

**TOWN OF MORAGA
PLANNING COMMISSION REGULAR MEETING**

Via teleconferenced locations

May 4, 2021
6:30 p.m.

MINUTES

THIS MEETING WAS CONDUCTED PURSUANT TO THE PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20, WHICH SUSPENDED CERTAIN REQUIREMENTS OF THE BROWN ACT, AND PURSUANT TO THE SHELTER IN PLACE ORDERS OF THE HEALTH OFFICER OF CONTRA COSTA COUNTY, INCLUDING THE MOST RECENT ORDER DATED FEBRUARY 25, 2021, AND OTHER SUBSEQUENT ORDERS, WHICH PERMITTED THE TOWN TO CONDUCT ESSENTIAL BUSINESS UNDER THE ORDER AS AN ESSENTIAL GOVERNMENTAL FUNCTION.

Consistent with the Executive Orders from Governor Gavin Newsom and the Contra Costa County Health Officer Orders including the most recent Order dated February 25, 2021, the May 4, 2021 Regular Meeting was not physically open to the public. Planning Commissioners and essential Town staff teleconferenced into the meeting.

Chairperson Luster described the Zoom Webinar format and identified the available Town of Moraga website links allowing the public to participate with the Planning Commission in order to provide public comment.

1. CALL TO ORDER

Chairperson Luster called the Regular Meeting of the Planning Commission to order at 6:30 p.m.

A. ROLL CALL

Present: Commissioners Bode, Davis, Helber, Lueder, Thiel, Vice Chairperson Hillis, Chairperson Luster

Absent: None

Staff: Afshan Hamid, Planning Director
Mio Mendez, Assistant Planner
Brian Horn, Associate 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

Chairperson Luster reported no public comments had been received for this item.

3. **ADOPTION OF CONSENT AGENDA**

A. **March 2, 2021 Meeting Minutes**

On motion by Commissioner Helber, seconded by Commissioner Thiel to adopt the Consent Agenda, as shown. The motion carried by the following Roll Call vote:

Ayes:	Bode, Davis, Helber, Hillis, Lueder, Thiel, Luster
Noes:	None
Abstain:	None
Absent:	None

4. **ADOPTION OF MEETING AGENDA**

On motion by Commissioner Helber, seconded by Commissioner Davis to adopt the meeting agenda, as shown. The motion carried by the following Roll Call vote:

Ayes:	Bode, Davis, Helber, Hillis, Lueder, Thiel, Luster
Noes:	None
Abstain:	None
Absent:	None

5. **PUBLIC HEARING**

A. **Renewal of a Conditional Use Permit (UP 08-020) for an Existing Wireless Communications Facility with Antennas and Equipment Located on an Existing PG&E Transmission Tower and Installation of a Diesel Generator within the Existing Ground Level Equipment Enclosure Located Northeast of Fay Hill Road adjacent to the East Bay Municipal Utility District Fay Hill Reservoir (APN 256-040-025).**

Planning Director Afshan Hamid expressed her appreciation to Planning Commissioners for e-mailing her questions about the application which allowed staff to be prepared prior to the meeting. She stated the questions and responses had been shared with the Planning Commission and had been made available to the public on the agenda website.

Ms. Hamid described the request to renew the Conditional Use Permit (CUP) for an existing Wireless Communications Facility located northeast of Fay Hill Road adjacent to the East Bay Municipal Utility District (EBMUD) Fay Hill Reservoir and close to the Bellavista Subdivision, with existing wireless facilities on the existing PG&E tower. She reported that staff had conducted a site visit to the property earlier in the day and had reviewed the project and its context.

Associate Planner Brian Horn provided a PowerPoint presentation of the AT&T Wireless Facility CUP Renewal which included an overview of the request for a 10-year renewal of a CUP for an existing wireless communication facility and the installation of a 30 kilowatt Generac diesel generator for emergency use within the existing AT&T equipment enclosure. He highlighted the project chronology, site location, the context with the Moraga Open Space Ordinance (MOSO) Minor Ridgeline which ran through the property, and presented southwest and northwest elevation views.

The criteria for the use permit renewal, radio frequency (RF) test and the details for the enclosure fencing, landscaping and emergency generator including photo simulations were also provided. The project was categorically exempt from the California Environmental Quality Act (CEQA) Section 15301, Existing Facilities, with no additional review required.

Mr. Horn explained that since the AT&T Wireless communication facility is consistent or could be made consistent through the recommended conditions of approval with the provisions of the Wireless Communications Ordinance, as shown in the May 4, 2021 staff report, the Zoning Ordinance and General Plan, as well as the criteria for renewal of the CUP as established in Planning Commission Resolution No. 07-2009, he recommended the Planning Commission approve the application and adopt the resolution contained in Attachment A to the staff report, subject to Conditions of Approval.

Responding to the Vice Chair, Mr. Horn explained that current photographs that had been displayed of the site and which had also depicted the adjacent Verizon Wireless facility had been taken on March 12, 2021. Verizon's planting plan had been installed at that point and consisted of manzanita shrubs which should grow to around 15 feet in height and 10 feet in width at maturity. As part of the 2019 Verizon application, slats for the chain link fence and the landscaping had been installed but staff was uncertain the shrubs had been 24-inch box sized plant material. Verizon had not finalized the permit and staff had not conducted a close out of the Verizon application.

Vice Chairperson Hillis provided an overview of the 2019 application for Verizon Wireless and the Planning Commission's discussion at that time around the landscaping where the applicant was required to install native vegetation subject to approval by the Planning Department to screen the existing equipment enclosure. The vegetation was required to be a minimum 24-inch box sized, the species had not been specified, and staff at that time had recommended the species be left open to the Planning Director to establish the plant material as long as there would be trees. As stated, the Planning Commission had specifically required 24-inch box sized plant material, which had been included in the meeting minutes for that application. Based on the replanting plan submitted by AT&T, specifically Sheet L-1A, it had shown a shrub identified as an existing manzanita tree. He asked whether or not the Verizon landscape plan had been reviewed by the Moraga-Orinda Fire District (MOFD) for compliance with its ordinances.

Mr. Horn was uncertain that the Verizon landscape plan had been reviewed by the MOFD.

Vice Chairperson Hillis referenced the correspondence and e-mail discussions between staff and the MOFD, as contained in Attachment E, MOFD Landscaping Discussion, and as shown in the staff report. Based on the information contained in Attachment E, the MOFD had raised concerns with the species of plant material proposed for the AT&T application, and he expressed concern the plant material for Verizon was not compliant with the required conditions of approval for that specific application or consisted of plant material the MOFD would have supported given the potential for a fire hazard.

Ms. Hamid acknowledged the Vice Chair's concerns with the Verizon application, specifically whether or not compliance with the conditions of approval had been met, how to implement those conditions, and the desire for the landscape and slats for the chain link fence to be consistent between the AT&T and Verizon applications.

Chairperson Luster asked the Planning Commission to focus on the AT&T application at this time and not the prior application for Verizon. She emphasized the need for the Planning Commission

to be very clear and specific on the conditions of approval for the AT&T application. In response to the concerns with the Verizon application, it was possible the Planning Commission may request a future agenda item and request that staff re-evaluate the conditions of approval for the Verizon application. In her opinion, the conditions of approval for the Verizon application had not been met and a permit should not have been issued given the unpermitted landscaping that had been installed and the lack of compliance with the MOFD recommendations.

Chairperson Luster acknowledged the MOFD had offered a number of recommendations for the AT&T application as reflected in Attachment E.

Mr. Horn also clarified, when asked by the Vice Chair, that the property where the AT&T facility was located was owned by SummerHill Homes, will eventually become part of the Moraga Geologic Hazard Abatement District (GHAD). He stated the ownership of the lease for the AT&T facility should be clarified by the applicant, and whether or not there would be continued maintenance of the landscaping to ensure survivability of the plant material that had not been specified in the conditions of approval.

Commissioner Davis emphasized the applicant had made marginal or no efforts to meet the conditions of approval 11 years ago, had been operating absent a permit for the past year, had not followed the conditions of approval for the CUP, and had not filed for a timely extension prior to the expiration of the existing permit or adequately managed the partner site. Given that history, he questioned the discussion of the conditions of approval and whether they would be met.

Commissioner Thiel asked if there were comments from Bellavista residents.

Mr. Horn confirmed that no public comments had been received for the item from residents of the Bellavista Subdivision or other comments from the public.

Vice Chairperson Hillis asked whether or not the Planning Commission may impose a performance bond on the application to ensure compliance with the conditions of approval, to which Ms. Hamid acknowledged the Planning Commission had valid concerns with the application and whether there had been compliance with the conditions of approval, and how they were implemented and enforced. She described the first step is for staff to create conditions of approval based on the application submitted, to be reviewed as part of the CUP request by the Planning Commission. The Planning Commission may add conditions, make them more specific, or eliminate conditions.

Ms. Hamid added that once approved, the conditions of approval would become the document staff reviewed during the building permit stage, and walked through with the applicant for specific action on how they would be implemented. Some of the conditions of approval required action or involved reminders. Staff also reviewed the project drawings to ensure they had called out specific details. Once the building permit was approved inspections were conducted by staff who would consider those conditions requiring a specific action. Prior to the release of the building permit to the applicant and the sign-off by the Town, a field inspection would be conducted. She emphasized that staff is trying to work with the Planning Commission on enforceable conditions of approval. It was important that the conditions of approval create a nexus to the application and were reasonable. As an example, requiring drought-tolerant landscaping would be more reasonable than landscaping that required a great need for water, given the difficulties for irrigation to the site, which would require a lot of staff oversight. She provided a brief summary and how staff will process going forward.

Ms. Hamid confirmed a performance bond may be required if the Planning Commission so decided to ensure compliance with the conditions of approval.

Ms. Hamid and Mr. Horn further clarified the subject application for the renewal of an existing CUP required Town staff to work with the Contra Costa County Building Department to coordinate a building permit for the requested generator.

Michele Vernotico, 1387 Calle Avanzado, San Clemente, consulting on behalf of AT&T, had no additional presentations to make and was present to answer any questions. Speaking to Condition 4 (a) and (c), she asked that both conditions be revised and that the reference to 60 days in each condition be revised to read *90 days*, which would allow AT&T and the Project Designer General Dynamics to coordinate on the right colored slats to be ordered and time to build, construct and tie up any loose ends.

Ms. Vernotico responded to Commissioner Davis' concerns with planting that was to have been installed in 2010. She stated she had been unaware of that issue until it had been brought up.

Ms. Vernotico explained that typically a lot of consultants were involved in this type of application to do different parts of the job, and she was unsure what had happened.

Chairperson Luster understood that planting had not been required as part of the 2010 resolution of approval, as reflected in the Design Review Board (DRB) Action Memorandum dated May 24, 2010, as shown in Conditions 3 and 4 of Attachment C to the staff report.

Commissioner Davis understood that a planting plan had been specified in 2010, but after the plan had been presented the DRB at that time had indicated it was not needed.

Mr. Horn clarified based on the files that a landscape plan had been provided for the Verizon Wireless facility but not the AT&T facility. Pursuant to the conditions, AT&T was to build the enclosure and once built bring it back to the DRB to determine whether landscaping was needed. Staff could not find any information during the DRB meetings where that had been discussed further and it was unclear what had occurred at that point after the enclosures had been constructed.

Chairperson Luster stated that based on her review of the information she could find no indication that anything was required by AT&T in terms of planting.

Commissioner Davis commented that while there had been no requirement for planting by AT&T with no record of any requirement, the plan itself and the light brown slats were not an "if," and the review of the extension of the application was not an "if," and he questioned why he should believe the applicant then and now.

Chairperson Luster referenced Condition 3 of the DRB Action Memorandum dated May 24, 2010, as shown in Attachment C, which read:

Prior to the issuance of any permit, the applicant shall submit to the Town a landscape plan for review and approval by the planning department. The plan shall provide for the installation of drought-tolerant, deer-resistant large native shrubs and an appropriate irrigation system. After completion of the equipment enclosure and prior to final inspection by the building department, the Design Review Board shall consider the need to install the approved landscape plan. If landscape installation is required, a landscape maintenance

agreement shall be executed to provide for the maintenance of the installed landscaping for a minimum of 5 years.

Commissioner Davis also pointed out pursuant to Condition 2 of Attachment B, Planning Commission Resolution 05-2010, Use Permit 07-09, RF testing had not been done as required, with the first RF report received by the Town eight years after the facility was up and running. He again questioned what was different between then and now in terms of having any confidence in the applicant's compliance with the conditions of approval. He stated that the requirement for a performance bond may be the only reason he could support the application.

PUBLIC HEARING OPENED

Chairperson Luster reported no public comments had been received for this time.

PUBLIC HEARING CLOSED

Vice Chairperson Hillis commented that he had requested at multiple times updated information on the Verizon application on more than one occasion, which had never been received, but acknowledged it may have been a result of a transition in Town staff and he had not brought the request up again.

Vice Chairperson Hillis expressed a willingness to separate his concerns with the Verizon application from the subject application but asked how his concerns with the Verizon application would be addressed.

Ms. Hamid stated based on the discussion staff would add the concern to its work program and look into the matter and provide an update and timeline to the Planning Commission.

Vice Chairperson Hillis referenced Condition 4 (a) and (b) and suggested that both conditions should reference the adjoining enclosure (Verizon) given the need for the light brown slats to be identical and possibly require that it match the slats of the adjoining enclosure, or include a reference to the product or color code, if known, in a condition of approval.

Mr. Horn advised that the exact product types were unknown. He suggested language could be added for the light brown wood lath or vinyl slats to be installed in the chain link fence to match the adjacent Verizon equipment enclosure. He added that building permit plans for the Verizon application may have included the specific material information.

Vice Chairperson Hillis suggested if staff could not verify the exact product or color, he would be comfortable amending Condition 4 (a), to read:

Within 90 days of the granting of this extension, light brown wood lath or vinyl slats to match the adjacent equipment enclosure shall be installed in the chain link fence to make it blend with the color of the dried pasture grass on the hillside and help conceal the equipment cabinets within the enclosure.

And amend Condition 4 (c), as follows:

Within 90 days of the granting of this extension, subject to final approval of the Moraga Orinda Fire District and Planning Department, the applicant shall plant three (3) 24-inch box size coast live oaks on the southwest side of Fay Hill Road in front of the equipment enclosure, spaced appropriately to provide camouflaging of the facility from Rheem

Boulevard and Moraga Road and provide irrigation and/or a plan to insure they receive adequate water to survive and be maintained in good health.

Ms. Hamid suggested that staff be allowed to work on the mechanics for a performance bond to determine the appropriate amount.

Vice Chairperson Hillis and Ms. Hamid wordsmithed a new Condition 4 (d) to read:

Town staff shall work with the applicant on a required performance bond regarding the installation of the fence slats, planting plan and the fence enclosure.

Commissioner Lueder understood that federal regulations preempted much of what municipalities may control in regards to wireless communications facilities. Requiring a performance bond may cause AT&T to incur costs and before proceeding, he asked for assurance from staff that the Planning Commission may, in fact, require a performance bond in this situation.

On the discussion of a potential performance bond and in the absence of legal counsel, there remained a question as to whether or not the Town may impose such a requirement, although Ms. Hamid reiterated the application was a request for renewal of an existing CUP and the Town and the Planning Commission had flexibility working with the applicant since it is a CUP.

Commissioner Davis again referenced Condition 3 of the DRB Action Memorandum dated May 24, 2010, which was again read into the record and stated that while landscaping may not have been required, a landscape plan had been required. If the applicant and the Town of Moraga had no record of the same, he suggested that condition had not been met. He looked forward to determining how to require compliance from the applicant for the current application.

Chairperson Luster agreed this was an important issue and while the location was not clearly visible to the public at this time, at some point the site would be visible and it was the duty of the Planning Commission to ensure that in the future trees and landscaping screened the facility from view. She supported landscaping and the requirement for a performance bond. She wanted the conditions of approval to be specific to allow the application to move forward. She also read into the record Condition 1 as shown in Attachment A, and noted that if the applicant had not met the current conditions of approval, it was possible a future extension may not be granted, and a bond will assist with the conditions of approval.

Commissioner Davis again contended that the applicant had never complied with the original conditions of approval.

Commissioner Helber suggested the first sentence of Condition 2 be revised, to read:

Within thirty (30) days of any new antenna installation, and every five years thereafter, AT&T shall conduct tests to verify compliance with FCC radio frequency emissions standards and provide such test results to the Moraga Planning Department.

Commissioner Helber supported the other suggested revisions to the conditions of approval.

On the discussion, Vice Chairperson Hillis recommended Condition 4 (c) be further revised, to read:

Within 90 days of the granting of this extension, subject to final approval of the Moraga Orinda Fire District and Planning Department, the applicant shall plant three (3) 24-inch box size coast live oaks on the southwest side of Fay Hill Road in front of the equipment enclosure, spaced appropriately to provide camouflaging of the facility from Rheem Boulevard and Moraga Road and provide irrigation and/or a plan to ensure they receive adequate water to survive and be maintained in good health indefinitely.

And the new Condition 4 (d) revised further to read:

Town staff shall work with the applicant on a required performance bond to ensure compliance with conditions of approval for installation of fence slats and landscaping.

On motion by Vice Chairperson Hillis, seconded by Commissioner Thiel to adopt Resolution __ - 2021, Renewal of a Conditional Use Permit (UP 07-2009) for an Existing Wireless Communications Facility on a PG&E Tower with Associated Equipment Enclosure Located on Fay Hill Road Southeast of the EBMUD Fay Hill Reservoir, subject to the conditions of approval as contained in Attachment A, and as modified as follows:

The first sentence of Condition 2 revised to read modified from Verizon to AT&T:

Within thirty (30) days of any new antenna installation, and every five years thereafter, AT&T shall conduct tests to verify compliance with FCC radio frequency emissions standards and provide such test results to the Moraga Planning Department.

Condition 4 (a) revised to read modify from 60 days to 90 days:

Within 90 days of the granting of this extension, Light brown wood lath or vinyl slats to match the adjacent equipment enclosure shall be installed in the chain link fence to make it blend with the color of the dried pasture grass on the hillside and to help conceal the equipment cabinets within the enclosure.

Condition 4 (c) revised to read modify from 60 days to 90 days:

Within 90 days of the granting of this extension, subject to final approval of the Moraga Orinda Fire District and Planning Department, the applicant shall plant three (3) 24-inch box size coast live oaks on the southwest side of Fay Hill Road in front of the equipment enclosure, spaced appropriately to provide camouflaging of the facility from Rheem Boulevard and Moraga Road and provide irrigation and/or a plan to insure they receive adequate water to survive and be maintained in good health indefinitely.

Add a new Condition 4 (d) to be further revised to read:

Town staff shall work with the applicant on a required performance bond to ensure compliance with the conditions of approval regarding the installation of the fence slats and the landscaping.

The motion carried by the following Roll Call vote:

Ayes:	Bode, Davis, Helber, Hillis, Lueder, Thiel, Luster
Noes:	None
Abstain:	None

Absent: None

Chairperson Luster identified the 10-day appeal process of a decision of the Planning Commission in writing to the Town Clerk.

When asked by the Vice Chair, Ms. Hamid confirmed staff's commitment to return with an update related to the issues the Planning Commission had expressed regarding the adjoining lease for Verizon Wireless.

6. ROUTINE AND OTHER MATTERS

There were no Routine and Other Matters.

7. REPORTS

A. Planning Commission

Chairperson Luster reported that all Planning Commissioners had attended the recent California League of Cities Planning Commission Academy and some of the Planning Commissioners highlighted the topics of discussion. It was noted by Commissioner Davis that Regional Housing Needs Allocation was discussed extensively by all jurisdictions.

B. Staff

Ms. Hamid reported that the next Planning Commission meeting scheduled for May 18, 2021, would include the Camino Pablo Annexation public hearing with new Planning Commissioners to visit the site with staff; and with the staff reports to be distributed in the next week. Given the complexity of the project, Planning Commissioners were encouraged to provide any questions to staff prior to the meeting via email. She expressed the willingness to have open office hours to meet with interested Planning Commissioners to discuss any questions about the application within the parameters of the Brown Act.

Ms. Hamid reported that the Planning Commission meeting scheduled for June 1, 2021 would include a Small Cell Wireless Ordinance Update. Staff continued to work on the Three-step Planned Development Process, with the Town Council to hold a Study Session scheduled for May 11, 2021 at 5:00 p.m. Also, staff had issued the Request for Proposal (RFP) for the Housing Element Update and hoped to have responses by May 11, 2021 to allow a qualified consultant to be presented to the Town Council for consideration of approval of a professional consultant contract.

8. ADJOURNMENT

On motion by Commissioner Helber, seconded by Commissioner Davis to adjourn the Planning Commission meeting at approximately 7:50 p.m.

All were in favor of the adjournment.

A Certified Correct Minutes Copy



Secretary of the Planning Commission