

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**October 27, 2010
MINUTES**

7:00 P.M. Regular Meeting

Joaquin Moraga Intermediate School Auditorium
1010 Camino Pablo, Moraga, California 94556

I. CALL TO ORDER

The regular meeting was called to order at 7:17 P.M. by **Mayor Ken Chew**.

ROLL CALL

Councilmembers present: Mayor Ken Chew, Vice Mayor Karen Mendonca, and Councilmembers Howard Harpham, Michael Metcalf and Dave Trotter

Councilmembers absent: None

II. PLEDGE OF ALLEGIANCE

Mayor Chew led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

Mayor Chew thanked Town Manager, Michael Segrest, for his many contributions to the Town of Moraga which he outlined at that time. The Council expressed its appreciation to Mr. Segrest for his accomplishments and his service to the community.

Mr. Segrest expressed his appreciation and commended the Town Council for its support.

PUBLIC COMMENTS OPENED

Edy Schwartz, President, Moraga Chamber of Commerce, thanked Mr. Segrest for his service to the people of Moraga during his tenure with the Town. She commended his thoughtfulness and creativity and stated that he would be missed.

PUBLIC COMMENTS CLOSED

Tim Farley, Director of Government Affairs, Saint Mary's College, took the opportunity to introduce Lindsay Verber, the Saint Mary's College student liaison, who would attend various civic events in an official capacity for the Town of Moraga.

Lindsay Verber, a senior at Saint Mary's College, stated she looked forward to working with the Town Council in an effort to bridge the gap between Saint Mary's College students and the Town.

IV. PROCLAMATIONS AND PRESENTATIONS

A. Presentation of Certificates of Recognition to Local Businesses who Participated in the Central Contra Costa Solid Waste Authority's (CCCSWA) Food Waste Recycling Project During its Pilot Phase

Paul Morrison, Executive Director, CCCSWA, reported on the efforts to reduce the volume of waste through recycling. He described the food waste recycling project, the only project in the country with national recognition and stated that the Town of Moraga had been one of the participant communities. He recognized some of the restaurants that had participated in the pilot phase of the project which had been very successful.

Bart Carr, Project Manager, CCCSWA, presented the Certificates of Recognition to representatives from Royal Siam Thai Restaurant, Saint Mary's College and Terzetto's Italian Cuisine. He noted that the remaining recipients; Asia Palace and the Ranch House Café would be mailed their Certificates of Recognition.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

V. DISCUSSION ITEMS - None

VI. ADOPTION OF THE CONSENT AGENDA

A. Approval of the Consent Items

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Mendonca) to approve the Consent Agenda, as shown. Vote: 5-0.

- | | |
|---|----------|
| 1) Accounts Payable Claims for 10/08/10 (\$107,546.82) | Approved |
| 2) Approve Minutes from the Town Council Special Meeting
October 13, 2010 | Approved |
| 3) Adopt Resolution 81-2010 Establishing Rules for Election
of Council Officers and Rules of Proceedings for Conduct
of Council Meetings and Rescinding and Replacing
Resolution No. 51-2010 | Approved |
| 4) Approve Resolution 82-2010 Authorizing Staff to Enter
Into an Agreement with Stewart Heating and Air of Pittsburg
in an Amount not to exceed \$49,000 for Replacement of the
HVAC Systems at the Hacienda, CIP Project No. 10-305 | Approved |
| 5) Approve Resolution 83-2010 Authorizing Staff to Enter
Into an Agreement with Carrier Commercial Services of
Concord in an Amount not to Exceed \$40,000 for the | Approved |

Replacement of the HVAC boiler for the Moraga Library,
CIP Project No. 10-304

- 6) Proclamation Declaring November 3, 2010 to be 'Shelter
In Place Education Day' Approved

B. Consideration of Items Removed for Discussion

No items were removed from the Consent Agenda for discussion.

VII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Chew – Reported that he had attended the recent Audit and Finance Committee (AFC) meeting on October 25 and the Town Gown meeting at Saint Mary's College on October 26.

Vice Mayor Mendonca – Reported that she had also attended the AFC meeting and the October 26 Town Gown meeting; would be representing the Town of Moraga at Saint Mary's College's 150th Anniversary Steering Committee meeting; and had attended the latest Moraga Chamber of Commerce meeting.

Councilmember Harpham – No report.

Councilmember Metcalf – Reported that the Council had been provided with written information that had been presented to the Contra Costa Transportation Authority (CCTA) Board of Directors which had recapped the State budget process as it related to impacts to transportation.

Councilmember Trotter - Reported that he had attended the October 22 Central Contra Costa Solid Waste Authority Finance Committee meeting.

- C.** Town Manager Update – Mr. Segrest reported that there were three volunteers who would be working as the Town's Economic Development Director team with new Town Manager Jill Keimach. A meeting had been scheduled between those individuals and the Planning Commission for November 1. He also reported that the Mulberry Tree Preschool had requested the Town transfer its Preschool lease to the person who had been a minor owner/partner. The Town Attorney and the Town Manager had advised that the lease would have to be negotiated to bring it consistent with law prior to being submitted to the Town Council for consideration. He encouraged audience members to sign up to receive the About Town newsletter that included information regarding the community.

VIII. COMMUNICATIONS - None

IX. ADOPTION OF MEETING AGENDA

It was recommended that the meeting agenda be modified with Public Hearing Item B to be considered prior to Item A.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Harpham) to modify the Meeting Agenda, to move Public Hearing Item B as item A. Vote: 5-0.

X. PUBLIC COMMENTS AND SUGGESTIONS

Jonathan Goodwin, Canyon, commented on the investment the Town had made on a stretch of road from the white bridge to the Town line and asked that tar be placed in the cracks to protect the Town's investment.

IX. PUBLIC HEARINGS

- B.** Public Hearing and Request to Continue Consideration of Adoption of Resolution x-2010 Approving Grading and Hillside Development Permit 01-10 for Mr. and Mrs. Robert White (Owners/Applicants), 32 Buckingham Drive as Recommended for Approval by the Planning Commission to Council Meeting of November 10, 2010

PUBLIC COMMENTS OPENED

Rudy Mortenson, Moraga, expressed concern with the potential for slides since the rainy season had started and the mountain behind his home could be affected by the use of heavy construction equipment for the property located at 32 Buckingham Drive.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Harpham/Mendonca) to continue the Public Hearing and Consideration of the Adoption of Resolution x-2010 Approving Grading and Hillside Development Permit 01-10 for Mr. and Mrs. Robert White (Owners/Applicants), 32 Buckingham Drive, as recommended for Approval by the Planning Commission to the Town Council meeting of November 10, 2010. Vote: 5-0.

- A.** Public Hearing and Consideration of an Appeal of the August 17, 2009, Decision of the Planning Commission Approving the Rancho Laguna II Residential Development Project with 27 single-family lots, per Resolutions Certifying the Final Environmental Impact Report (EIR) and Approving a Conceptual Development Plan (CDP) and Conditional Use Permit (CUP) (*Continued from October 28, 2009, November 4, 2009, January 27, 2010, March 10, 2010, May 12, 2010 and May 26, 2010*).

Mayor Chew recused himself from the discussion due to the location of his residence within 500 feet of the subject property.

Councilmember Metcalf also recused himself from the discussion due to the location of his residence within 500 feet of the subject property.

Both **Mayor Chew** and **Councilmember Metcalf** stepped down from the dais but remained in the Council Chambers.

Vice Mayor Mendonca chaired the meeting at this time. She described the process for the public hearing with presentations by staff, the applicant, the appellants, questions from the Council, and then comments from the public.

Mr. Segrest presented the October 27, 2010 staff report and advised that when the item had last been considered by the Town Council, the Council had directed the applicant to work on a plan where none of the homes would be visible from Rheem Boulevard and the trail along Saint Mary's College, and that staff and the applicant work on a financing solution for the Rheem Boulevard repairs. A new Conceptual Development Plan (CDP) had been provided to the Town Council showing how the applicant had achieved those objectives. Lot 27 had been relocated to 'D' Drive and the grading plans had been modified for Lots 23 through 26. None of the lots along 'B' Drive would be visible as one traveled along Rheem Boulevard or from the trail across from Saint Mary's College although a portion of the roofs of Lots 10 and 11 on 'B' Court may be visible for a short duration because of a notch where 'A' Way intersected 'B' Drive. The homes would not extend above the skyline if extended across that notch although that void created a situation where the Council's directive would not be accommodated. Condition V-5-18 had been provided to ensure that the height of the homes not extend above the skyline, with a suggestion that through the design review process there would be an opportunity to thoroughly review the design of the homes to minimize their visibility.

Mr. Segrest explained that staff was prepared to provide a revised minute order that would require Lots 23 through 26 be relocated either to 'D' Drive in a reconfigured arrangement, or to 'C' Court prior to the approval of a General Development Plan (GDP).

With the reconfigured plan, the applicant could also eliminate 'A' Way and use Fayhill Road for access to the site. With fewer than 26 lots in the upper area, a separate EVA would not be required.

Mr. Segrest explained that the revised minute order would eliminate the visibility of any homes from Rheem Boulevard or along the trail along St. Mary's Road by eliminating the notch for 'A' Way, eliminate the extensive grading from Lots 23 through 26 and maintain a more natural land form, and eliminate the extensive hillside grading including a 14-foot high retaining wall and creek crossing required for 'A' Way while still providing the contributions for repairs to Rheem Boulevard, as previously agreed to by the applicant, with the exception of the area along 'A' Way to be eliminated. He added that the staff report had indicated that the net positive impact to the Town would be approximately \$17,000 a year from increased property and sales taxes including an offset for additional services. The road would be private with no additional costs to serve the area.

With the repairs to Rheem Boulevard, the Town would realize some savings in asphalt repairs of approximately \$25,000 a year, creating a net positive impact to the Town of approximately \$42,000 a year.

Mr. Segrest clarified that the geogrid solution had been the only preferred solution recommended by staff for the road restoration with some enhancements to the creek. The valley buttress method had been considered but would have involved fill coming from the project. The current configuration of the project would not require fill and it would be prohibitive to the Town to input fill for a valley buttress approach to stabilize Rheem Boulevard.

PUBLIC HEARING OPENED

APPLICANT:

Mark Armstrong, Project Manager, Rancho Laguna II Residential Project, reported that based on direction from the last Council meeting, the landscape plan had eliminated the hillside tree clusters that had been a concern, a slope map had been provided which had shown that the slope would be less than 25 percent as required by the Grading Ordinance, cross sections of

some of the lots had been provided as requested, and the landscaping plan and visual simulations including revisions to Lots 23 through 26 were appropriate and necessary to provide the roads and lots in that location. In response to the amended minute order, he suggested that they would be able to secure locations to shift Lot 23 to 'C' Court while also shifting one of the other three lots to 'C' Court. Nine lots would fit in the lower area but the lots would be narrower and some may have to include two-story homes as opposed to single-story homes. As to a condition for a shared responsibility between the Town and the applicant to stabilize and repair Rheem Boulevard, that condition had been negotiated between the applicant and the Town Manager and was supported by the applicant.

Mr. Armstrong agreed with the Town's Environmental Impact Report (EIR) Consultant on the visual analysis in that a semi-rural view from dirt public trails was less than significant. He commented that he had responded in writing to a letter from the appellants and suggested that excerpts from legislative history did not address the fact that the definition of the General Plan was clear and concise and should be followed. He noted the length of time required to accommodate the EIR process and the detailed appeal process of the past year with revisions to the project where much had been accomplished. He asked that the EIR be certified and that the CDP approved.

In response to the Council, Mr. Armstrong explained the intent that the bottom of the lower valley buttress be left where it was. The grading plan was preliminary and not final. As to changing the locations of Lots 23 and 24 to 'C' Court, that may be possible and there was a plan for an additional lot on the north side of 'C' Court that had been considered earlier in the process. Ultimately that had not been done since the lots were narrow and the desire was that they be kept wider. That concern could be addressed on either side of 'C' Court. As to Lot 23, he understood the intent that it be kept farther east on the pad. He was confident that the grading concerns raised by staff could be addressed.

Mr. Armstrong commented on the location of 'A' Way, and noted that an alternative analysis for access had been provided after the last hearing. Not having 'A' Way at its current location would be acceptable to the applicant. Fayhill Road intended to be a private access road, 24-foot in width with a trail for people to walk on the new private road alignment for the project. In response to the staff recommendation that the geogrid method was the only preferred method to stabilize Rheem Boulevard, he commented that there were no homes in the lower valley and it served no purpose to have a valley buttress method in the lower valley other than to stabilize Rheem Boulevard. If Lot 23 was eliminated entirely there would still be a road.

As to the elimination of 'A' Way, which currently crossed the creek, he stated that utilities would have to be brought up along the private road through a lift station. Stormwater would be addressed through underground pipes and would not require a maintenance road on the top, to be privately maintained by a Geologic Hazard and Abatement District (GHAD). Work would be done in that location and if a sewer was needed down the 'A' Way location, it would cross underneath the creek with a lift station on the other side and no need for a notch.

Vice Mayor Mendonca reported for the record that any ex parte communications would be reported by each Councilmember prior to Council deliberation.

APPELLANTS:

Suzanne Jones introduced Tom Packard, the Appellants' Consultant who had reviewed the visual impacts of the project.

Thomas Packard, Environmental Planning Consultant, Walnut Creek, representing the Appellants, spoke to the policies of the General Plan as related to the preservation of scenic

elements such as ridgelines, hillsides, and the potential for visual impacts from development. He presented graphics of the extent of the ridge top modifications proposed by the project with views of 'B' Drive and 'B' Court to the north and south. He noted that the development aspects of the project would be visible from public viewpoints along Rheem Boulevard, the Lafayette-Moraga Regional Trail, the Palos Colorados Trail, and the old Moraga Ranch Trail. He presented an animation sequence representing an experience traveling down Rheem Boulevard where the proposed 'A' Way would come into view and where some of the ridge top modifications had been proposed, with the excavation and removal of the top of the ridge, cuts on the hillside as required for 'A' Way, and where the homes would be visible in the excavated area. He noted that there would be some landscaping proposed for certain areas that had not been represented in the animation sequence.

A telephoto zoom view from the Lafayette-Moraga Trail was also presented demonstrating the extent of the ridge top modification required and views from the East Bay Regional Park District (EBRPD) portion of the trail. Views from the old Moraga Ranch Trail were also presented northward toward the project area with views of the ridge on which the project would be located and the extent of the modification of the ridge being proposed.

Mr. Packard read into the record General Plan Policies CD1.3 and CD1.5 as they related to the protection of ridgelines and hillsides and Guiding Principle 1. He suggested that the Palos Colorados viewpoint, if analyzed in the Draft EIR (DEIR), would result in a finding of significant impacts under the California Environmental Quality Act (CEQA). He suggested that the project was inconsistent with various General Plan policies and Guiding Principle 1 due to major alterations and reshaping of a major ridgeline and topography adding roads and homes to the ridge top since the ridge top was the most natural topographical feature of the site.

Responding to the Council, Mr. Packard reiterated his opinion that the Palos Colorados viewpoint, if analyzed in the DEIR, would result in a finding of significant impacts under CEQA. He noted that there was a wealth of data from studies that had been conducted throughout the country to demonstrate the fact that people preferred views of undeveloped as opposed to developed landscapes and that there was data to support the assertion that development diminished the scenic quality of landscapes of certain views. Given the extent and type of modifications to the landscaping, visibility of the project from the Palos Colorados Trail and the expectation of viewers using that trail for undisturbed landscapes, in his opinion that was the basis for a finding of significant visual impact under CEQA. In his opinion, the Palos Colorados Trail would be most affected by the Rancho Laguna II development.

Mr. Packard identified his professional credentials for the purposes of discussion with his life's work in scenic resource issues and visual impact studies. A copy of his professional résumé had been included as part of the staff report.

Bill Vaughn, Moraga, suggested that the project was inconsistent with General Plan Community Development Element Policy CD1.5. He stated that the General Plan rules should be applied using clear and unambiguous language. He noted that calling the ridgeline something else, such as a plateau, was unreasonable and undefendable. He suggested that the developer had twisted the definition of a ridgeline and had confused the issues raised by the concepts of the Moraga Open Space Ordinance (MOSO), in that major and minor ridgelines had been defined in the General Plan. He suggested that the staff report was in error that ridgelines had not been defined in the General Plan. He referenced Town Council meeting minutes from May 1, 2002, portions of which he read into the record, where ridgeline protection and hillside development had been discussed by the Town Council at that time. Based on his own suggestion as a member of the Town Council at that time, ridgelines should not be defined in Policy CD1.5, although he noted that he could not have foreseen that what the protection of ridgelines meant

would now be an issue. He urged the Town Council to review the record where the intent to avoid development on the ridgelines was clear.

Mr. Vaughn suggested that there was a loophole definition that the applicant was advocating that had been contradicted by the examination of the record and which had been directly rejected by the Town Council at that time for a broader definition of a ridgeline. He emphasized that Rheem Ridge was a ridgeline with respect to the application of the General Plan, that the record was clear as to the goals and intents behind the process and language as to that part of the General Plan, and that those former Councilmembers who were part of the past discussions on the General Plan from 1990-2002 had been clear as to their intent on that issue; that the main objective of the General Plan was to preserve and protect undeveloped ridgelines.

Mr. Vaughn suggested that the project was clearly in violation of that component. He asked the Town Council to grant the appeal and deny the project, without prejudice, with the appropriate modifications. When asked, he reiterated the background of the Town Council discussions from the May 1, 2002 Council meeting, whereby as a member of the Council at that time, it was clear that General Plan Policy CD1.5 was to extend to ridgelines outside of MOSO. He recognized that staff disagreed with that policy, as earlier discussed, and repeated that he had been a member of the Town Council from 1998 to 2002 and had been involved in all of the General Plan revision discussions.

As to whether or not his concerns with Rancho Laguna II had been raised during Planning Commission and Town Council meetings when the project had been considered, Mr. Vaughn affirmed that he had participated in all of those discussions. As to whether or not there was some ambiguity with the intent of the language in General Plan Policy CD1.5 and the definitional language in the back of the General Plan which the Town Council in 2002 had not revisited, he suggested that there was no ambiguity in that the definitions had come from the voter-approved MOSO text, which was where the major and minor ridgelines and 800 feet had been referenced.

Ms. Jones spoke to the project plan, specifically 'B' Drive Lots 23 through 26, and the discussion to potentially move those lots. She noted that those lots illustrated the problem with the ridgeline lots in that they would be built immediately on top of the ridgeline which would have to be removed. She noted that Lot 23 would require 35 feet to be removed from the top of the ridgeline. Lots 7 through 12 would also require the significant removal of the ridge top. Lot 7 required a 24-foot cut into the top of the ridge and included a 4-foot high, 100-foot long retaining wall on one side of the pad, and a 6-foot high, 75-foot long retaining wall on the other side. Lots 11 and 12 were different in that they had deep cuts although most of the development of those lots would be off of the crest of the ridgeline and would be least problematic. When asked, Ms. Jones noted that the ridgeline traveled all the way down to Lot 7, whereby Lots 7 through 10 were just as close to the ridgeline as Lots 23 through 26.

PUBLIC COMMENTS OPENED

Kirk Peterson, Moraga, stated that he had grown up in Moraga and had participated in the Citizens Planning Congress after the Town's incorporation. At that time, the consensus was clear that the Town's ridgelines should be protected. He supported the appellant's argument and asked that the project EIR not be certified and that the appeal be upheld. He noted that the General Plan had also spoken to the destruction of natural terrain which in this case would be enormous.

Teresa Onoda, Moraga, commented that she was aware of many residents who had moved to Moraga based on its semi-rural character and ridgelines, and who supported Councilmembers based on their support of the ridgelines. She asked the Council to oppose the development.

Brian Holt, Senior Planner, EBRPD, Oakland, advised that the EBRPD had submitted correspondence to the Town regarding the project, with specific concerns with the location of Lots 7 through 12, and Lots 23 through 26 due to the isolated condition of the homes on the ridgelines, the fragmentation of the open space area, greater risk to the homes in the event of a fire, and the demands on public service providers.

Erik Olafsson, Canyon, supported the appellant's argument and asked that the development not be allowed to destroy the ridgelines.

Jonathan Goodwin, Canyon, reminded the Town Council of the long history in Moraga of protecting ridgelines and creeks as evidenced by past projects.

Malcolm Sproul, Moraga, was pleased to see that the project had been redesigned to avoid the majority of impacts to the creek, although he remained concerned that the project continued to have significant impacts to the ridgelines where over 200 feet of the ridge tops would be graded away with deep fills on the east side. The magnitude of grading along the crest of the ridgelines was not consistent with the policies of the General Plan to protect ridgelines from development. He had submitted a letter to the Town Council dated June 21, 2010, which had outlined his concerns where Lots 7 and 17 would be visible from the Lafayette-Moraga Trail and all of the homes would be visible from the EBRPD Regional Connector Trail across the Palos Colorados site. He asked the Town Council to uphold the appeal of the Planning Commission action and deny the project as proposed and provide direction to the applicant to preserve the ridgeline and use the fill pads and overslopes of the area east of the creek for homes.

Dennis Wanken, Moraga, stated that he was neither pro nor anti development, but pro property owner. He asked the Town Council to uphold the recommendations of the Planning Commission and approve the project, and to uphold the law and applicable property rights. He expressed concern that the Town could be faced with legal action.

Larry Beans, Moraga, found the fact that 35 feet of soil would have to be removed from the ridgelines in order to make the project successful to be overwhelming and a concern.

Larry Korb, Moraga, opposed the development on the ridgelines and the plans for Road 'A' which would fill the creek.

Lynda Deschambault, Moraga, asked in the event the project was approved that the same green building standards imposed on Palos Colorados also be imposed on the Rancho Laguna II development to ensure consistency with approved projects. She asked that permeable concrete be used in the development given the potential water runoff. She applauded the changes for the protection of the creek and asked when the EIR was certified that those changes be reflected in the document. She spoke to the differences between the General Plan and MOSO and suggested that the appellant had demonstrated that it was a ridgeline, that there was no ambiguity with the area being discussed as a ridgeline, and that it was unmistakably the type of ridgeline intended to be protected by Policy CD1.5. She urged the Town Council to set a precedent and protect the ridgelines in the Town which had been the intent of previous Town Councils, that the Town Council uphold the General Plan, uphold the appeal, and deny the project as proposed and consider an alternative.

Barbara Simpson, Moraga, opposed development on the ridgelines. She too spoke to the history of MOSO and recognized that many existing homes in Moraga may not be allowed to be built today. She expressed concern with the fact that one of the appeals of the project was that the developer would repair Rheem Boulevard since the Town was not financially able to do so, although she did not find that to be a compelling reason to approve a project. She also expressed concern with access in the event of an emergency since the project involved only

one route in/out of Rheem Boulevard regardless of the fact that the Moraga-Orinda Fire District (MOFD) Fire Marshall had not indicated that would be a concern. Additionally, she expressed concern with the potential for two-story homes on some of the lots particularly if located along Rheem Boulevard.

Darwin Marable, Moraga, stated that he had recently moved to Moraga and he noted the variety of wildlife that resided in the area.

Frank Comprelli, Moraga, commented on the precedent set by the 2000 and 2002 Town Councils, and the precedent the current Council would establish for all future developments. He did not want to see development banned, although he would like to see reasonable development. He also expressed concern with a decision being based on whether or not the Town could be faced with legal action. He urged the Town Council to follow the advice of the Town Attorney.

The following individual did not speak but offered written comments on the speaker comment card:

Gillian Gray, Moraga, *'I am not against development. I oppose the houses on Rheem Boulevard 1 – 8 (?) as this is a wonderful scenic corridor - the last significant one on a main thoroughfare in Moraga. Should we define 'is'?'*

Vice Mayor Mendonca declared a recess at 9:50 P.M. The Town Council meeting reconvened at 10:15 P.M. with all Councilmembers initially shown as present and recused.

REBUTTAL:

Mr. Armstrong suggested that the focus of attention appeared to be on development along 'B' Drive. He also suggested that the project opponents liked the changes in the minute order but would like the applicant to go further, eliminating the homes on 'B' Drive to the north and removing the homes from 'B' Court to the south due to the grading. He clarified that the proposed grading would accommodate the streets and the homes. He noted that per Policy CD1.5, ridgelines were to be protected from development. However, Town staff had interpreted that policy that ridgelines had been defined in the General Plan definition section, D4, as either a major or minor ridgeline based on MOSO. If the applicant followed the appellants' request and removed Lots 7 through 12, development would be prohibited. He suggested that the test should be whether or not the grading was appropriate to place a home and whether or not the home and street ultimately were visible from any public viewpoint afterward, which it would not, and which was why 'A' Way would be relocated. He stated that the plan was consistent with the policies and guidelines of the Town's General Plan.

Mr. Armstrong responded to Mr. Vaughn's recollection of the legislative history of past Town Councils and noted that he had been present during many of the Town Council meetings referenced. While there had been a lot of back and forth during the process, the end result was a General Plan with a definition of a ridgeline that followed MOSO, which had defined ridgelines as above 800 feet. In this case, Lots 7 and 8 were at 700 feet and would be developed with visual integrity. He emphasized the clear direction of Policy CD1.5 had been to minimize impacts of the development which the project had done.

In response to concerns for two-story homes on 'D' Drive, Mr. Armstrong pointed out that they would be developing much less than 10 percent of the property with the remainder to be preserved. The project would also include a GHAD and trails throughout. He pointed out that the EBRPD trail on the far end of Palos Colorados looked over the Palos Colorados development and toward the Rancho Laguna II development. He commented that the visuals

that had been presented by the appellants were not panoramic in nature but had focused on a particular location. He emphasized that the views and the semi-rural character of the Town would not be changed.

Mr. Armstrong explained that the plan presented to staff had been analyzed by the Town's EIR Consultants who had given objective advice and recommendations. If the Town Council agreed with the appellants' argument that all development be prohibited on 'B' Drive would not protect the ridgelines, but prohibit development which was unreasonable and inappropriate and one reason staff had made the recommendation it had. As to a recommendation to limit development to a long access road serving 10 to 12 homes on the top, that was also not feasible given the important and expensive components required to develop down below which required fill to create a valley buttress. He also suggested it was not feasible for the applicant to make the changes being recommended by the appellants and still do what was necessary to stabilize Rheem Boulevard. He suggested that the project was visually sensitive, appropriately graded to allow a lot to accommodate a home in a way the homes would not be visible from the public view point, and the visual quality of the hillsides would not be impacted with tree screening. He stated that questions with respect to fire protection had been answered in the staff report and the project EIR mitigation measures called for a fire protection plan to be approved by the Town and the MOFD.

Ms. Jones provided the Town Council documents to demonstrate that the Palos Colorados Trail was a condition of approval as part of the Precise Development Plan (PDP) for that project. She also provided a copy of the appellants' PowerPoint presentation for the record.

Mr. Vaughn suggested that the applicant was incorrect in his reference to the definition of ridgelines as referenced in Appendix D of the General Plan which offered definitions for major and minor ridgelines. He disagreed with the argument that the General Plan was not required to follow the ridgeline, disagreed with the applicant's argument that any changes to the project were not feasible or reasonable, and corrected misinformation regarding the presence of the Town Attorney during prior Town Council discussions on the revisions to the General Plan.

Mr. Vaughn reiterated his background and the history of the past Town Council discussions regarding the General Plan revisions and discussions of the spirit and intent of the preservation of ridgelines and the application of MOSO. He read into the record an e-mail that had been sent to him from a former Councilmember who had concurred with his recollection of those discussions. He recognized that the Town wanted to avoid litigation but asked that the Town Council apply the General Plan as it had been intended which would give the Town the best legal standing and legal position moving forward.

In response to the Council, Mr. Armstrong commented that based on the evidence presented, some of the ridgeline homes would be visible along the Palos Colorados Trail but more so on the trail proposed for the subject development which had been approved as part of the map. Some portions of the subject project would be visible from any of the urban trails in the Town although a panoramic view from those areas would show a combination of open space and neighborhood development in a semi-rural appearance, which had been analyzed by the EIR Consultant as not having a significant impact.

Mr. Packard also responded to the Council in relation to the views of the Palos Colorados Trail in that his visual analysis scope was not what was typically done for a full EIR analysis. He suggested that an entire 360-view context from each of the viewpoints should be documented, inventoried, and considered in the impact assessment. The viewpoints that had been shown and photos used to present the project represented the view now and in the future toward the project site. The Palos Colorados Trail had been accurately depicted in the views used and the change in the character of that view. He disagreed that placing the Rancho Laguna II

development on the ridgeline would not change the character of the view based on the imagery provided and used in the appellants' PowerPoint presentation.

Town Attorney Michelle Kenyon stated that she had reviewed the staff report and as it had been stated by the applicant and the appellants, the General Plan was to be considered as a general document. She had been present at the time the provisions had been discussed and added into the General Plan in 2002, and there was an understanding that the document was general in nature and there was to be some interpretation. As to the definition of a ridgeline, she stated that was left up to the Council to interpret. In terms of the protection of the ridgelines, however as defined in the General Plan, protect did not mean prohibition of development on ridgelines. As to legislative intent, that was something for the Council to consider. However, if the matter were to go to court, the court would be looking at the face of the General Plan to determine whether or not there were any ambiguities. Only if the court found ambiguities would it then look to the legislative history. In this case, the legislative history was important for the Town Council to determine how it wanted to interpret the General Plan. She suggested that the Town Council had discretion in interpreting what protection of ridgelines meant.

ACTION: It was M/S (Harpham/Trotter) to extend the Town Council meeting to 12:00 A.M. Vote: 3-0. (Metcalf and Chew recused.)

Planning Director Lori Salamack affirmed when asked by the Town Council that she had helped prepare the staff report with the Town's Consultant Contract Planner, had been hired by the Town of Moraga in May 2001, and had been present as the Planning Director for many of the Town Council meetings in 2002 when the legislative history had been discussed. In her opinion, the Town had a lot of discretion with respect to the hillside issue as reflected in Policy CD1.5, as written. If the Town Council determined that the cuts required specifically for Lots 23 through 26 did not retain the character of the existing land form, the Town Council may indicate that those proposed lots were not consistent with the General Plan. She found that to be a reasonable interpretation of the General Plan. Policy CD1.5 directed the Town to protect the ridgelines from development but had not been intended to prohibit ridgelines from development.

Ms. Salamack also referenced the definition of ridges in the General Plan and the language of MOSO as related to the major ridgelines, whereby MOSO did not prohibit development in other ridge areas although development would be subject to strict design review control. Based on that, it was improper to assume that the intent of the language to protect the ridgelines from development meant to prohibit development on the ridgelines.

Ms. Salamack added that a ridge and a ridgeline had been terms used in the General Plan, although they meant different things. She read the definitions of both terms into the record at this time. She commented that she had recognized the definitions as being consistent with those in MOSO and recognized that the introduction to the definition section stated when the word was used and what it would mean. She also spoke specifically to Lot 7 and the proposed retaining walls, and noted that it was at a pad elevation of 718 feet with the very rear of the pad at 715 feet. The pad was being created at the lowest level of the existing contours. In order to create that lot retaining walls would be required. The Town Council may determine that the presence of the retaining walls had not preserved the character of the existing land form and that lot could be found to be inconsistent with the General Plan.

Phil Erickson, President, Community Design and Architecture, a sub-consultant with the Town's EIR Consultants, advised that he had submitted correspondence in response to the appellants' visual presentation and the new views that had been submitted. In response to why the DEIR had not considered the views from the Palos Colorado Trail, he noted that the DEIR had been issued in July 2006, the Palos Colorado CDP in 1999, its GDP in 2007, and the PDP in 2009.

The definition of the trail and its acceptance as a public trail had been unclear and had not been included as a viewpoint in the DEIR. However, he had worked with staff to analyze representative viewpoints in Moraga and Lafayette for the EIR. As to the potential future public trail, as stated in his correspondence, he did not see the viewpoint rising to a level of significance in terms of the impacts. When asked, he was uncertain of the percentage of the lots that would be visible from the Palos Colorados Trail since that analysis had not been done. He added that the simulations had not included landscaping and must be considered in terms of the character and impact of the views.

PUBLIC HEARING CLOSED

Reporting on ex parte communications, **Councilmember Harpham** stated that he had communication with Mr. Armstrong by telephone on more than one occasion and had spoken by telephone on one occasion and had met with Ms. Jones.

Councilmember Trotter reported that he had one communication with Mr. Armstrong some months ago when the then-revised plan had been presented along with members of Town staff in the Town offices. He also had communications with appellant group member Ms. Jones on intermittent occasions since May 26, 2010.

Vice Mayor Mendonca reported that since May 26, 2010, she had received numerous letters and e-mails from the appellants, from the public, Town staff, correspondence and e-mail from the applicant, met in person with Malcom Sproul, Bob Merritt, Caroline Wood, Dick Emmel, Teresa Onoda, Suzanne Jones, Susan Sperry, Bill Vaughn, and had conversations with Jan Bloomer, Megan Leuteneker, and Jim Simpkin.

Recognizing the lateness of the hour, Mr. Segrest explained that the Town Council had voted to extend the meeting to 12:00 A.M. The Town Council could decide to extend the meeting if no decision was made at that time or continue the meeting to a future meeting date.

As to the revised minute order, the Council expressed concern with any potential additional changes or revisions to the document given the lateness of the hour and given that the Town Council had yet to see the revised document.

In response to the Council, Ms. Salamack commented that Lot 7 contained two retaining walls to create the pad but Lot 8 did not. Lots 8 and 9 were more alike than Lots 7 and 8 because Lots 8 and 9 were split pads and the contour lines were at the same elevation. The pre-grading contour line was at 705 feet and ran to the back of both pads. There was a five-foot difference between the corners of the pads for Lots 8 and 9. One was at 735 and the other at 730 feet. She would not evaluate that as a significant difference.

Vice Mayor Mendonca allowed Mr. Armstrong to address the Council at this time to discuss the subject topic.

Mr. Armstrong explained that they were making changes to the project without having 'A' Way. Some of the grading to address Lots 7 through 9 had focused on that location. He emphasized that the applicant and staff had gone through great detail with respect to Lots 23 through 26. He did not want to see Lots 7 and 8 be eliminated from the project just because they had not been allowed to evaluate that issue. He clarified that the retaining wall was on the south side of Lot 7 and was there since they were not grading on the adjacent property owner's land. This was the first time he had heard complaints about the retaining wall and suggested that it could be eliminated along with the pad down the hill. He recommended that the grading on those two lots be identified as something that needed to be addressed in the PDP stage. He was confident they would be able to demonstrate that Lots 7 and 8 would work.

ACTION: It was M/S (Harpham/Mendonca) to extend the Town Council meeting to 12:45 A.M. Vote: 3-0. (Metcalf and Chew recused.)

Ms. Kenyon clarified for the benefit of the audience that the public hearing had been closed, although the Town Council had the opportunity to ask questions of the applicant or the appellants.

Mr. Armstrong stated that he was comfortable making the revisions to Lots 23 through 26, although if the Town Council desired to eliminate Lot 7, he would rather that be done at the PDP stage. He emphasized that this was the first time in the entire process that there had been a focus on the specifics of Lot 7. He otherwise commented that the tree that had been identified in that area had been recommended by staff to remain and the lot would have to be reconfigured as a result. He would rather see a notice in the minute order to show that Lot 7 may potentially be eliminated and allow the applicant at a later stage the opportunity to show the Council how the lot could be changed.

Mr. Segrest asked whether or not the Council would be willing to consider the revised minute order since it would not be difficult to add the language "and potentially for Lot 7."

Ms. Kenyon commented that the Council would have to be willing to modify the minute order if it wanted to include Lot 7, which would require more Council review. She was comfortable with the Council acting on the revised minute order based on the language prepared by staff which had been based on the new configuration that had been presented by staff, although she was not comfortable adding additional lots given the lateness of the hour. She asked the Council to determine whether it needed to make a decision tonight. She was not opposed to a two-week continuance if that was what the Council decided.

Mr. Segrest pointed out that the next meeting of the Council would include the continuation of the Dollar Tree application and the residence at 32 Buckingham Drive. The Town Council may have to consider scheduling a special meeting or continuing the item after the first of the year.

Town Clerk Marty McInturf advised that a special meeting had been tentatively scheduled for December 1, 2010. The dates of November 17 or 18 had been selected as potential dates for the State of the Town Address.

Speaking from the audience, Mr. Armstrong stated that he would not be ready if the item were continued to November 17, 2010. He asked that Lot 7 be identified in the PDP stage where Lot 7 may be removed. He was not asking for any changes to the contribution element. He was prepared to take the risk that the Town Council may not be convinced to allow Lot 7 to remain and noted that the applicant's contribution would remain the same.

In response to concerns that the revised minute order had not been presented for public review and comment, Ms. Kenyon clarified that the minute order was not a document that required review. The Town Council may adopt a minute order verbally.. In this case, alternative versions of the subject minute order had not been provided to the applicant or the appellants. She stated that the Town Council would have to decide whether or not that was an appropriate process for the appeal hearing, although from a legal perspective, that was an adequate method. She asked whether or not the applicant was willing to accept a revision to the minute order as crafted by staff, which she again acknowledged the Town Council had not seen and which could be revised to indicate that Lot 7 would be eliminated or be reconsidered at the PDP stage.

Mr. Segrest clarified for the record that he had verbally presented the content of the minute order at the beginning of the public hearing as part of the staff report, that there had been ample opportunity to comment, and that there would be no surprises in the written form.

Ms. Jones expressed concern with Lots 7 through 10. She understood that the grading would change in that area and the appellants would like the opportunity to see what would be changed on the plans, noting that the appellants' opposition may change based on the revised plan. She emphasized the potential significant exposure to litigation for the Town which no one wanted. She suggested that if the Town Council approved the minute order at this time with uncertainty with respect to Lot 7, Lots 7 through 10 would essentially be approved.

Ms. Kenyon stated that if the Council chose to place language in the minute order that stated Lot 7 was eliminated it would be eliminated unless or until such time as the Council decided to put it back in. That would require public hearing notification as part of the regular public hearing process and would be considered as part of the GDP stage.

Mr. Segrest stated that what staff had suggested would provide enough direction for the applicant to move forward and satisfy the Town Council's concerns with respect to Lots 7 through 10, and would not disenfranchise the appellants in terms of potential litigation.

Ms. Kenyon agreed that the status of Lot 7 could be dealt with in the GDP stage. She asked for the opportunity to show the Town Council the minute order when the Council could decide whether or not it wanted to make any revisions. She suggested that the elimination of Lot 7 could be included without a great deal of modification.

The Town Council took the opportunity to review the minute order at this time.

Ms. Kenyon offered language to be included in the minute order to the first paragraph of Page 1, insert the following language "Lot 7" before the text reading "Lots 23 through 26," Page 2, after the first sentence revise the second sentence to read "Lot 7 requires the construction of significant retaining walls that indicate that the proposed development is not consistent with the pre-development contours of the site;" at the end of that same paragraph after the text reading "EVA" insert the following language "and Lot 7 shall be eliminated from the project unless the applicant can demonstrate to the satisfaction of the Town Council at the General Development Plan stage that the lot can be developed consistent with the requirements of the General Plan."

In response to the changes to the proposed minute order, Mr. Vaughn understood that the Town had an ordinance with a maximum length for cul-de-sacs with no secondary access and which had come about relating to fire safety. If 'B' Drive were reconfigured, the maximum length could be affected. He reiterated that the changes to the project had not been analyzed. He questioned whether the applicant could add lots to the project at a later date.

Ms. Kenyon stated that the lot could not be reinserted, once removed, unless specific findings could be made by the Town Council.

At this time, the Town Council discussed the revisions to the minute order and the appeal of the Rancho Laguna II Residential Development and made the following comments and/or direction to staff:

- **Councilmember Trotter** - Expressed concern with the language in the minute order, specifically the language as revised for Page 2; expressed concern with the pre- and post-grading changes on Lot 8 although the minute order had stated that Lots 23 through 26 were not consistent while those lots below were; questioned the rationale being created in the context of General Plan consistency and urged further consideration

of Lot 8; asked that Lots 23 through 26 specify where those lots would be relocated; suggested that three of the lots should be relocated to the reconfigured 'D' Drive and only one of the lots be considered for reconfiguration along 'C' Court; clarified with staff the intent of Conditions B-16-H and B-16-E; and clarified with the applicant the desire for Condition B-16-H to be eliminated from the conditions. He noted that there was nothing in the minute order that stated there shall be no valley buttress fill of the lower creek area and that the Town Council would pursue a geogrid approach.

In response to the request by **Councilmember Trotter** that the minute order include language that there shall be no valley buttress fill of the lower creek area and that the Town Council would pursue a geogrid approach, Mr. Segrest suggested that could be added to the language of the minute order.

ACTION: It was M/S (Harpham/Mendonca) to extend the Town Council meeting to 1:15 A.M. The motion FAILED by the following vote:
Ayes: Harpham, Mendonca
Noes: Trotter
Abstain: None
Absent: Metcalf, Chew [recused]

Ms. Salamack clarified, when asked, that the lots on 'B' Court and 'C' Court had within the area of the pad at the elevation of the pad a contour that was at that same elevation, and that condition was not true for Lots 23 through 26.

ACTION: It was M/S (Harpham/Mendonca) to extend the Town Council meeting to 1:15 A.M. The motion FAILED AGAIN by the following vote:
Ayes: Harpham, Mendonca
Noes: Trotter
Abstain: None
Absent: Metcalf, Chew [recused]

Ms. Kenyon advised that given the failure of the motion the Town Council had one minute remaining to discuss the item.

- **Councilmember Harpham** - Recommended that Lots 25 and 26 be relocated to the reconfigured 'D' Drive and Lots 23 and 24 be relocated to the reconfigured 'C' Court.
- **Vice Mayor Mendonca** - Was not opposed to the lots being split 2-2 or 3-1 and was disappointed that the Town Council could not reach agreement on the minute order.

Ms. Kenyon explained on the discussion that even if the Town Council would like to consider a continuation of the item at this time, a unanimous vote on a motion to continue would have to be made to continue the Town Council meeting given that it was now 12:45 A.M.

Councilmember Trotter offered a motion to continue the Town Council meeting to 12:50 A.M. solely for the purpose of establishing a continued hearing date. The motion failed due to the lack of a second.

XII. ORDINANCES, RESOLUTIONS AND REQUESTS FOR FUTURE ACTION

There were no ordinances, resolutions or requests for future action.

XIII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

There were no requests for future agenda items.

XIV. ADJOURNMENT

ACTION: The meeting adjourned at 12:45 A.M.

Respectfully submitted by:

Marty C. McInturf, Town Clerk

Approved by the Town Council:

Ken Chew, Mayor