted that the Commission had had representatives from the Moraga Country Club in front of them three times and that they had been very accommodating and good to work with. If staff was comfortable in moving forward then he would be okay with whatever landscaping conditions were recommended.

The DRB addressed each of the five requirements under Condition number 3 from Planning Commission Resolution 06-2010 and commented on staff's conditions of approval in the draft action memorandum.

Mr. Markel explained that from a screening standpoint on Moraga Way they felt they were handicapped in what they could do with landscaping and that it was their preference to plant temporary box trees. He added that there was no proposed signage for the temporary trailer.

Chair Glover asked about onsite security and lighting at night.

Mr. Markel said that the site plan showed an area on the clubhouse side of the creek where the materials and tools were to be fenced off and secured. The contractors were limited to certain construction hours (8 a.m. to 5 p.m.) and were aware that they could not leave floodlights on. Security at the current clubhouse would make rounds to make sure no unauthorized persons were on the property.

Chair Glover had no desire to bring this project back before the DRB. He thought that staff could determine whether the conditions were met.

The DRB modified the following conditions of approval to the DRB Action Memorandum for the temporary trailer building:

- i Page 2 of 4, Part 2: Conditions of Approval
2. With regard to Planning Commission condition 3-c from Resolution 06-2010, General Plan Policy LU2.6 and in compliance with design guidelines SRC7, L3.5, L3.7, CC1.4 and CC2.1, a minimum of four 15-gallon size 'Los Altos' Redwood trees shall be planted between the HVAC units on the east side elevation and St. Andrews Drive. The trees shall be shown on the plans submitted for a building permit and subject to staff approval.
8. With regard to Planning Commission condition 3-a from Resolution 06-2010, a boxed tree shall be added to the parking area at the north side of the deck. The tree will be in a planter box that can be removed when the temporary building is removed.
10. With regard to Planning Commission condition 3-e from Resolution 06-2010, the MCC has decided to have no signs for the temporary clubhouse facility.

On motion by Boardmember Kline, seconded by Boardmember Zhu, to adopt the Draft Action Memorandum dated July 26, 2010, approving DRB 09-10 for the new temporary trailer building at 1600 St. Andrews Drive, subject to the findings and conditions, and with the modification of conditions 2, 8, and 10 (as shown above).

The motion carried by the following vote:

Ayes: Boardmembers Glover, Kline, Zhu
Noes: None
Abstain: None
Absent: Boardmembers Kuckuk , Sayles

Mr. Chamberlain identified the ten day right of appeal for anyone wishing to appeal the decision of the Design Review Board to the Planning Commission by filing a letter stating the grounds for the appeal and through the payment of the appeal fee, through the Planning Department.

Sayles returned as Chair.

VII. OTHER MATTERS

There were no other matters.

VIII. STAFF REPORT

Mr. Chamberlain reported that the Planning Department received a Community Commercial Use Permit Application from the Dollar Tree to move into and combine three vacant spaces in the Rheem Shopping Center. The proposed store was less than 10,000 square feet so they did not qualify as a major tenant in order to have a big sign. The Dollar Tree wanted to install a sign similar to the existing CVS Pharmacy sign so he was going to take pictures of the storefront to determine whether they could have a large sign (rather than the standard small tenant signs). The former Blockbuster store (where Dollar Tree was proposing to move into) had a wider beam which could hold a bigger sign.

IX. BOARDMEMBER REPORTS

Boardmember Kline and Boardmember Glover reported that they would not be able to attend the next DRB meeting on August 9, 2010.

Chair Sayles reported that he had attended the last two mayor's breakfasts where there was discussion about the lack of projects and the lack of DRB and Planning Commission meetings. They talked about the possibility of merging the two bodies if things continued to be slow. He said that there was a tremendous amount of time and money being spent for staff to support two commissions if so few projects were coming in.

Mr. Chamberlain clarified that it was more likely that the DRB and the Planning Commission would conduct one meeting a month instead of two. Merging the two bodies could get tricky because of ordinance changes and the appeal process. In the end it would be more complicated to eliminate the bodies and revise the code then to simply cut back on meetings.

X. ADJOURNMENT

On motion by Boardmember Glover, seconded by Boardmember Kline to adjourn the meeting at approximately 9:07 P.M. to a regular meeting of the DRB on Monday, August 9, 2010 at 7:00 P.M. in the Moraga Library Meeting Room located at 1500 Saint Mary's Road, Moraga, CA 94556.

DESIGN REVIEW BOARD STAFF REPORT

MEETING DATE: September 13, 2010 REPORT WRITTEN: August 27, 2010

ITEM NUMBER: VI. A. – DESIGN REVIEW

FILE NUMBER: DRB 08-10 – Dan Wood (Applicant and Owner) 120 Moraga Road:
Application for approval for a new 3,259 square foot two-story craftsman style residence, with a 771 square foot garage on a 33,715 square foot lot addressed as 120 Moraga Road. APN 255-511-001

ZONING: 1-DUA (One dwelling unit per acre single family residential)

CEQA STATUS: Construction of the new residence on the property is categorically exempt under Section 15303(a) where up to three single-family residences may be constructed in a residential zone in urbanized areas.

APPLICATION SUMMARY:

This project was reviewed at the July 26, 2010 DRB meeting and action was continued to the September 13, 2010 meeting for the applicant to provide improvement plans for the 30-foot wide access easement to the property. The applicant was also asked to study the feasibility of providing a new access road from Corte Santa Clara and submit a site section to show the angle of view from the second floor bedroom windows. This report will discuss only the new plans submitted. Please refer to the staff report for July 26, 2010 for the design analysis and recommendation for approval of the home on the property.

PUBLIC NOTICE AND OTHER CORRESPONDENCE:

Written notices of the application for design review were mailed to all property owners within three hundred (300) feet of the subject property on September 3, 2010. A map showing the area of notice, project mailing list and a copy of the public notice is attached as **EXHIBIT A**. Previous correspondence received at the July 26th meeting is attached as **EXHIBIT B**. The applicant sent a letter to the neighbors on August 20, 2010 with a copy of the proposed landscaping plans for the access easement. A copy of this letter is attached as **EXHIBIT C**. Any additional correspondence received after August 27th will be brought to the meeting.

DISCUSSION OF ACCESS EASEMENT ISSUES:

The existing 12-foot wide paved access road to the site is within a 30-foot wide access easement located on three adjacent properties at 3763, 3767 and 3771 Via Granada. The access road easement is also adjacent to the property at 126 Moraga Road. The easement was recorded by East Bay Municipal Utility District (EBMUD) in 1954 prior to the Campolindo Subdivision. Therefore the access road was established prior to the creation of the lots upon which it is located. The applicant, Dan Wood, intends to have his attorney at the meeting to explain that all the owners of property that the easement crosses have legal access to the easement. Dan Wood cannot prohibit access to the road by any of these owners. Even if he were able to build an alternate access road from Corte Santa Clara, the existing access road would have to be maintained.

At the July 26th meeting, Dan Wood said that the Moraga-Orinda Fire District (MOFD) wanted the access road widened from 12-feet to 16-feet. Apparently, the current “Fire Apparatus Access Road Standards” state that the access roads for a single family residence shall be 16-feet wide. However, the applicant has learned that the Town of Moraga has discretion as to whether to follow this MOFD standard. The applicant has submitted a plan of the existing paved driveway within the 30-foot easement. The road alignment is not centered within the easement. At the east end of the driveway at Moraga Road, it is relatively close to the center of the easement, but then the driveway comes very close to the south side of the easement as it makes the turn to the south. The property owners at 3763 and 3767 Via Granada have existing fences within the access easement that would have to be moved in order for the driveway to be widened by 4-feet. In addition, the property owner at 3771 Via Granada has some retaining walls that would have to be relocated to widen the access road. The existing access driveway is shown on the GIS Aerial Photo below:

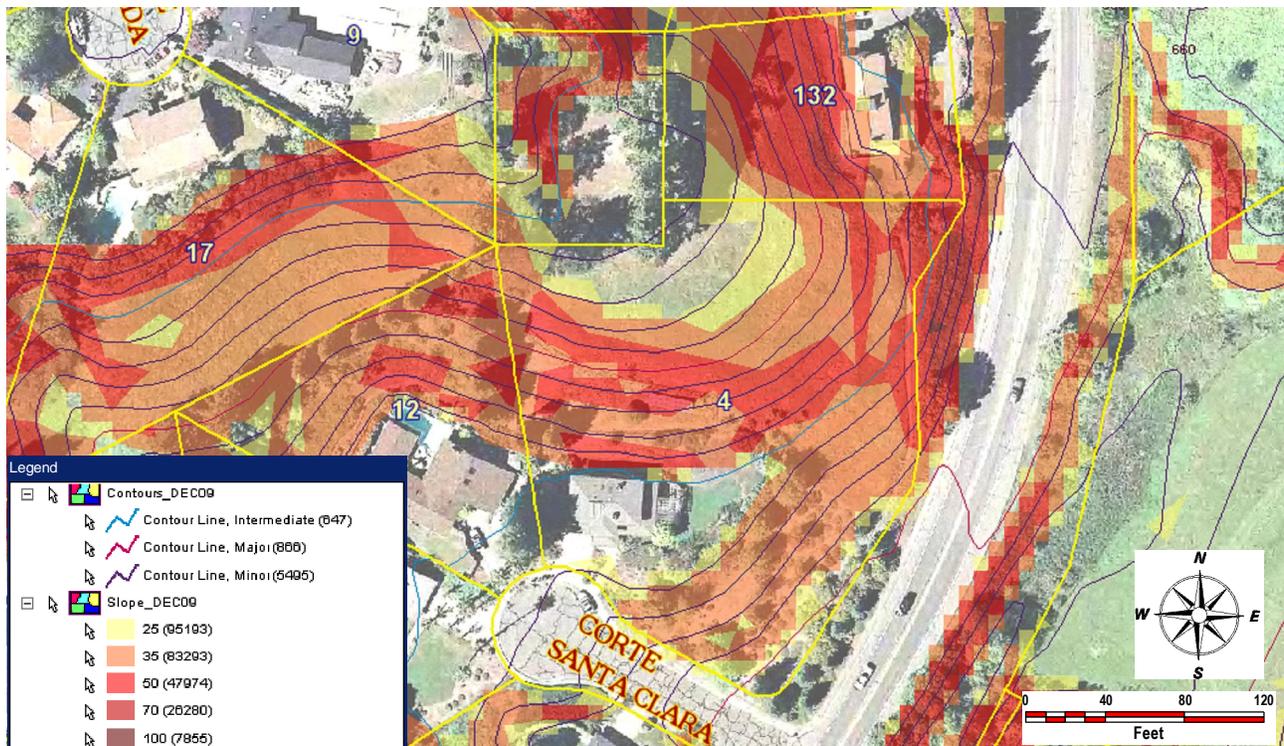


The proposed landscaping along the access driveway is primarily on the south and east sides of the road where there is space between the paved road and the easement boundary and the topography is flat enough to permit landscaping. There is a drainage channel along the north side of the driveway and a slope down to the fences. The applicant has offered to

install landscaping along the north side of the driveway if the neighbors are willing to move their fences to accommodate the landscaping within the access easement. The applicant's letter to the neighbors dated August 20, 2010 (Exhibit C) requested input from the neighbors with regard to the widening of the road, relocation of the fences and proposed landscaping. Staff suggests that if the neighbors do not want to relocate their fences, the DRB should consider an exception to the MOFD standard for a 16-foot wide road. 12-foot wide was the standard requirement for many years for a driveway to a single home. Of course it could be argued that since all four of the properties have legal access to the driveway, it should be widened to 20-feet, which is the standard for two or more homes on a private driveway.

DISCUSSION OF FEASIBILITY OF ALTERNATE ACCESS TO 120 MORAGA ROAD:

The applicant has submitted two studies prepared by his civil engineers, Schell and Martin, Inc., to show potential access routes from Corte Santa Clara to the project site. On study sheet one, alignment "A" would be the most direct route, but the slope of the driveway would be 28%. This slope would be too steep for access. Alignment "B" takes a longer route closer to the home at 132 Moraga Road. The slope of this alternative was maintained at 16.8%; however, the retaining wall heights necessary to build this road would be excessive, with some as high as 15-feet. The study on sheet two allows the slope of the access road to vary with a maximum slope of 20%, which is the steepest allowed by the MOFD. The retaining wall heights are still excessive. These access road studies are preliminary and only take into account the slope of the road. The geotechnical feasibility has not been determined. The slope map below shows that most of the slopes on the hillside below 120 Moraga Road are over 35% and some are over 50%.



Under the Town's Grading Ordinance, the grading required to install an access road from Corte Santa Clara would require approval by the Town Council with a recommendation from the Planning Commission because the average slope in the area of disturbance would

exceed 25%. Since the alternate access road could be seen from the Moraga Road scenic corridor, it is very unlikely that the high retaining walls would be approved. While it may be technically feasible to build an alternative driveway, such a driveway would not be aesthetically acceptable under the Town's design guidelines.

DISCUSSION OF VIEWS FROM SECOND FLOOR WINDOWS:

One board member at the July 26, 2010 meeting requested a plan to show the relationship of the proposed new home to the surrounding homes and questioned whether the views from the second story bedroom windows would impact the privacy of neighbors. The applicant's engineers, Shell and Martin, Inc., have prepared a "Context Map", to show the distances between the proposed new home and the surrounding adjacent homes. All the pad elevations of the existing homes and proposed home are also shown on this plan. Schell and Martin, Inc. also prepared a site section to show the sight line from the second story windows to the home below at 132 Moraga Road. People standing in the second floor would only be able to see the roof of the home at 132 Moraga Road. A site section was not prepared in the north-south direction because the adjacent homes that might be seen from the two windows in bedroom #3 that face to the north are over 300-feet from the windows and there are many trees that obscure the view. One of the neighbors testified at the July 26, 2010 DRB meeting that they could see the story poles from their bedroom. The story poles go up to the ridge of the roof on the new home. The top of the windows on the second floor would be 5-feet below the height of the ridge of the roof. The applicant set-up a ladder at the proposed location of the second floor and took pictures from this increased elevation to show that any views of adjacent homes is blocked by existing vegetation, except for his own home at 4 Corte Santa Clara. The applicant will bring these photos to the meeting.

PERMIT STREAMLINING ACT:

The application for design review was submitted on June 29, 2010. The Permit Streamlining Act requires a decision on the project within *60 calendar days* after a project has been found to be exempt from CEQA or a negative declaration is adopted for the project. The project was determined to be exempt from CEQA on July 14, 2010; therefore, the application must either be approved or disapproved by September 12, 2010 unless both the Town and the applicant agree to a one time 90-day extension. The applicant agreed to the continuance to the September 13, 2010 meeting date, but action should be taken at this meeting.

RECOMMENDATION:

Staff recommends approval of the application in accordance with the findings required by Planning Commission Resolution 16-01 and the conditions of approval listed in the Draft Action Memorandum attached as **EXHIBIT F** to the July 26, 2010 staff report. Depending on the testimony from neighbors with regard to the widening to the existing access road, relocation of fencing and the proposed landscaping along the access road, some additional conditions may need to be added to the draft action memorandum.

Prepared By Richard Chamberlain, Senior Planner

EXHIBITS:

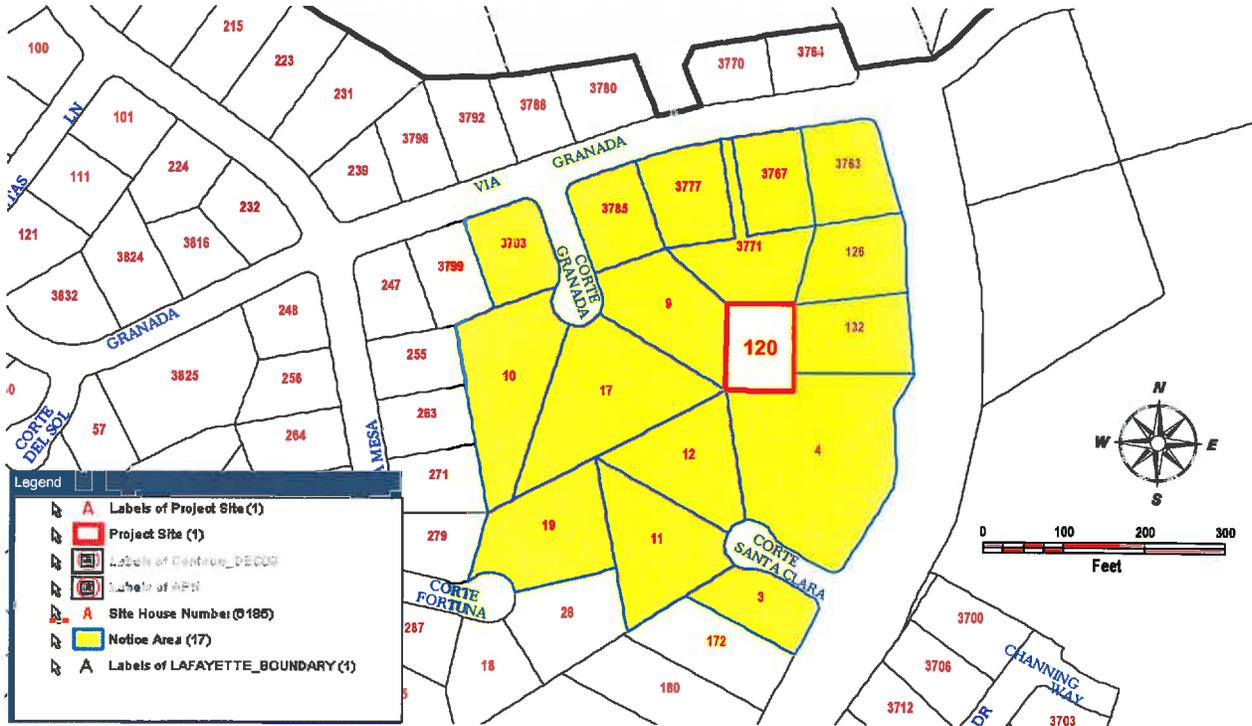
- A – Notice Area Map, Project Mailing List and Public Notice
- B – Copies of Correspondence Received at July 26, 2010 DRB Meeting
- C – Letter from Applicant to Neighbors dated August 20, 2010
- D – Applicant's Plans

EXHIBIT A

**NOTICE AREA MAP,
PROJECT MAILING LIST AND
PUBLIC NOTICE**

VICINITY MAP AND AREA OF NOTICE

File Number: DRB 08-10
120 Moraga Road



NOTICE

Town of Moraga

YOU ARE HEREBY NOTIFIED THAT on Monday, September 13, 2010, at **7:00 p.m.**, in the **Moraga Public Library Meeting Room at 1500 St. Mary's Road, Moraga, California**, the Design Review Board of the Town of Moraga will conduct a public meeting to consider the following application:

DRB 08-10 – Dan Wood (Applicant and Owner) 120 Moraga Road: An application for design review approval for a new 3,259 square foot two-story craftsman style residence, with a 771 square foot garage on a 33,715 square foot lot addressed as 120 Moraga Road. This project was reviewed at the July 26, 2010 DRB meeting and action was continued to the September 13, 2010 meeting for the applicant to provide improvement plans for the 30-foot wide access easement to the property. The applicant was also asked to study the feasibility of providing a new access road from Corte Santa Clara and submit a site section to show the angle of view from the second floor bedroom windows. The property is zoned 1-DUA (one dwelling unit per acre single family residential). APN 255-511-001.

Applicant and Owner
Dan Wood 4 Corte Santa Clara Moraga, CA 94556

The plans for this project are available for public review at the Moraga Planning Department, 329 Rheem Blvd. during normal business hours (Monday through Friday from 8 am to noon and 1 to 5 pm). Comments regarding the proposed project can be submitted in writing or orally at the public meeting. Written comments submitted to the Planning Department will be copied and submitted to the Design Review Board at their meeting. For additional information, contact the Planning Department at (925) 888-7042.

Richard Chamberlain
Senior Planner

DRB-08-10
Mailed Public Notice

120 Moraga Road Design Review Board
Mailing List

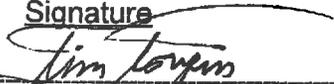
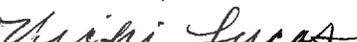
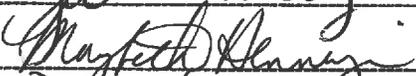
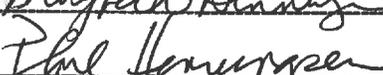
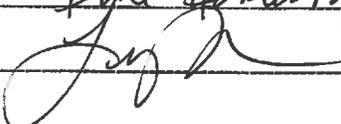
APN	NAME	ADDRESS	CITY & ZIP
255511009	Kevin P & Laura T Mccauley	9 CORTE GRANADA	MORAGA, CA 94556 1620
255511008	James O & Jill H Malley	3785 VIA GRANADA	MORAGA, CA 94556 1632
255511007	Werner G & Gisela Volkmer Trust	3777 VIA GRANADA	MORAGA, CA 94556 1632
255511006	Tim Sr & Pamela Toupin	3771 VIA GRANADA	MORAGA, CA 94556 1632
255511005	Ronald C Holmes	3767 VIA GRANADA	MORAGA, CA 94556 1632
255511004	Claude A & Eleanor I Persons	3763 VIA GRANADA	MORAGA, CA 94556 1632
255520006	David Y & Deanna J Fok	3 CORTE SANTA CLARA	MORAGA, CA 94556 1636
255531004	John & Gena Egelston	19 CORTE FORTUNA	MORAGA, CA 94556 1619
255520007	David P & Kathryn Marshall Trust	11 CORTE SANTA CLARA	MORAGA, CA 94556 1636
255520008	Kambod & Roya Azarmi	12 CORTE SANTA CLARA	MORAGA, CA 94556 1636
255520009	Dan H & Julianna Wood Trust	4 CORTE SANTA CLARA	MORAGA, CA 94556 1636
255511010	Vincent & Marina Debiasi Trust	17 CORTE GRANADA	MORAGA, CA 94556 1620
255511001	Real Estate Services	PO BOX 24055	OAKLAND , CA 94623 1055
255511002	Kevin M & Dillma A Johnson	132 MORAGA RD	MORAGA, CA 94556 1638
255511011	Tina Moretti	10 CORTE GRANADA	MORAGA, CA 94556 1620
255511003	Thomas V & Selma Mirante	126 MORAGA RD	MORAGA, CA 94556 1638
255511012	Donald & Vicki L Lucas	3793 VIA GRANADA	MORAGA, CA 94556 1650

EXHIBIT B

**COPIES OF CORRESPONDENCE
RECEIVED AT
JULY 26, 2010 DRB MEETING**

The Wood Residence at 120 Moraga Road

We, the undersigned, have reviewed the plans for the proposed residence and believe the design is well suited to the lot and is compatible with the houses in the neighborhood. We believe the proposed home will not have a substantial adverse affect on neighboring properties and will not lower property values in the area. We believe the new home will have a positive impact upon our neighborhood.

Address	Signature	Date
3771 VIA GRANADA		7/23/10
3771 Via Granada		7/23/10
11 Corte Santa Clara		7/24/10
11 Corte Santa Clara		7/25/10
3793 VIA GRANADA		7/25/10
3793 Via Granada		7/25/10
3785 Via Granada		7-26-10
2180 SkyView Ct.		7/26/10
2180 SkyView Ct		7/26/10
3879 CAMPO ULTO DR		7/26/10

Received July 26, 2010.
at DRB Meeting

RECEIVED

JUL 26 2010

MORAGA PLANNING DEPT.

Claude and Eleanor Persons
3763 Via Granada
Moraga, CA 94556

July 24, 2010

Design Review Board of the Town of Moraga
329 Rheem Blvd.
Moraga, CA 94556

Re: DRB 08-10

Dear Board Members,

My wife and I live at 3763 Via Granada. We have lived in our home for over 20 years and have raised our children here. We are extremely upset by the development proposed by Mr. Wood on the property formerly occupied by EBMUD. As I'm sure you know, EBMUD used the property in question for a water tank for many, many years, which is what it was used for when we bought our home.

We always assumed that the easement running across our property in favor of EBMUD could only be used for ingress and egress for the water tank. We never even considered the possibility someone would not only try to build a single family home on the property but that they would also try to use the easement running across our property for ingress and egress to and from such a home. Attached to this letter of comment is a copy of a map showing the easement and the properties impacted by the easement.

- 1) Our attorney has advised Mr. Wood that the existing easement in favor of East Bay MUD cannot be used for ingress and egress to a single family home. The terms of the easement are extremely limited and there is nothing in the easement documentation that remotely suggests that the use of the easement can be dramatically expanded for use in connection with a single-family home. East Bay MUD used the easement very sporadically. Two or three times per month someone from EBMUD used the easement to check on the water tank. However, as I'm sure you realize, if the easement is used by a single family home there will be 8 - 10 trips (in and out) or more across the easement every day. Furthermore, East Bay MUD never used the easement at night. Use of this easement for a single-family home will obviously involve nighttime use with automobile headlights which will shine right into my home. This represents a drastic intrusion of our privacy.
- 2) Our attorney has been in touch with Mr. Wood's attorney and has explained our legal position. Attached hereto is a copy of a letter our attorney sent to Mr. Wood many weeks ago explaining our position. We have had no written response from Mr. Wood or his attorney explaining to us why our legal position is incorrect.

July 24, 2010

Accordingly, there is an unresolved issue as to whether the easement, that goes through the backyard of our property at 3763 Via Granada, can be used as a driveway to access the single family residence that is the subject of the application referred to above. Since we believe the easement in question can not be used for a single family residence, the Design Review Board (DRB) should require Mr. Wood to construct an alternative access driveway to the planned home. Mr. Wood owns the property located at 4 Corte Santa Clara and a driveway to the new house can be developed across this property already owned by Mr. Wood. We have no objection to the home Mr. Wood wants to develop. Our only objection is to Mr. Wood's use of the easement that runs across our property. Until such time as Mr. Wood agrees to construct the new driveway on his existing property, the design review board should not take any action on the pending application.

- 3) The finding under "Required Findings for Design Review Board Approval", item 3 on page 4 of the Design Review Board Staff Report, indicates the proposed improvement "would not be considered a significant factor in either raising or lowering the value of adjacent homes". This finding is incorrect.

In fact there would be a significant negative impact on the adjacent properties, including our property. We estimate that since we acquired our property in 1989, the existing roadway was used by EBMUD for single trips to the previously existing water storage tank (for inspection purposes) an average of two times a month, on weekdays only, almost always between the hours of 10 a.m. and 3 p.m. and never at night. For the past 20 years, there was a locked gate at Moraga Road that was installed at our insistence to discourage trespassing through our backyard and invasion of the privacy of the homes adjacent to the roadway. Without any notification or approval by the affected properties, Mr. Wood had EBMUD remove the gate after he acquired the property.

The planned change of use of the easement through our yard from twice a month (no use at all in the past four to five years), to frequent regular day and night use as a driveway will have an extreme negative impact on the privacy, unimpeded views, and uninterrupted enjoyment of the backyards of our and adjacent properties.

This new proposed use will generate unacceptable noise and visible intrusion on the privacy of not only our property but the other adjacent properties as well.

Use of the easement at night will result in headlights shining into the backyard and the interior rooms of our home. Additionally, from the property line of the lot in question there is a direct view into the backyards and the interior rooms (including our own master bedroom) of the homes at 3763 Via Granada and 126 Moraga Road.

We would also like to point out that all of the landscaping and planning we have done on our home was based upon the use of the lot in question by EBMUD (not a single family home) including our backyard fence heights, and all of the plants and materials we have used. We and our neighbors were caught entirely by surprise when EBMUD decided to remove the water tank and later informed us the property was being put up for sale. I know that the same is true of our neighbors at 126 Moraga Road.

We consulted with a Real Estate agent with extensive sales experience in Moraga, Orinda and Lafayette to get an idea of the impact the use of the easement on our property for a single family home would have on the value of our home. We were informed the use of the easement for a single family home would diminish the value of our home by a minimum of \$75,000 to \$100,000. The existing EBMUD roadway is even closer to the side and backyard of our neighbors' home at 126 Moraga Road than it is to our home and therefore it is safe to assume the property at 126 Moraga Road would be financially impacted in a like or even greater manner. The other two properties would also be impacted.

- 4) Given that Mr. Wood owns the adjoining property on Corte Santa Clara (and has already applied for and been granted a lot line adjustment by the Moraga Planning Department adding property from his Corte Santa Clara property to the lot acquired from EBMUD), we believe there is a viable alternative for an access road to his planned single family home which has little if any impact on our property or any other adjacent properties. An access road, the visual impact of which could be mitigated by appropriate landscaping, could be built through Mr. Wood's own property at Corte Santa Clara (or even from Moraga Road) to the new lot. If anyone should suffer from the impact of the development of a new home on the lot in question it should be the developer, Mr. Wood and not my wife and me or our neighbors
- 5) Even if Mr. Woods is eventually able to convince a court that the existing EBMUD easement should be usable for a new single-family home, Mr. Wood has not proposed any plans to attempt to mitigate the extreme invasion on the privacy of all of the backyards, including ours, that the vehicles used by construction trucks, delivery vehicles and the eventual owners and guests of the new house will create. This is unacceptable.

In the unlikely event Mr. Woods can prevail in court regarding the use of the easement, we, as the owners of the property most impacted by the new development would anticipate a significant amount of input regarding what should be done to mitigate this impact, specifically as it relates to our property. We believe we have the right to expect the city of Moraga to protect our interests in this matter.

- 6) The landscaping for the planned home site includes the retention of the remaining existing Monterey Pines to mitigate the visual impact of the project. As the Design Review Board undoubtedly knows, Monterey Pines are subject to disease and insect damage and are dying off throughout the Lamorinda area. The trees in question were undoubtedly planted at the same time as the Monterey Pine trees that surround our property. We have been forced to remove numerous Monterey Pines on our property because they were diseased, dying or ready to fall. Many more will need to be removed soon.

The existing Monterey Pines planned for retention by Mr. Wood undoubtedly have a remaining life expectancy of less than ten years, after which there will be a clear unimpeded view into the properties below. Additionally, as these are non-native trees, Mr. Wood would be free to remove them at a later date without the need to apply for a tree removal permit. Obviously, when the existing trees die or are removed the impact of the use of the easement for the planned single family home will be even greater than it would be with all of the existing trees.

- 7) Mr. Wood acquired this lot for \$275,000, which we believe, considering the view, distance from Moraga Road, and the lack of intrusion from neighboring properties, is at least \$100,000, and probably substantially more, below market. We believe that this price reflects the fact that access to the EBMUD lot for a single family home is so uncertain. Accordingly, Mr. Wood was obviously aware that the lot in question had very uncertain access rights when he bought it from EBMUD.

In summary, we do not believe Mr. Wood has the right to use the easement on our property for access to a single-family home he is trying to develop on the lot in question and, to, we believe the extreme negative impact on the adjacent properties that would result from frequent day and night use of the easement as a driveway is so significant that any approval for development should be contingent on Mr. Wood's providing access through his own property located on Corte Santa Clara or from Moraga Road.

Design Review Board of the Town of Moraga
Page -5-
July 24, 2010

We believe the cost of constructing said driveway would bring Mr. Wood's cost for the lot in line with similar Lamorinda properties. In the event the easement for the new lot is constructed on Mr. Wood's property, the only homeowner that would be significantly impacted by the new development would be Mr. Wood himself.

In advance of submittal of these written comments to the Design Review Board, we have spoken with and presented this letter to our neighbor, Mr. Ronald C. Holmes, to determine if he concurs with our statements above. His property at 3767 Via Granada will also be impacted by use of the easement through his property as a driveway to the proposed new single family home. His handwritten response is below.

We have attempted to contact each of the members of the Design and Review Board to encourage you to visit our and the other adjacent properties so you can evaluate for yourselves the negative impact the proposed use of the easement that runs across our property will have on us and our neighbors. We appreciate your careful attention to this matter. Thank you. Please feel free to contact us at 925-284-5250.

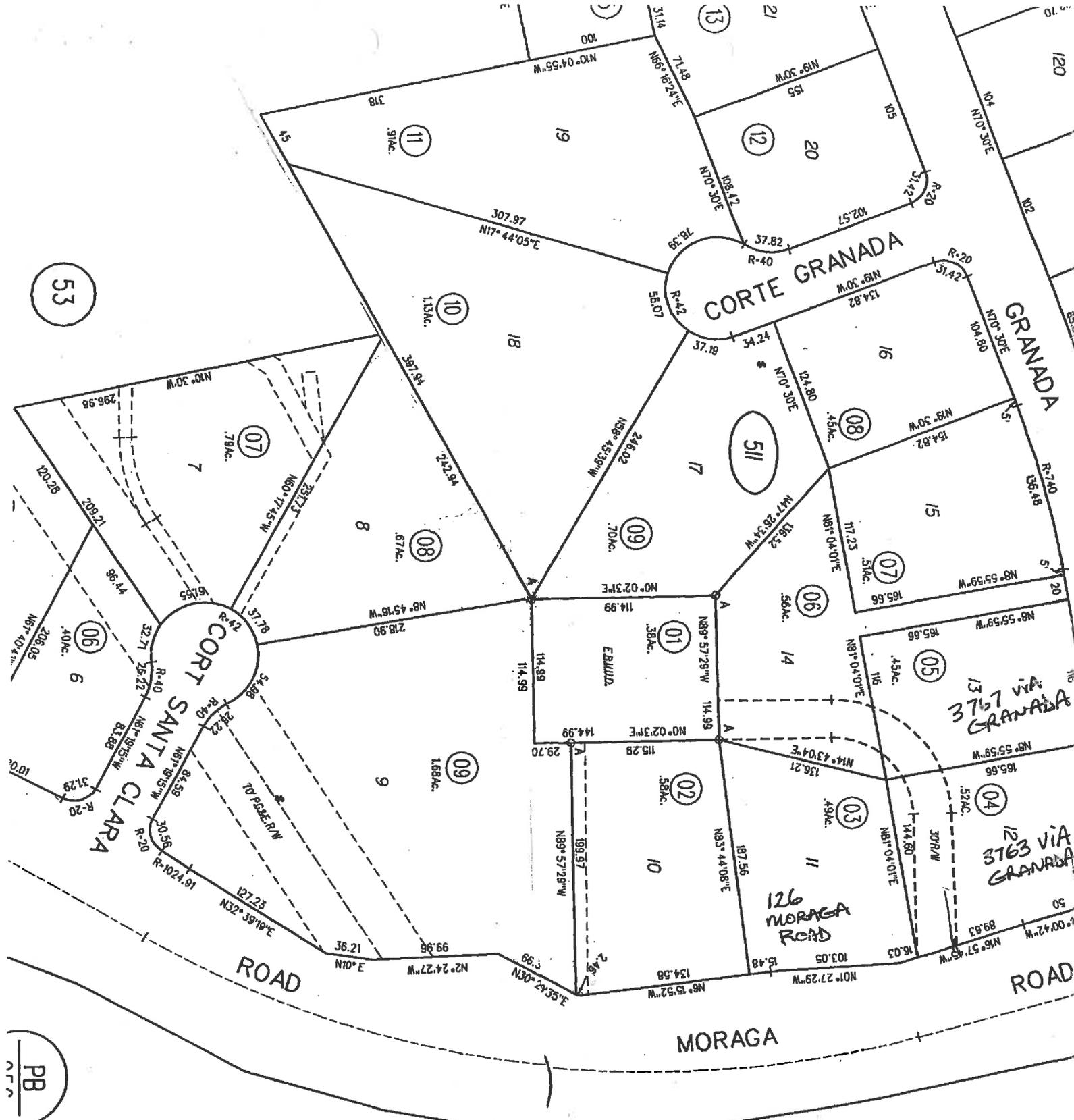
Sincerely,

Handwritten signatures of Claude and Eleanor Persons. The signature for Claude is written above the signature for Eleanor.

Claude and Eleanor Persons

I support the foregoing statements made
by Claude and Eleanor Persons.

Handwritten signature of Ronald C. Holmes.



53

CORTE GRANADA

GRANADA

CORT SANTA CLARA

MORAGA

126 MORAGA ROAD

3767 VIA GRANADA

3763 VIA GRANADA

PB
256





**MILLER STARR
REGALIA**

1331 N. California Blvd.
Fifth Floor
Walnut Creek, CA 94596

T 925 935 3400
F 925 938 4126
www.mslegal.com

Paul D. Marienthal
PDM@mslegal.com

March 31, 2010

VIA FEDERAL EXPRESS

Daniel Wood
4 Corte Santa Clara
Moraga, CA 94556

Re: 3763 Via Granada, Moraga, California

Dear Mr. Wood:

The undersigned represents Claude and Eleanor Persons who reside at 3763 Via Granada, Moraga, California. We have been informed that you have purchased the parcel previously owned by East Bay Municipal Utility District. As you know EBMUD owns a right of way easement which was granted to them by our clients' predecessor in 1954 pursuant to a deed which described the easement as "parcel two." This easement is described in the deed as a "right of way. . . for the purpose of constructing, reconstructing, preparing, maintaining and using a roadway over, along and across (the property)."

As I am sure you are aware, the property in question was used by EBMUD as a water tank, and the easement in question was used solely for the purpose of gaining access to the water tank by EBMUD. Nothing in this easement remotely suggests that the easement can be used for ingress and egress to and from a single-family home on the EBMUD property.

Accordingly, my clients are quite alarmed to discover that you intend to use the EBMUD property to develop a new single-family home and to use the easement as a driveway for this new home. Our clients' property would be materially and adversely impaired if the easement is used for ingress and egress to and from a single-family home. For the past 55 years the easement has been used very sporadically by EBMUD, which is what was always intended by the parties when the easement was created. California law is quite clear that the owner of an easement can not increase the use of the easement beyond what was originally intended. "The owner of an easement cannot change or increase the use of the easement in any manner that imposes a new or greater burden on the servient tenement without the consent of the servient owner. An unreasonable increase in the burden on the servient tenement resulting from an increase or change in the use of an easement is called a "surcharge." Furthermore, it is quite clear that the owner of the servient tenement (my clients in this case) have the right to enjoin any potentially excessive

Daniel Wood
March 31, 2010
Page 2

use of the easement. "An unreasonable increase of the burden may ripen into a prescriptive right and is a nuisance that can be enjoined by the owner of the servient tenement. A material increase in the use may also result in the forfeiture or extinguishment of the easement." Please see Miller & Starr "California Real Estate," 3rd ed. (2000), Volume 6, Chapter 15:55 at page 171.

It has also come to our clients' attention that you acquired the EBMUD property at a substantial discount because of the well understood problems associated with access to the EBMUD parcel. I have been advised that a typical lot in this community suitable for a single-family development has a value of approximately \$500,000 and that you paid approximately half this amount for the EBMUD parcel. Accordingly, you should not be heard to complain that you had no idea that the property does not have legal ingress and egress for a single-family development.

I also understand that you have removed the gate which has been on the easement for the past 20-30 years. This gate was installed at the insistence of my client many years ago and you had no right to remove this gate. Although you may own an easement over the property in question, this property is owned by my client and demand is hereby made that you immediately replace the gate that you removed. My client does not want people and cars from the community trespassing over this area, which is why the gate was installed in the first place.

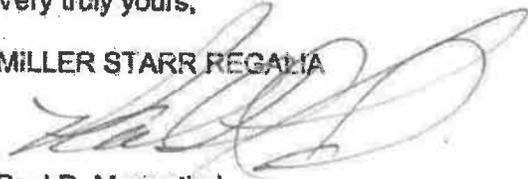
Based on the foregoing, demand is hereby made that you immediately cease all work on the easement in question and that you cease all efforts to develop a single family home on the EBMUD property that relies on the easement for ingress and/or egress. My clients insist that the easement only be used for the use originally intended by the parties and that no improvements to the easement area be made whatsoever. In the event you refuse to comply with these demands, our client will have no choice but to immediately seek to enjoin your efforts through court action.

In the event you have legal counsel please have such counsel contact me immediately.

Thank you for your help and cooperation

Very truly yours,

MILLER STARR REGALIA



Paul D. Marienthal

PDM:ajs

RECEIVED

JUL 26 2010

Thomas & Selma Mirante
126 Moraga Road
Moraga, CA 94556

MORAGA PLANNING DEPT.

July 23, 2010

Town of Moraga
Planning Department
Design Review Board
329 Rheem Blvd.
Moraga, CA 94556

RE: DESIGN REVIEW BOARD NUMBER 08-10

Dear Board Members,

We would like to bring to your attention some issues concerning the parcel 255-511-001. This parcel was previously owned by East Bay Municipal Utility District. The parcel was recently sold to Mr. and Mrs. Dan Wood. The following issues are of great concern to us, and our neighbors:

- 1. Lack of Privacy** - For the past 11 years, our family has enjoyed a private, open space backyard; there has never been an issue as to the lack of fencing to obstruct viewing into our backyard. A portion of our backyard was fenced in by the original property owners with chain-link fencing, as well as wood (below eye level) and large heavy-duty metal fencing materials, and the remainder of our backyard is open space, with a variety of trees and shrubs. Due to the type of fencing and open space, any person driving on the easement has a direct line of sight throughout our entire backyard to view our activities. Since EBMUD's use of the easement was minimal, their amount of time on the easement did not affect the privacy that our family enjoys, and there has never been a need for any other type of fencing or planting to enhance our privacy. We also enjoy the natural light in our home, and because of this, we keep the majority of our blinds and shades in the back of the house up and have so since we moved in on April 1999.

If Mr. Wood and family, visiting guests/clients, friends, delivery drivers, and potentially other neighbors are granted access to the easement as the official driveway of the residence, the increased noise level, and traffic at all hours of the day and evening, will have a detrimental and negative affect on our privacy and enjoyment of our property, both during the day and evening hours. In the evening, anyone on the easement will be able to view inside our home quite easily. We do not want to live with our window blinds always closed, and we would like to continue enjoying the natural setting of our property.

The increased traffic on the easement, and the lack of privacy, will also significantly lower our property value as stated by an established Lamorinda real estate agent that was consulted by our neighbors at 3763 Via Granada.

Since Mr. Wood was granted a lot line adjustment (application number LLA-02-10) for his current residence at 4 Corte Santa Clara and 120 Moraga Road, a solution to what will be our lack of privacy, would be for Mr. Wood to create a new driveway next to his existing home that will continue to his new property at 120 Moraga Road. This solution would only impact Mr. Wood since the home on 120 Moraga Road is directly behind his current residence. This would maintain our privacy and that of our neighbors, and only affect the Wood Family.

If it is determined that the easement will be the official driveway of the 120 Moraga Road property, we strongly request that Mr. Wood be required to erect a solid wood fence on his property line, for the entire length of the easement, to obstruct the view of numerous cars driving up and down the driveway. This would prevent such drivers gaining immediate viewing access to our backyard, and our living spaces.

2. **Objection to Repaving the Easement** – The existing easement is very close to our property already, and widening the road closer to our property line will increase the negative impact on our privacy and affect some of our trees.
3. **Impact of Increased Water Drainage** – The planned new construction will increase the water drainage onto our property from the roof and cement /patio surfaces of 120 Moraga Road. We are requesting that Mr. Wood be required to provide enough drainage on his property for rainfall so that our property does not receive additional drainage that will negatively impact our French drains that that on and surround our property. We are also requesting an Environmental Impact Report to determine the effects of drainage of rain water onto our property, and any other issues pertaining to the planned construction of 120 Moraga Road.
4. **Establishment of a Speed Limit of 5 mph** – The establishment of a speed limit on the easement as a safety measure would ensure that all drivers are not putting our family, property, neighbors, pets, deer and other wild animals in danger. We have observed Mr. Wood driving his work truck, family sedan, and a motor bike at speeds that appear too fast for our safety and that of our neighbors. There are neighboring children who tend to use the easement from time to time, as well as deer, wild turkeys, raccoons, and other wild animals. There is a significant potential for an accident to occur without a speed limit on an easement with a blind curve.
5. **Objection to Mr. Wood granting access of the easement to neighbors** - Our neighbors at 3771 Via Granada own a construction company, Toupin Construction, and have many company trucks (flatbeds, dump trucks, etc.). Recently, these construction vehicles have been using the easement to access 3771 Via Granada situated directly behind our home. With the upcoming sale of 3771 Via Granada, and if Mr. Wood is given full use of the easement, we request that the use of the easement is not granted to existing and future residents of 3771 Via Granada. This will also increase the amount of traffic on

of 3771 Via Granada, and if Mr. Wood is given full use of the easement, we request that the use of the easement is not granted to existing and future residents of 3771 Via Granada. This will also increase the amount of traffic on the easement and cause a detrimental and negative impact on our privacy and that of our neighbors.

6. **Confirmation that the neighbor's gravel and curved driveway directly in front of their home at 3771 Via Granada, and above our property can only be used for an emergency escape route** – Five years ago, Contra Costa County building inspectors (Mike Silva, Jeff Keebler, and Nestor Baligard(sp?)) determined that the gravel driveway facing Moraga Road shall be used strictly as an emergency escape route after we raised concerns for our family and property when a Toupin Construction truck lost traction on the gravel driveway, and the truck was tilted at an angle parallel to our home with the possibility of the truck rolling onto our property.
7. **Confirmation of allowed start and end of construction days and times** - As you are aware, City ordinance states that construction will not commence before 8:00 a.m., construction will conclude by 5:00 p.m. during weekdays, and there will be no construction during weekend hours. A company Mr. Wood hired recently began their tree removal equipment at 7:40 a.m.
8. **Prohibiting the parking of any vehicles, campers, work trucks, etc. along the entire easement**- Due to our privacy concerns we request that no vehicles be allowed to park on the entire easement for any length of time to ensure our privacy and that of our neighbors.

We invite members of the Design Review Board to visit our property to see the severe and negative impact we will suffer from the planned construction of 120 Moraga Road and the increased traffic. Please free to contact us at 925-283-3134 or stop by our home if you have any questions. Thank you for your time and consideration.

Sincerely,



Tom and Selma Mirante

EXHIBIT C

**LETTER FROM APPLICANT TO
NEIGHBORS DATED
AUGUST 20, 2010**

August 20, 2010

Dear Neighbor,

Enclosed is a copy of the proposed landscape plan for the southeastern side of the driveway for 120 Moraga Rd. All proposed plantings will be installed within the existing driveway easement between the southeastern edge of the existing driveway and the southeastern edge of the driveway easement. There is substantial existing landscaping on the this side of the driveway; the landscape architect has worked to fill in the "blank" spots. All the proposed plants are drought tolerant, appropriate to the region, and will be watered using drip irrigation.

On the north side of the driveway, there isn't sufficient space to install screening landscaping between the existing driveway and the fences within the driveway easement. Should you be willing to move your fences to the edge of the driveway easement, we will establish and install a similar landscaping plan for the north side of the driveway.

Since the Moraga DRB meeting, I have learned that the Town of Moraga has discretion as to whether to follow the standards put forth by the Moraga-Orinda Fire District. This is relevant to our situation regarding the width of the driveway. Currently, there is a 300' driveway that is 12' wide that services 120 Moraga Rd. Current Fire Apparatus Access Road Standards state that such roads for a single residence shall be 16' wide. If we are directed to widen the driveway, we will either have to eliminate the proposed landscape plan for the southeastern side of the driveway and widen it by 4' on that side, or widen the driveway on the northwestern side of the driveway, which would require the removal of the existing fencing and retaining walls. With your input, the Town of Moraga might allow the 12' wide driveway to remain as it has been for the last 54 years.

If you have any questions, concerns, or feedback, please do not hesitate to call me or email me.

Sincerely,

Dan and Julie Wood

4 Corte Santa Clara
Moraga, CA 94556
925-200-3358
dhwood1@comcast.net

cc: Richard Chamberlain, Senior Planner, Town of Moraga

EXHIBIT D
APPLICANT'S PLANS