

**TOWN OF MORAGA  
PLANNING COMMISSION MEETING**

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

January 21, 2020

7:00 P.M.

**MINUTES**

**1. CALL TO ORDER**

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

**A. ROLL CALL**

Present: Commissioners D'Arcy, Davis, Helber, Hillis, Lueder, Luster, Chairperson Stromberg

Absent: None

Staff: Derek Farmer, Planning Director  
Steve Kowalski, Senior Planner

**B. Conflict of Interest**

There was no reported conflict of interest.

**C. Contact with Applicant(s)**

There was no reported contact with applicant(s).

**2. PUBLIC COMMENTS**

There were no comments from the public.

**3. ADOPTION OF CONSENT AGENDA**

**A. December 16, 2019 Minutes**

Commissioner Helber requested clarification of the motion shown on Page 8 of the December 16, 2019 Minutes, which motion included revisions to conditions of approval. He asked for assurance from staff that the conditions, as revised, reflected the entire text of the conditions.

Planning Director Derek Farmer suggested the minutes be tabled to allow staff the opportunity to clarify the minutes which could be brought back for adoption at the next meeting of the Planning Commission.

On motion by Commissioner Luster, seconded by Commissioner Davis to continue the approval of the December 16, 2019 Minutes to the next meeting of the Planning Commission. The motion carried by the following vote:

Ayes: D'Arcy, Davis, Helber, Hillis, Lueder, Luster, Stromberg  
Noes: None  
Abstain: None  
Absent: None

#### 4. ADOPTION OF MEETING AGENDA

On motion by Commissioner Luster, seconded by Commissioner Helber to adopt the Meeting Agenda, as shown. The motion carried by the following vote:

Ayes: D'Arcy, Davis, Helber, Hillis, Lueder, Luster, Stromberg  
Noes: None  
Abstain: None  
Absent: None

#### 5. PUBLIC HEARING

##### A. Design Review Board/Planning Commission Consolidation and Accompanying Zoning Code Text Amendments

Conduct a Public Hearing and Consider Adopting Planning Commission Resolution \_\_ - 2020 Recommending the Town Council Adopt an Ordinance Amending Various Sections of Title 2 – Administration and Personnel , and Title 8 – Planning and Zoning, of the Moraga Municipal Code to Effectuate the Consolidation of the Design Review Board and Planning Commission, and Making Various Changes to: (A) the Planning Commission Officer Appointment Procedures Set Forth in Chapter 2.12 – Planning Commission of Title 2 to enable the Planning Commission to Re-Elect an Officer for Consecutive Terms Without Requiring Town Council Approval; (B) the Appeal Rights of the Planning Commission Set Forth in Chapter 8.12 - Planning Agency of Title 8 to No Longer Allow a Planning Commissioner to Appeal a Planning Commission Decision; (C) the Development Standards Set Forth in Chapter 8.44 – Suburban Office District of Title 8 to Streamline the Application Review Process for New Professional Office Uses Attempting to Locate in that District; and (D) the Design Review Procedures for Additions or Alterations to Single-Family Residential Properties Set Forth in Chapter 8.72 – Design Review of Title 8 to Exempt Certain Minor Improvements from the Design Review Process.

(Project Planner: Steve Kowalski, Senior Planner)

Senior Planner Steve Kowalski presented a PowerPoint presentation of the item as outlined in the staff report dated January 21, 2020. The Planning Commission had continued the item from the meeting of December 16, 2019, with direction to staff to make certain changes to the ordinance based on input from the Planning Commission.

Mr. Kowalski recommended the Planning Commission adopt the Draft Resolution contained in Attachment A to the staff report which recommended the Town Council adopt an ordinance amending several sections of Titles 2 and 8 of the Moraga Municipal Code (MMC). Along with the amendments staff had previously identified during the December 16 meeting, staff had also recommended two additional amendments, as follows:

- Effectuate the consolidation of the Design Review Board and Planning Commission to help streamline the planning review process.
- Change the Planning Commission officer appointment procedures set forth in MMC Section 2.12.080 to enable the Commission to re-elect by majority vote an officer for consecutive terms without requiring approval of the Town Council.
- Change the appeal rights of the Commission set forth in MMC Section 8.12.240(A) to no longer allow one of its members to appeal a Planning Commission decision.
- Change the development standards of the Suburban Office District set forth in MMC Section 8.44.050 to facilitate the establishment of new professional uses attempting to locate in that district, and
- Change the design review procedures for single-family residential properties set forth in MMC Section 8.72.030 to exempt certain minor improvements from the design review process.

The Planning Commission may also provide additional amendments to be forwarded to the Town Council for consideration. Final adoption of the ordinance by the Town Council was anticipated in March 2020, with the ordinance to go into effect 30 days from the final adoption date.

Responding to the Commission, Mr. Kowalski described the Town's current appeal process of a decision of the Planning Commission to the Town Council. Appeal by an applicant required a \$135 deposit which covered the staff time for the appeal. A third-party appeal required a \$1,000 deposit and the Appellant would be required to pay the entire staff costs for processing the appeal. Staff reports were shared with the Town Attorney who billed for his/her time, which costs could escalate depending on the volume of legal questions. Currently the ordinance allowed a Planning Commissioner to file an appeal of a Planning Commission decision absent an appeal fee. Staff recommended that clause be modified to change the appeal rights of the Commission set forth in MMC Section 8.12.240(A) to no longer allow one of its members to appeal a Planning Commission decision. This change had been recommended by staff based on concern with potential legal action that had been brought against the Town by an applicant who had been subjected to a recent appeal.

Mr. Farmer also explained why staff was now recommending a change in the Planning Commission officer appointment procedures as set forth in MMC Section 2.12.080 to enable the Commission to re-elect, by majority vote, an officer for consecutive terms without requiring Town Council approval.

Mr. Farmer stated it was common practice to have a new Planning Commission Chair and Vice-Chair elected each year, although when consecutive officers had been elected in the past, Town Council approval had not been sought first as required by current MMC regulations. The Planning Commission by-laws stipulated the number of terms for a Planning Commissioner. As an example, at the time that Vice-Chair Luster had been elected Vice-Chair consecutively from 2018 to 2019 that decision should have gone before the Town Council first for approval pursuant to the MMC. That had not occurred and Vice-Chair Luster had been elected by motion to serve again for 2019.

Mr. Farmer also clarified, as an example, the Planning Commission Chair or Vice-Chair would not have to recuse himself or herself as a member of the Moraga Center Specific Plan (MCSP) Implementation Project Citizens Advisory Committee (CAC) since the charter, which had established the MCSP CAC, had been clear as to the roles and duties with specific instructions provided to the members of the MCSP CAC who served on other committees and what could or could not be deliberated in public. That would also not preclude those members' participation on the MCSP Implementation Project discussions.

Chairperson Stromberg stated as a member of the MCSP CAC, he had intentionally avoided expressing any opinions that may serve as a basis for an applicant or someone in the community to move to recuse him from voting as a member of the Planning Commission.

Mr. Kowalski advised that each member of the Planning Commission served a two-year term with terms expiring October 1 of each year, and with each member to serve until a qualified successor had been appointed. Members could be appointed to a maximum of three consecutive terms unless the Town Council determined that continued service of a member was in the best interests of the Planning Commission or the Town.

Mr. Kowalski again clarified the appeals clause and the staff recommended modification and the changes proposed to Chapter 8.44, Suburban Office District Section 8.44.050 – Development standards, as outlined in the staff report and in the Draft Resolution.

In response to a recommendation by Commissioner Davis to bifurcate the two newest changes staff had proposed (appeal clause and Planning Commission officer appointment procedures) and separate them from the other recommendations to the ordinance, there was no consensus to take such action at this time.

Commissioner Davis opposed the amendment that removed the current ability of a Planning Commissioner to appeal a decision of the Planning Commission. He cited a recent appeal by a Planning Commissioner which had served the Town well, and had been a good example of a Planning Commissioner's ability to file an appeal, particularly given the fee structure.

Chairperson Stromberg questioned how the assessment of fees would be handled and he too cited the recent Planning Commissioner appeal of a Planning Commission decision to the Town Council. He asked if Planning Commissioners should be required to pay the appeal fees when appealing an item.

Chairperson Stromberg understood that if the staff recommended amendment precluding a Planning Commissioner from appealing a decision of the Planning Commission was approved, it would not preclude a Planning Commissioner from seeking to find a receptive voice on the Town Council to possibly revisit the decision of the Planning Commission.

Commissioner Davis suggested that a member of Town government in the course of his or her duties should not be assessed personal fees in the course of those duties.

Commissioner Lueder suggested that a Planning Commissioner being allowed to appeal a decision of the Planning Commission went beyond the responsibilities as a Planning Commissioner and should be considered a personal appeal.

Commissioner Helber clarified with staff the Town Council had the ability to appeal a decision of the Planning Commission at no cost and a Planning Commissioner or any member of the public could theoretically request that a Town Council member appeal an item.

The Planning Commission and staff discussed the staff recommended revision to change the appeal rights of the Commission set forth in MMC Section 8.12.240(A) to no longer allow one of its members to appeal a Planning Commission decision at length subject to the noted concerns, and there was no general consensus to accept the staff recommendation. There was a recommendation to further revise the staff recommended amendment to the MMC to read: *Change the appeal rights of the Commission set forth in MMC Section 8.12.240(A) to no longer allow a Planning Commissioner in his or her capacity as a Planning Commissioner to appeal a Planning Commission decision.* The Planning Commission acknowledged that even with the revised language there would still be an appeal fee that would be applied.

Commissioner Davis expressed the willingness to accept the new language that would alleviate his reservations with the staff recommendation on the appeal issue.

[Note: The Chair did not open the Public Hearing and did not ask for public comment.]

Commissioner Luster disagreed with the removal of the ability of a Planning Commissioner to make an appeal of a Planning Commission decision. She referenced the language that had been used in the Draft Resolution as shown in Attachment A to the staff report, and recommended that all language implying opinions and emotions should be stricken from the document and the staff arguments and proposed resolutions should be based on facts and citations of the governing documents. She saw no language in the findings portion of the proposed resolution defending the request to remove the appeal right of a Planning Commissioner.

Commissioner Luster referenced the last sentence of the second to last paragraph of Page 4 of the January 21, 2020 staff report which read: *The most recent case of this type of appeal was the Los Encinos residential development project, which was approved by the Planning Commission on June 3, 2019 by a 4-2 vote, then later appealed by a Commissioner to the Town Council, where the appeal was ultimately denied and the Commission's approval was upheld on July 31, 2019.*

Commissioner Luster suggested that statement was false. The Los Encinos Project, as proposed and as approved by the Planning Commission, had not been upheld by the Town Council, and per the appeal's request modifications had been made by the Town Council pertaining to incompatible code discrepancies found in at least two design guidelines and one condition of approval. The Town Council had also found it fitting to require two additional conditions of approval regarding private screening of potential construction impacts and those changes had been approved unanimously by the Town Council.

Commissioner Luster referenced the first sentence of the last paragraph of Page 4 which read: *By amending MMC Section 8.12.240(A) to clarify that one Commissioner can no longer appeal the decision of a component member of the planning agency on which he or she sits, the process will be more in line with general planning ordinance standards and remove one layer of appeal rights from a process whose intentions have been called into question*, and clarified the intentions of the most recent appeal had been clear and documented. It was not uncommon in the legal system for the interpretation of the law to be challenged and language in the MMC pertaining to the appeal process and Planning Commissioner qualifications had twice been given precedent as a right given to Planning Commissioners. She also disputed the last sentence of the same paragraph of Page 4, which read: *This change is being proposed by staff to help further streamline the application review/approval process and reduce the risk of future legal actions taken against the Town by an applicant who may decide to question the legality of the process*, noting that a Planning Commissioner's right to appeal had only been used twice in the Town's history, that right could not fall under the category of burdensome to the general application process, and streamlining of the process and potential legal pushback were not defensible reasons to ignore the General Plan, MMC, or public sentiment when reviewing a project.

Commissioner Luster also referenced the second to last WHEREAS clause, as shown on Page 2 of the Draft Resolution, and suggested that the use of the term "disagrees" in the clause implied frivolity and personal opinion while the appeal had been based on the siting of numerous project elements found to be inconsistent with the General Plan, MMC, and public sentiment. She suggested the use of the term "disagrees" could be replaced with other language such as "finds inconsistent with Moraga's General Plan and MMC."

Commissioner Luster went on to comment that an appeal was the only process by which a project could be further scrutinized and pushed up to the next level of review, not by the same body but the elected Town Council. If a Planning Commissioner appealed to the Town Council, the Council had the right to review the project or dismiss the appeal, a fair and straightforward process under the law to all parties involved. The lack of an appeal process for Planning Commissioners would force Planning Commissioners with justified concerns to make backdoor requests to either Councilmembers or private citizens to appeal a project. The current right to appeal ensured that the arguments of the Planning Commissioner were kept public and all intentions kept above board, and was a basic tool of checks and balances within the Town's governing and decision-making bodies.

Commissioner Luster further commented that the Planning Commission operated under majority rule and each Commissioner who had been interviewed and appointed

individually by the Town Council should have the right to request a project be further scrutinized by a higher decision-making body.

Commissioner Luster recognized that growth was inevitable, property owners had the right to develop and the State was enacting legislation pushing for more development, but the Town still retained the responsibility of ensuring that development was sound and in accordance with Town laws, with much of the responsibility put in the hands of the Planning Commission. She suggested the current process was pure and the rights of the Town and its citizens to appeal were being properly exercised. For those reasons, she opposed removing the right of a Planning Commissioner to appeal a Planning Commission decision. She was not opposed to discussing an alternative as to how a Planning Commissioner may appeal a project, such as requiring any project that consisted of more than one single-family dwelling or development over an acre to be heard by the Town Council subject to recommendations from the Planning Commission.

Chairperson Stromberg acknowledged that while not unanimous there was some consensus from the Planning Commission to bifurcate the items as Commissioner Davis had initially recommended given the comments from Commissioner Luster.

Commissioner Helber expressed concern making the process more cumbersome for staff and rather than bifurcate the discussion as the Chair had recommended the Planning Commission should determine whether it could reach a decision for a single resolution to be forwarded to the Town Council versus two separate resolutions. He suggested the discussion could be narrowed down to one to two elements, with one motion for one resolution, to be forwarded to the Town Council.

Chairperson Stromberg agreed that breaking up the resolution into various components would burden staff. He sought further input from Planning Commissioners on staff's latest recommended zoning text amendments.

Commissioner Luster supported Commissioner Helber's recommendation to striking entirely the staff recommendation to change the appeal rights of the Commission set forth in MMC Section 8.12.240(A) to no longer allow one of its members to appeal a Planning Commission decision.

Chairperson Stromberg recognized there was Planning Commission consensus to approve the staff recommended revisions with the exception of the issue regarding appeals.

Commissioner D'Arcy questioned how consecutive terms for the Chair and Vice-Chair would be handled, to which Mr. Kowalski again walked through the current MMC regulations regarding the election of Chair and Vice-Chair of the Planning Commission as related to consecutive terms and the staff recommended amendment.

Commissioner Lueder understood the Town Council itself had some recent controversy as to who was entitled to hold office, and based on what had been reported on that discussion he expressed concern with a Town Council decision on Planning Commission officers.

Mr. Kowalski explained that it had not been staff's intent that a Planning Commissioner should not be allowed the right to appeal. What staff was trying to say was that a Planning Commissioner must take off the Planning Commission hat and wear a citizen hat and pay the appeal fee. Staff's intent was if a decision did not go in favor of the minority, the minority should not have a second opportunity to appeal unless the higher power was convinced to call up the item.

Commissioner Davis suggested that Commissioner Luster's counterpoint, which he supported, had made it clear that a Planning Commissioner should have the opportunity to appeal. He also suggested that having a Planning Commissioner be required to approach a Councilmember to support a request for an appeal would likely result in a claim of violation of the Brown Act and deep censure.

Commissioner Helber recommended as a compromise that if any Planning Commissioner wanted to file an appeal, a second Planning Commissioner be required to sign off on that appeal. He asked if that would address the staff concerns.

Mr. Farmer suggested there would be no legal ramifications to such an approach if clearly worded as such in the MMC.

Chairperson Stromberg suggested if a Planning Commissioner was unable to obtain support from a fellow Planning Commissioner, the Planning Commissioner still had the fallback opportunity to appeal as a member of the community subject to the applicable appeal fee.

Mr. Farmer suggested that would not address the central tenet that staff had proposed, that the same component agency would still be appealing the decision of the same component agency of the Planning Agency.

Chairperson Stromberg commented that if an application obtained a vote from the majority of the Planning Commission and if a Planning Commissioner was of the opinion the vote was inconsistent with Town documents and desired an appeal to the Town Council, the applicant may decide that would place the application in jeopardy costing the applicant more money and raising certain legal issues that could result in legal action against the Town by the applicant.

The Commission discussed the issue at length in an effort to retain a Planning Commissioner's ability to appeal a Planning Commission action, recognized that the current system had never been legally challenged by any client or been abused or overused and had been effective, understood that any appeal to the Town Council could be dismissed by the Town Council, and discussed ways that Planning Commissioners could validate an appeal without violating the Brown Act.

Commissioner D'Arcy was uncertain why a Planning Commissioner should have a more exalted level of speaking to the Town Council absent the payment of an appeal fee than would be the case with a typical Moraga citizen.

Mr. Farmer clarified that staff had researched different jurisdictions in terms of whether the staff recommendation would be consistent with other municipalities. Based on staff's

research, other municipalities either did not allow a Planning Commissioner to file an appeal or their codes had not mentioned that a Planning Commissioner could file an appeal.

Commissioner Lueder stated that based on the comments, he was convinced that the current language in the MMC should stand as is, particularly since the process had only been used twice in ten years and had not been burdensome to staff.

Commissioner Helber offered a motion, seconded by Commissioner Davis, to approve the Draft Resolution contained in Attachment A to the staff report, subject to the elimination of the staff recommendation to: *Change the appeal rights of the Commission set forth in MMC Section 8.12.240(A) to no longer allow one of its members to appeal a Planning Commission decision.*

On motion by Commissioner Helber, seconded by Commissioner Davis to recommend the Town Council adopt an Ordinance Amending Various Sections of Title 2 – Administration and Personnel, and Title 8 – Planning and Zoning, of the Moraga Municipal Code to Effectuate the Consolidation of the Design Review Board and Planning Commission, and Making Various Changes to: (A) the Planning Commission Officer Appointment Procedures Set Forth in Chapter 2.12 – Planning Commission of Title 2 to enable the Planning Commission to Re-Elect an Officer for Consecutive Terms Without Requiring Town Council Approval; (B) the Development Standards Set Forth in Chapter 8.44 – Suburban Office District of Title 8 to Streamline the Application Review Process for New Professional Office Uses Attempting to Locate in that District; and (C) the Design Review Procedures for Additions or Alterations to Single-Family Residential Properties Set Forth in Chapter 8.72 – Design Review of Title 8 to Exempt Certain Minor Improvements from the Design Review Process. The motion carried by the following vote:

Ayes:	Davis, Helber, Hillis, Lueder, Luster, Stromberg
Noes:	D'Arcy
Abstain:	None
Absent:	None

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

There were no Routine and Other Matters.

## **7. REPORTS**

### **A. Planning Commission**

Commissioner Luster reported she had attended two Liaison Meetings and a meeting of the Alcohol Drug Abuse Prevention Team (ADAPT), and briefed the Commission on the discussions.

### **B. Staff**

Mr. Farmer also briefed the Planning Commission on the Liaison Meetings and reported there may be additional funds in the Town's Capital Improvement Program (CIP)

regarding a proposed crosswalk in front of the Rheem Theatre, with more details to be provided when known. He added the MCSP Implementation Project Draft Zoning, Development and Design Guidelines Study Session, which had been scheduled for February 5 had been canceled due to Senate Bill (SB) 330, which had become effective on January 1, 2020. Staff was required to conduct more review in terms of the proposed changes to the code and design guidelines to ensure consistency with SB 330. The next regular Planning Commission meeting scheduled for February 3, 2020 would also be canceled with the next meeting scheduled for Tuesday, February 18, 2020. In addition, Planning Commissioners were asked to file their re-applications by Thursday, January 23, 2020 by 5:00 P.M. with the Town Clerk.

Chairperson Stromberg encouraged Commissioners to download and educate themselves on SB 330, which universally impacted cities and towns in California.

## 8. ADJOURNMENT

On motion by Commissioner Helber, seconded by Commissioner Davis to adjourn the Planning Commission meeting at 8:21 P.M.

A Certified Correct Minutes Copy



Secretary of the Planning Commission