

**TOWN OF MORAGA
PLANNING COMMISSION SPECIAL MEETING**

Via teleconferenced locations

June 15, 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 June 15, 2021 Special Meeting was not physically open to the public. Planning Commissioners and essential Town staff teleconferenced into the meeting.

Vice Chairperson Hillis 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

Vice Chairperson Hillis called the Special 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

Absent: Chairperson Luster

Staff: Afshan Hamid, Planning Director
Mio Mendez, Assistant Planner
Karen Murphy, Assistant Town Attorney
Ben Noble, Contract 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

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

3. **ADOPTION OF CONSENT AGENDA**

A. **May 25, 2021 Meeting Minutes**

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

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

4. **ADOPTION OF MEETING AGENDA**

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

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

5. **PUBLIC HEARING**

- A. **South Camino Pablo Annexation and Residential Subdivision**, Continued from May 25, 2021. This includes a Mitigated Negative Declaration, General Plan Amendment (GPA), Pre-Zoning (Zoning Code Amendment), Conceptual Development Plan and General Development Plan, Vesting Tentative Map, and Grading Permit (APN: 256-040-025).
(Project Planner: Ben Noble, Contract Planner)

Planning Director Afshan Hamid reported the project had been heard by the Planning Commission on May 25, 2021, at which time there had been extensive discussions regarding the project, presentations had been made by Town staff, the Town's consultants, the applicant and their consultants. Town staff has brought forward the recommendation from the Planning Commission with findings based on the direction provided by the Planning Commission.

Ben Noble, Contract Planner, provided a PowerPoint presentation of the Camino Pablo Subdivision, which included an overview of the request for consideration of a draft resolution recommending denial of the proposed South Camino Pablo Residential Subdivision project with a 2-dwelling unit per acre (DUA) General Plan Amendment (GPA).

The project, located in unincorporated Contra Costa County on the south-eastern edge of the Town of Moraga, fronted Camino Pablo opposite Tharp Drive. The applicant had proposed 13 single-family homes in an 8.5-acre development area on the southern portion of the property with 15.4 acres of open space, to be permanently preserved on the northern portion of the property which required a GPA to change the designation on the southern portion of the site from 1-DUA to 2-DUA.

The Planning Commission held a public hearing on May 25, 2021, at which time the majority of Planning Commissioners determined they could not recommend the GPA from 1-DUA to 2-DUA. A number of concerns had been expressed, including the applicant's lack of sufficient justification for the GPA, the desire for projects to conform to established rules and not to request changes or exemptions to the General Plan, concerns with respect to setting an undesirable precedent for

applicant-initiated GPAs, concern recommending a change to policies previously established by the Town Council, the Planning Commission's perspective that the property owner was able to develop a project under the existing designation, and a lack of clear Town policies on how the Planning Commission should consider an applicant-initiated GPA.

Some Planning Commissioners had identified reasons to support the 2-DUA designation including comments that fewer units may necessitate larger individual home sizes, fewer homes on the site may make it more difficult for future property owners to maintain site improvements that would benefit the Town, and additional units that may help demonstrate to the State that the Town was making changes to increase housing production.

The motion ultimately adopted by the Planning Commission on May 25 directed Town staff to prepare a resolution denying the proposed 2-DUA GPA and recommending the retention of the 1-DUA designation. The Planning Commission had also requested clarification from the Town Council on the criteria for future applicant-initiated GPAs and exceptions to the two, two-story consecutive home design guidelines.

Mr. Noble advised that the draft resolution had been included in the June 15, 2021 staff report identified as Attachment A, and contained recitals with application background and notes on why the Planning Commission had recommended denial. He explained that if the Planning Commission adopted the resolution in Attachment A, the first recital would have to be modified to identify Scott Carr and John and Jacqueline Hoover as well as Dobbins Properties, LLC, as property owners.

The draft resolution also contained findings that the proposed 2-DUA GPA was internally inconsistent with the remainder of the General Plan and that the other requested approvals could not be made due to this inconsistency.

Mr. Noble added that if the Planning Commission adopted the resolution in Attachment A, the Town Council had been tentatively scheduled to consider the application on July 14, 2021 to take action on the Phase 1 approvals, provided the applicant appealed the Zoning Ordinance Amendment recommendation as required by the Moraga Municipal Code (MMC). Staff anticipated the applicant would take this action. The Town Council would consider the Planning Commission recommendation and relevant background information. Staff would request the Town Council also provide clarification on the applicant-initiated GPAs and the two, two-story design guidelines issue.

Commissioner Davis asked staff for clarification whether the Planning Commission had, in fact, recommended the current zoning of 1-DUA for the project. He recalled the Planning Commission had requested that the Town Council consider providing guidance to the Planning Commission to amend the General Plan. He found what staff had stated in the presentation to be a material change from what the Planning Commission had discussed during the May 25 meeting.

Mr. Noble explained that staff had endeavored to accurately reflect the motion and direction made by the Planning Commission on May 25.

Ms. Hamid referenced the motion as shown on Page 26 of the May 25 Planning Commission meeting minutes, which she read into the record as follows:

Vice Chairperson Hillis offered a motion, seconded by Commissioner Thiel, to direct staff to prepare a resolution denying the General Plan Amendment recommending a 1-DUA designation for the site, and requesting clarification from the Town Council on what metrics the Planning Commission should utilize when reviewing future applications when requesting variances from the General Plan dwelling unit designations, and provide

additional clarity to the Planning Commission on the precise parameters for when a variance to the two, two-story consecutive homes design guidelines were appropriate. The motion carried by the following Roll Call vote:

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

Commissioner Bode recalled the motion was as written in the meeting minutes. He reported he had recently e-mailed the Planning Director to inquire whether or not any direction had been received from the Town Council with regard to what those metrics would be as part of the motion.

Ms. Hamid commented that any metrics or direction from the Town Council would occur at a regularly scheduled Town Council hearing. As staff had reported, if the resolution in Attachment A was approved by the Planning Commission, the item would be considered by the Town Council on July 14, 2021.

Commissioner Thiel inquired of the details for the appeals process from a Planning Commission decision, and Ms. Hamid explained the applicant may file an appeal based on the Planning Commission recommendation. An appeal would be heard by the Town Council and be based on the rezoning and all other actions requested, to be considered as one large package to the Town Council.

As to how the Planning Commission would be made aware of the Town Council's guidance moving forward, Ms. Hamid stated the Planning Commission's May 25 meeting minutes would be provided to the Town Council and an objective staff report would outline the Planning Commission's request and recommendation. The Town Council would discuss all materials, may choose to evaluate all materials, make modifications, or take a different direction. The ultimate decision was up to the Town Council. All information would be part of the evidence presented to the Town Council.

Matt Dobbins, President, Dobbins Properties, LLC, explained that following the May 25 Planning Commission meeting, the applicant had investigated suggestions offered by Commissioner Helber related to the elimination of the V-ditch and extending the Homeowner's Association's (HOA) responsibility of the landscaping to the back walk. There had been no objections to making those changes.

Mr. Dobbins understood a majority of the Planning Commission had expressed general approval of the project in terms of the layout and design and had generally grasped the benefits the project would provide to the Town, and that the professional staff the Town had employed would be tasked to uphold the rules and regulations through the process of evaluation. He noted that Town staff had recommended approval of the GPA.

Mr. Dobbins stated, as he had commented in correspondence distributed to the Planning Commission in the last week and as demonstrated by Town staff during the May 25 hearing, the cost to build the project whether 9 or 13 units would not change. The underlying development costs would not change based on a reduced number of units and anything less than 13 units would not be financially feasible. He added that a GPA must be approved if the project at the subject location were to have any chance of success.

Mr. Dobbins responded to comments from Vice Chairperson Hillis about what had been described as a perceived threat by the development team during previous occasions should the applicants shift the application to Contra Costa County. He emphasized that the applicants had worked with

Town staff over the last several years and had been committed to the Town and its processes in order to build a successful project with approvals from the Town; however, the undeniable reality was that submittal of the application to Contra Costa County was their backup plan if they could not get Town approval. What an alternative project may look like would be at the discretion of Contra Costa County. He pointed out that Contra Costa County had already set a precedent with its approval of the Sky View Court Subdivision at 3-DUA.

Mr. Dobbins emphasized that a 1-DUA project was not a viable option for the site and if that was what was approved by the Town of Moraga, the applicants would have no choice but to file an application with Contra Costa County. He also commented there appeared to be some notion that reviewing or recommending approval of a GPA was not within the purview of the Planning Commission and the decision should be deferred to the Town Council. There also seemed to be an unwritten rule that the General Plan should be treated as a rule of law and never considered for change. He suggested both ideas were false. He found the purview position inconsistent with the Town's code process that specifically relied on and expected the Planning Commission to make a recommendation on a GPA, and while the ultimate decision lay with the Town Council, either through an appeal or direct referral, the Planning Commission should weigh-in on any GPA, specifically if it supported the underlying project it would like to see approved under Town of Moraga controls.

Mr. Dobbins commented that due to the amount of time General Plans typically spanned they were regularly amended in several jurisdictions and intended to be a living document similar to the U.S. Constitution that needed regular updates with changing times, which was why State law provided that General Plans could be amended up to four times a year. The General Plan and 1-DUA designation which had been assigned to the property had been approved nearly 20 years ago, and the needs and goals of any town typically changed over 20 years.

Mr. Dobbins suggested it was worth noting that Town staff had no policy grounds that prevented them from recommending the GPA, and the Town Attorney had expressed no legal grounds that prevented the GPA from being evaluated and decided upon on its merits, and in his opinion neither was the Planning Commission.

Mr. Dobbins commented that 20 years ago the 1-DUA had been assigned to the property without any input from the property owners and with little thought or consideration in comparison to the detail generated for this project. He displayed a Regional Context Aerial Map and noted it was evidenced by the incorrect 1-DUA designation shown in the General Plan Land Use Diagram for the neighborhood across from Camino Pablo, which had been zoned and built at 3-DUA. Although the homes had been built and zoned at 3-DUA, the General Plan designated the properties at 1-DUA. Without making any GPAs, the applicant would be bound to a 20-year old General Plan that was flawed. He emphasized that Town staff and the project consultants had spent considerable time analyzing and studying the project in every manner possible and studies had determined that the benefits provided to the Town through the fractional GPA by adding only four lots was justified and that the project should be approved as proposed.

Mr. Dobbins pointed out that the benefits to the Town included the permanent preservation of 15 acres of open space that would continue to be used for cattle grazing by the Carr Family, a high quality well-designed project that would help to reduce the risk of wildfire by adding an area of refuge for the community, and funding for a Type 3 new fire engine for the Moraga-Orinda Fire District (MOFD).

Mr. Dobbins further commented that in 2002, the Town Council had designated the property for residential development but in reality unless the existing site conditions somehow changed and/or landslides magically disappeared, a 1-DUA project could not be built on the site. With that knowledge, he questioned whether the Town Council's desire for the property be developed with

a 1-DUA designation or nothing at all. If the Planning Commission liked the design and the project and was satisfied the extensive General Plan Policies Project Conformance Matrix prepared by staff had shown the project clearly was consistent with the General Plan, as amended, he respectfully requested the Planning Commission consider the merits of the project as a whole and whether or not it met the ultimate intent of the General Plan. If that was done by the Planning Commission he suggested the Commission would come to the same conclusion as staff and recommend the GPA along with the other Phase 1 entitlements for the project.

Commissioner Davis referenced the Regional Context Aerial Map the applicant had displayed and asked whether it included other developments which had been zoned for a lower density such as Palos Colorados and Bellavista Subdivisions.

Mr. Dobbins noted the map had not included those properties and was only a sheet from their plan set.

Commissioner Davis was curious in the course of the South Camino Pablo application why the applicant had not used the Palos Colorados and Bellavista Subdivisions as examples of previous times the Town Council and Planning Commission had amended the General Plan for a specific project. He suggested both projects were good examples of how a project could be built with the density and housing resulting in open land for the Town, much like the applicant had proposed. Those two examples would have been excellent examples for why the Planning Commission may, in fact, support the subject project. The subject project only proposed a 2-DUA in the area they were building but across the site was 1-DUA, just as the other two project areas with density in specified zones. He again questioned why those examples had not been considered as an argument in support of the subject project.

Mr. Dobbins was not prepared to answer the question and acknowledged he wished they had included those projects.

Mark Armstrong, representing the applicant, explained that the Rancho Laguna II Project, of which he had been involved, only had a designation of Moraga Open Space Ordinance (MOSO) and non-MOSO lands, with no residential designation on the site other than taking the non-MOSO portion of the property and converting it with more homes than there could be consistent with that zoning designation, of one unit per five acres. The same thing had been done in the open space for Lots 1 and 2 for this project, still non-MOSO, not part of the non-MOSO area to be preserved indefinitely as open space.

Commissioner Davis found that Rancho Laguna II was not a good example and was not the development he had referenced.

Mr. Armstrong stated he had also represented the original developer for the Palos Colorados project which involved three different designations; MOSO, non-MOSO and one strip of Residential, which strip of land was closest to the City of Lafayette. He explained that the same principles applied but Palos Colorados was a much larger project and involved a compromise due to litigation after the project had originally been denied by the Town. He acknowledged that many people at the time found the Palos Colorados project to be inappropriate but it had ultimately been approved through litigation and a Development Agreement (DA).

PUBLIC HEARING OPENED

Vice Chairperson Hillis reported no public comments had been received for this item

PUBLIC HEARING CLOSED

Commissioner Helber recognized he was in the minority when the Planning Commission had discussed the project on May 25. He still supported the project, as proposed, with the amendments the applicants had made through the process along with further amendments the applicant had suggested. He found the project would provide a community benefit. As to other projects that offered a community benefit, he suggested that open space also offered a community benefit, with the portion of the subject project currently zoned agricultural to be designated as open space. He asked Commissioner Davis if that was the type of benefit he was seeking for such a project.

Commissioner Davis explained that he was looking for a rational basis to say yes or no. The Planning Commission's rationale during the May 25 meeting without a precedent was to seek guidance from the Town Council on moving from the 1- to 2-DUA based on the applicant's request. His interest in referencing Palos Colorados and the Bellavista Subdivisions was to show a pair of examples of a GPA that had been approved. While he appreciated the benefits this project would offer, such as the open space, it was not foremost in his thinking which was mostly around how in or out of balance the subject project would be relative to other projects approved in the Town of Moraga in recent memory.

Commissioner Thiel echoed his previous support for a GPA for the project. He encouraged housing development in Moraga which included what would end up being more affordable Accessory Dwelling Units (ADUs), and he would like to see the project fall within the Town of Moraga and not in Contra Costa County, which had shown the applicant's commitment to the Town, with a track record of substantial collaborative development with Town staff and transparency with the Planning Commission in terms of addressing concerns with fire, emergency services and police. He wanted to see the project advance with the Planning Commission and the Town Council.

Vice Chairperson Hillis recognized the majority of the Planning Commission had opposed the GPA request from 1- to 2-DUA which showed an issue with the design, particularly since the 1-DUA designation would require a redesign of the project. Based on his impression, the general support for the design was that the project consisted of quality architecture and there was appreciation for the proper mitigations for fire. There had also been comments from the Planning Commission about the fact that the planting plan should be coordinated with the MOFD to ensure compliance with its safe fire planting guidelines and adherence to the use of native species.

Vice Chairperson Hillis responded to comments that the General Plan was being looked at as sacrosanct and unchangeable, which in his opinion was not the case. As with the U.S. Constitution, it was not easy to amend but had been amended regularly over the last century. Based on his perspective, the General Plan could be amended but his comments on this development was that the General Plan was being considered not only as a guideline but the constitution of the Town, and unless there was a strong policy argument that it should be changed, he questioned changing it.

Vice Chairperson Hillis had not heard a good policy argument for the GPA and noted the profitability of the project was not something the Planning Commission could take into account, but the Planning Commission may consider whether or not the development conformed to the Town's governing documents and whether an argument had been presented that based on policy offered a good reason to overrule the General Plan. Based on his perspective, there appeared to be no reason to overrule the Town's constitution to authorize the development and it was a strict policy decision that should be deferred to the Town Council, particularly on land the Town Council had previously opined and designated less than 20 years ago. He added there was the opportunity to reference other developments but the Town Council still chose to designate the land 1-DUA.

Vice Chairperson Hillis emphasized that his concerns with fire safety remained, and he referenced the upcoming heat wave, extensive drought conditions and fuels which had not been sufficiently mitigated on open space directly adjacent to the proposed development. He noted that the entire Town of Moraga was located in the Wildland Urban Interface, with the Town having made decisions as a Town where appropriate densities should be located, some of which occurred prior to the incorporation of the Town. More recently, decisions had been made related to the Moraga Center Specific Plan Implementation Project (MCSP-IP), which had identified density as belonging in the urban core of the Town. While he understood the subject parcel was developable, he found there was no prevailing argument to overrule the General Plan's 1-DUA designation and not to maintain that designation given the fire danger.

Vice Chairperson Hillis added he had spoken with the applicant previously on-site and had been informed there was no way to change the site to meet the design guideline prohibiting consecutive two, two-story homes next to one another. He suggested since there was a fairly coherent policy argument, the project should remain 1-DUA and unless there was an overruling argument why it should be changed, the 1-DUA should be maintained and the resolution in Attachment A should be preserved as prepared by staff, moving the application on to the Town Council.

Ms. Hamid reported the applicant would like the opportunity for a rebuttal to clarify some facts.

REBUTTAL:

Mr. Armstrong responded to questions around the General Plan and where it had been shown whether it was appropriate to change the General Plan. The General Plan Policy Conformance Matrix had been exhaustive, the General Plan was a broad document, there could be policies that were inconsistent, but the overall General Plan as a whole and as an integrated document, to suggest it confirmed that the project development area would render the entire General Plan as inadequate and inconsistent defied the obvious. In terms of the community benefit, a well-designed project was a benefit in and of itself, and the hillside regulations themselves pointed out that evaluation of hillside projects must consider the property rights associated with the property in a process to develop the property. The feasibility of the project was important when depriving the property owner of all reasonable opportunity to develop the site. He emphasized the applicants had been very careful in demonstrating why feasibility was at issue.

Vice Chairperson Hillis acknowledged the feedback, emphasized the Planning Commission regularly reviewed whether or not variances to ordinances were appropriate, and acknowledged the General Plan as the more senior ordinance in the Town. He stood by his comments and stated it was not that the General Plan should never be changed, but if it were to be changed it should at least be for reasons to rebut the reasons originally put into place. He found the arguments for why a 1-DUA had been established years ago to be clear that the area was to be developed as a transition zone between the urban core and from the wildland immediately adjacent.

Vice Chairperson Hillis otherwise reported he would be unable to participate in the July 14 Town Council meeting. He asked that staff provide the comment slides he had provided during the May 25 Planning Commission meeting to the Town Council as public comment at that time.

Commissioner Bode offered a motion to adopt the resolution in Attachment A, as drafted, and subject to modification to the first recital as staff had requested during the presentation.

Assistant Town Attorney Karen Murphy confirmed the first recital of Attachment A should be modified.

Mr. Noble suggested the first recital be amended as follows:

WHEREAS, Dobbins Properties, LLC, (“Developer”), and Scott Carr, and John and Jacqueline Hoover, all of which are owners of that certain 23.9-acre property located the southern portion of the property on Camino Pablo at Tharp Dive (the “Project Site”), APN 258-290-023; and

Commissioner Bode offered a motion, seconded by Commissioner Thiel Recommending that the Town Council Deny Applications for a General Plan Amendment, Rezoning, Conceptual Development Plan and General Development Plan, Vesting Tentative Map and Grading Permit for the South Camino Pablo Annexation and Residential Subdivision Project with a proposed 2-DUA designation (APN 256-040-025) The motion carried by the following Roll Call vote:

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

Vice Chairperson Hillis identified the 10-day appeal process in writing to the Town Clerk.

Ms. Murphy reported the MMC required recommendations from the Planning Commission denying zoning changes to be appealable to the Town Council. Staff anticipated an appeal would be filed for the application.

6. REPORTS

A. Planning Commission

There were no reports.

B. Staff

Ms. Hamid reported that staff was working on a contract for the Housing Element and General Plan Update and hoped to bring it to the Town Council in the next month or so. She reported that COVID-19 restrictions for public meetings had been lifted by Governor Newsom as of June 15, 2021, Town Offices had reopened on June 14, but COVID-19 precautions in Town Offices remained in place.

Vice Chairperson Hillis acknowledged a request for public comment for Item 5A and although the public hearing had been closed he allowed the speaker to address the Planning Commission at this time.

Marcus Anderle, 1844 Camino Pablo, Moraga, stated he had provided comments in writing to the Planning Commission and the developer of the South Camino Pablo Annexation during the May 25 Planning Commission meeting. He opposed the project, offered productive suggestions to the layout of Lot 13, situated directly across from his residence, and sought the installation of a good neighbor rather than an open fence in the buffer zone south of Camino Pablo. He urged the Planning Commission and developer to consider his requests and provide feedback with the modifications to benefit the development and mitigate impacts to the neighbors located directly across the street. He also invited Planning Commissioners to a site visit of the neighborhood and was open to organize such a visit with the neighbors.

Vice Chairperson Hillis reiterated the application had been tentatively scheduled for Town Council consideration on July 14. He otherwise asked why the Pledge of Allegiance had not been on the agenda for the meeting.

Ms. Hamid stated the item was not on the agenda for discussion and was something she would discuss off-line with the Chair.

8. **ADJOURNMENT**

On motion by Commissioner Helber, seconded by Commissioner Bode and carried unanimously by a Roll Call Vote to adjourn the Planning Commission meeting at approximately 7:40 p.m.

A Certified Correct Minutes Copy

A handwritten signature in blue ink, appearing to read "Omid", is written over the text "A Certified Correct Minutes Copy".

Secretary of the Planning Commission