

**TOWN OF MORAGA  
PLANNING COMMISSION SPECIAL MEETING**

Via teleconferenced locations

June 28, 2022  
6:00 p.m.

**MINUTES**

**THIS MEETING WAS CONDUCTED PURSUANT TO THE PROVISIONS OF GOVERNMENT CODE SECTION 54953 (AS AMENDED BY AB 361) WHICH AUTHORIZED TELECONFERENCED MEETINGS UNDER THE BROWN ACT DURING CERTAIN PROCLAIMED STATES OF EMERGENCY, THE GOVERNOR OF CALIFORNIA PROCLAIMED A STATE OF EMERGENCY RELATED TO COVID-19 ON MARCH 4, 2020. THIS TELECONFERENCED MEETING WAS NECESSARY SO THAT THE TOWN COULD CONDUCT ESSENTIAL BUSINESS AND WAS PERMITTED UNDER GOVERNMENT CODE 54953 IN ORDER TO PROTECT PUBLIC HEALTH AND SAFETY OF ADDENDEES**

Online meetings (i.e. teleconferenced meetings) were encouraged, where practical, as these meetings presented the lowest risk of transmission of SARS CoV-2, the virus that caused COVID-19. This was particularly important when community prevalence rates were high. Our current trends as of April 15, 2022 in COVID-19 case rate and COVID-19 hospitalizations have plateaued at this time, but wastewater surveillance data and COVID-19 test positivity had been increasing. In addition to this, the predominant variant of COVID-19 being identified continued to be the Omicron variant, the impact of which on the spread of COVID-19 had shown to dramatically increase COVID-19 transmission.

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**

Chairperson Hillis called the Special Meeting of the Planning Commission to order at 6:03 p.m.

**A. ROLL CALL**

Present: Commissioners Bode, Davis, Helber\*\*, Polsky, Thiel\*, Chairperson Hillis

\*Arrived at 6:04 p.m.

\*\*Arrived around 6:50 p.m.

Absent: Vice Chairperson Luster

Staff: Cynthia Battenberg, Town Manager  
Afshan Hamid, Planning Director  
Karen Murphy, Assistant Town Attorney

Assistant Town Attorney Karen Murphy understood Commissioner Davis was able to hear the comments from the Planning Commission but there were technical difficulties and his comments were not audible; however, agenda Item 6 was a Study Session to receive input from Planning Commissioners and the public. She asked whether or not Commissioner Davis was able to call into the meeting but Commissioner Davis lost his Internet connection at this time. Since he was needed for a quorum the Planning Commission waited a few minutes until he reentered the Zoom meeting to allow the Planning Commission meeting to continue.

Commissioner Thiel joined the Zoom meeting at approximately 6:04 p.m. and with a quorum present the Planning Commission meeting moved forward at this time. Commissioner Davis had not yet returned to the meeting via Zoom.

**B. Conflict of Interest (if any)**

There was no reported conflict of interest.

**C. Contact with Applicants**

There was no reported contact with applicant(s).

Commissioner Davis rejoined the Zoom meeting at 6:07 p.m. but there remained technical difficulties and his comments remained inaudible. Staff attempted to resolve the technical difficulties and Commissioner Davis was able to ultimately call into the meeting to participate.

**2. PLEDGE OF ALLEGIANCE**

Commissioner Bode led the Pledge of Allegiance.

**3. PUBLIC COMMENTS**

Chairperson Hillis reported there were no public comments for this item.

**4. ADOPTION OF CONSENT AGENDA**

- A. May 3, 2022 Planning Commission Meeting Minutes
- B. May 24, 2022 Planning Commission Meeting Minutes

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

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

\*Absent due to technical difficulties

*(Please note: Commissioner Davis continued to have technical difficulties and was in and out of the meeting.)*

**5. ADOPTION OF MEETING AGENDA**

No motion was made to adopt the meeting agenda.

**6. PUBLIC HEARINGS**

- A. Input and Feedback on HCD Working Draft Housing Element: Constraints and Programs Addressing Constraints
- B. Revision to June 21, 2022, Staff Report and Attachments
- C. PowerPoint Presentation
- D. Correspondence received AFTER the Agenda was Published

Planning Director Afshan Hamid thanked the Planning Commission for agreeing to meet for this Special Meeting to continue the discussion of the Advanced Planning Initiative, which included several components. This component was the State mandated 6<sup>th</sup> Cycle 2023-2031 Housing Element Update. Staff was working on the Working Draft Housing Element that would be presented to the Planning Commission on July 5, 2022. The policies before the Planning Commission reflected a balance of state law and mandates, technical data and locally established priorities.

Meetings had been held over the past nine months to discuss the priorities and policies, with this meeting being a framework for those priorities and policies. Staff would come back at a later date to discuss more of the details. This meeting would include an informational report with a focus on Housing Element Goals, policies and programs and an excerpt of the Government Constraints Analysis.

The full Draft of the Housing Element had been scheduled for Planning Commission consideration on July 5, 2022, with the feedback from the Planning Commission from this meeting to be incorporated into that draft. The policies, goals and programs were a result of robust community engagement, multiple joint meetings between the Planning Commission and Town Council, stakeholder interviews with developers, collective guidance from the Town Council and Planning Commission, data from The Balancing Act Tool, surveys and the annual report to be submitted to the State Department of Housing and Community Development (HCD) every April 1.

Ms. Hamid introduced the consultant team including Barry Miller, Barry Miller Consultants; Stephanie Hagar, BAE Urban Economics; and Town staff including Town Manager Cynthia Battenberg, members of planning staff and Assistant Town Attorney Karen Murphy.

Ms. Hamid provided a recap of the Comprehensive Advanced Planning Initiative including the 2023-2031 Housing Element; rezoning of key sites to accommodate the Regional Housing Needs Allocation (RHNA), with objective design standards for rezoned sites; Bollinger Valley Special Study Area Rezoning; mandatory General Plan Amendments including consistency amendments and state-mandated safety/transportation amendments; and a Program-Level Environmental Impact Report (EIR).

The focus for this meeting was on the policies and programs, particularly new programs added in response to identified housing constraints, with the focus for the July 5 Planning Commission meeting to be on a review of the full Working Draft of the Housing Element along with public comment and with a recommendation to the Town Council from the Planning Commission with the Draft Housing Element to thereafter be forwarded to HCD for review. All chapters and appendices had been posted on the [www.makemoragahome.org](http://www.makemoragahome.org) website and the numerous milestones in the planning process were highlighted.

Stephanie Hagar, Associate Principal, BAE Urban Economics, provided an overview of the Housing Element, the Town's guide to meeting housing needs required as part of the General Plan that must be updated every eight years and was the only part of the General Plan subject to state certification. The content was defined by State Government Code, with all cities and Towns required to demonstrate they had accommodated their fair share of the region's housing needs. She provided an overview of RHNA, which identified the total number of units needed for each region of the state and with local governments required to update their Housing Elements to demonstrate they could meet their RHNA then submit the Housing Element to the state for approval.

The Town of Moraga's RHNA for the upcoming cycle had increased by 388 percent, with a comparison with the 5<sup>th</sup> and 6<sup>th</sup> Cycles provided. The Town of Moraga was required to plan for 501 Low and Very Low Income units.

The contents of the Housing Element and appendices were identified along with an overview of the structure for the goals, policies, programs and objectives, and Moraga's Draft Housing Goals, existing and future.

Barry Miller, Barry Miller Consultants, continued the PowerPoint presentation and highlighted the New Programs Under Goal 1, Opportunities for housing to accommodate anticipated growth, which included the update to the General Plan Phase 2, zoning changes discussed by the Town Council and Planning Commission at prior meetings. Also, increasing density from 20 to 24 units/acre in R-20 and Mixed Use areas; creating Mixed Use zoning in parts of the Rheem Center Area; allowing residential and open space density to be transferred to commercial sites; and mapping amendments to accommodate new housing opportunities at the Moraga Center Specific Plan (MCSP) and Rheem Center Areas.

Phase 2 of the zoning changes included a revamping of the 6-DUA zone to reflect existing uses; considering changes to R-12 and R-20 standards; moving the Floor Area Ratio (FAR) standards from the Design Guidelines to the Moraga Municipal Code (MMC); monitoring development activity in the MCSP and Rheem Center Areas and considering further zoning changes in the future. An overview of the map changes for the MCSP rezoning and Rheem zoning was also provided, with the timing of the zoning changes to be concurrent with the adoption of the Housing Element. Examples of 20-24 DUA projects included developments in the cities of Lafayette, Healdsburg, Mill Valley, Palo Alto and the Town of Danville along with examples of 24-DUA development already in Moraga on Rheem Boulevard, Moraga Road and Ascot Drive.

New Programs Under Goal 2 included providing for a variety of housing types and affordability levels, supporting use of State Density Bonus Law, providing more outreach to affordable housing developers, allowing co-housing and live-work units and improving access to affordable housing subsidies.

New Programs Under Goal 3, Conserving existing housing and neighborhood safety/services including adoption of an Inclusionary Zoning Ordinance (10 percent below market rate); facilitating future Accessory Dwelling Unit (ADU) production; creating public information materials on Senate Bill (SB) 9; participating in a regional shared housing program; developing a "Public Realm Plan for the Rheem Center; allowing child care by right on the ground floor of multifamily buildings; providing information/technical assistance to first-time homebuyers and expanding wildfire safety and evacuation planning.

New Programs under Goal 4, Ensure that regulations did not constrain housing for all income levels included simplifying the Planned Development (PD) process and amending the parking regulations (reduce requirements for studio and one-bedroom apartments and guest spaces). Phase 2 considered further reductions to parking where a Transportation Demand Management (TDM) plan was used; meeting with developers, builders, homeowners to discuss ways to improve processes; applying for infrastructure grants; amending the Scenic Corridor Regulations and providing technical assistance to implement the MCSP.

New Programs Under Goal 5, Provide for residents with special housing needs included amending the MMC to meet new state laws; allowing certain housing types, including small residential care facilities and assisting older adults with "age in place" retrofits.

New Programs under Goal 6, Promote equal housing opportunities for all residents included a new program providing a link between other programs in this Element and their contribution towards Affirmatively Furthering Fair Housing (AFFH); considering an agreement with a fair housing provider to provide fair housing services; landlord/tenant mediation and first-time buyer counseling; conducting annual fair housing training for staff and distributing information on fair housing to the public.

New Programs Under Goal 7, Promote residential energy efficiency and conservation included implementing key provisions of the Town's Climate Action Plan (CAP) that served to reduce home energy costs including CalGreen and Energy Efficient requirements for new construction; supporting increased funding from Marin Clean Energy (MCE) for energy upgrades; encouraging increased use of renewable energy (solar); promoting water efficient landscaping and considering a point-of-sale energy efficiency upgrade program.

Mr. Miller explained that the next steps included the Planning Commission hearing on July 5, the Town Council hearing on July 13, the end of the 30-day review for the Working Draft of the Housing Element on July 30, the release of the Draft EIR in late September, the HCD comment letter in late October, revisions to the Housing Element in November, and a Planning Commission hearing to adopt the Housing Element in December along with a Town Council hearing to adopt the Housing Element in January 2023.

Ms. Hamid explained that an additional Town Council meeting had been added to the schedule to be held on July 11 for a Special Meeting on the Working Draft of the Housing Element, with the second meeting of the Town Council on the Working Draft to be held on July 13, 2022.

Chairperson Hills reported that during the PowerPoint presentation Commissioners Davis and Helber had joined the meeting, although Commissioner Davis continued to have technical issues and while he could hear the discussion, he was unable to provide comments.

Responding to the Commission, Mr. Miller and Ms. Hamid clarified:

- A portion of the Rheem Center Area, the southern portion of the center consisting of HomeGoods and a few tenants south of the entrance driveway off of Moraga Road would retain the Commercial Zone to avoid creating more housing opportunities than needed and possibly lose some of the commercial activity needed and complying with the Housing Accountability Act. If that area was needed in the future the zone could be expanded.
- The Town Council had discussed allowing housing in all of the zoning districts in the Rheem Center Area but had backed away due to potential loss of businesses versus the vacant lot at the corner of Lucas Drive and Moraga Road adjacent to 7-Eleven, which involved a willing and engaged property owner who had expressed interest in developing the property for housing. There was a willing property owner in the Rheem Center who had been contacted by staff early in the process and who was interested in developing the northern portion of the center for housing and Mixed-Use. As part of the discussion, the No-Net-Loss provision was defined as one where if a property was zoned for housing, and if it was not developed to that certain zoning or for housing, it must be found elsewhere. Based on guidance from the Town Attorney, a more strategic approach would be to leave a portion of the southern portion of Rheem Commercial area as Commercial and save it for the next Housing Element, or if needed to make adjustments at a later date.
- The intent of the "Public Realm Plan" was that it cover the entire area and not just the areas to be rezoned and even include some of the adjacent residential properties. Staff had reached out and sent letters early in the process to the properties in and around the Rheem Center and MCSP Areas including the veterinary clinic, the owner of which was not sure of his future plans at this time and had not shown much interest in housing at that site. The property owners of the storage facility site and gas station at the corner were interested but it would have been spotty if they did not comprehensively rezone the entire thing.
- The Housing Element may be amended at any time over the next eight years.

- If the MCSP and Rheem Center Areas were rezoned, the Town would be substantially over the 1,100 units required with the net gain for the rezoning in the Rheem Center Area around 350 units.

Chairperson Hillis declared a recess at 7:10 p.m. The Planning Commission meeting reconvened at 7:20 p.m. with all Commissioners and staff present with the exception of Vice Chairperson Luster and Commissioner Davis.

Chairperson Hillis advised that a member of the public had contacted the Planning Commission to report that Attachment B to the staff report, which was available online only included odd-numbered pages, and Ms. Hamid advised the document would be corrected next business day.

#### PUBLIC COMMENTS OPENED

Dave Bruzzone, Moraga, explained he had submitted a letter dated June 21, 2022 that he hoped the Planning Commission had the opportunity to read and which included a number of submittals from previous meetings. He spoke to the rules adopted as part of the MCSP, which had been adopted November 10, 2020, and the Hillside and Ridgeline Regulations, which actions had implemented additional constraints on the MCSP property. As the correspondence provided indicated, he asked of the legality of those regulations as it related to SB 330, which prohibited the Town from imposing more restrictive rules that would limit the number of homes and density, and which was a large part of the correspondence provided.

Mr. Bruzzone understood for the Rheem Center Area the density would be over 33-DUA and possibly even higher, which was a concern given that the MCSP Area was described as the poor stepchild, whereas the Rheem Center Area was being allowed more development, higher density and residential development, and which was a constraint the Bruzzone Family had dealt with for years. He suggested many of the constraints and corrections should have been removed from the MCSP Area during the implementation process and he wanted assurance that more constraints were not being imposed on the MCSP Area.

Mr. Bruzzone cited as an example the R-20 Zoning District and a revision to Section 8.34.040 where the Town had added exclusive of streets but the implementation of the MCSP had not included exclusive of streets and changing the amount of land that the density applied to would be a major impact on the number of units that could be built. If the area for streets was removed, it would impact the maximum capacity and he wanted assurance that staff knew what he was speaking about, which change had been made as part of the MCSP implementation process.

Mr. Bruzzone also had questions on increasing the density in the Moraga Center and the nursery while acknowledging that would be a positive since it would allow residential but he wanted to look at the boundaries of that area to see whether some adjustment was needed to align better with higher density properties.

#### PUBLIC COMMENTS CLOSED

Commissioner Bode commented he had read the Housing Element a few times and each time he had a better understanding. He understood the goal of the Housing Element was to have a plan in place with the seven described goals and objectives. He was uncertain how the goals could be accomplished and the units built, but he requested an additional objective to be considered to: *Encourage landowners and builders to actually construct and market housing that was in-line with the objectives with Moraga's Housing Element.* He emphasized it was vital to understand the input from the landowners and builders who would actually build the housing needed in the Town.

Commissioner Helber thanked staff and the consultants for the thoughtful and detailed package. He found the Town was making progress on this process. In terms of encouraging affordable housing, he found there were a lot of suggestions encouraging development but one suggestion would impose a restriction throughout the Town in terms of the Inclusionary Zoning Ordinance. He supported affordable housing and suggested the Town should provide its fair share of affordable housing but be very intentional and thoughtful on how it planned for affordable housing. He did not want to encourage affordable housing while inadvertently discouraging thoughtful and wise development in Moraga.

Commissioner Helber commented that while there has been some development in Moraga, traditionally Moraga was a difficult community to build subdivisions. He expressed concern with an Inclusionary Zoning Ordinance, particularly if the Town stacked a 10 percent requirement Town-wide. While the details were not yet worked out, as an example a 10-unit development would require one unit to be affordable and be required to be sold consistent with the Median Income which would be sold at a loss, and the cost borne by future homeowners which he found to be inappropriate Town-wide. While it could be appropriate in certain areas of the Town, such as upzoning, the development potential could be balanced with an affordable housing requirement. Applying that requirement Town-wide needed more discussion and information given the Town could inadvertently discourage development and currently all types of development was needed in Moraga.

Commissioner Helber liked the fee deferral program, was uncertain of a fee waiver since the Town still needed to function and the fees were important, but deferring a fee until the close of escrow or until a Certificate of Occupancy was issued, pushed that cost closer to the settlement of the home versus up front when one had to carry interest. Some of the other encouraging actions he supported. In terms of the scenic corridors, he wanted to see more details, specifically, when those details would come out and given that the scenic corridors on Moraga Road and Moraga Way in particular were very important to the Town. He again complimented Town staff and the consultants for the detailed package and he liked the direction they were headed.

Chairperson Hillis concurred with many of the statements offered by Commissioner Helber. He commented that during a Joint Town Council and Planning Commission meeting, there had been consensus for a discussion on whether or not the Inclusionary Zoning Ordinance would be applied Town-wide or just to the shopping centers. He suggested the language in the second sentence of Program 14, as shown on Page B-11 of the Draft Moraga Housing Element | Housing Plan, under the objective should be modified to allow the flexibility for that discussion to continue, and could be amended to read: *The ordinance shall require that 10 percent of specified units in future market-rate development be set aside as "below market rate" (BMR) and sold or rented to qualifying low-or-moderate-income households.*

Chairperson Hillis had reservations about an Inclusionary Zoning Ordinance being applied Town-wide. He had lived across from the Rheem Center with the parking spaces up front always busy and those near the road almost always vacant, and he was pleased to see there had been a deep look at what the Rheem Center could look like since it was an opportunity for the two gateway shopping centers in the future. He was pleased that the Town was diving into that opportunity. He also lived near the storage facility and the underutilized space near the veterinary clinic, and if the Town were to consider a Public Realm Plan, even if not considering that space for housing, adjacent to the veterinary clinic was a mission-style business complex that was consistent with the architecture at the public storage facility, Via Moraga, and the veterinary clinic, and it would be nice to see all of the potential opportunities for maintaining businesses and the potential for housing as part of the Public Realm Plan in similar detail as the design guidelines for the MCSP Area.

Chairperson Hillis also understood as they proceeded with the process, the Housing Element would be required to go through the California Environmental Quality Act (CEQA) process which would include public comment, and responses to subsequent public comment that had not been addressed through this process.

Ms. Hamid reiterated this discussion was a Study Session only with public comments received as part of the process but confirmed that issues would be reviewed under the CEQA process.

Commissioner Bode spoke to the Inclusionary Zoning Ordinance and recalled as part of a prior discussion the City of Corte Madera had set its inclusionary housing goal too high and no builder had been attracted to that development in that City. He did not want to see that happen in Moraga. He recommended the language in the second sentence of Program 14, as shown on Page B-11 of the Draft Moraga Housing Element | Housing Plan be further modified to include the modification proposed by the Chair along with a realistic goal of 10 percent.

Ms. Hamid thanked the Commission for the comments but noted the Town did not currently have any inclusionary housing requirement and no affordable housing had been built in Moraga in the past eight years. She noted the State Density Bonus law was very flexible and made it easier to achieve affordable housing. Inclusionary housing was a balance and allowed a city to close the gap. She cited the City of San Rafael, which had a 20 percent inclusionary housing requirement that had later been determined to be too high, and 20 percent could also be a constraint. What was appropriate was a balance with options for 10 and 15 percent. She added that developers were looking for certainty of review, certain concessions such as flexibility on setbacks, and were willing to provide the additional affordable unit to get those concessions, which was why inclusionary housing was more favorable than a density bonus.

Staff was still looking into what was working, continued to work with other communities and would return with a set of detailed options in August to allow further discussion. At this time, staff sought a policy direction to include inclusionary housing as a program.

Mr. Miller agreed a decision was not needed on inclusionary housing at this time. It was part of the work plan for the eight years and was a priority item to be resolved after the adoption of the Housing Element, with the details remaining to be worked out.

Chairperson Hillis suggested his recommended approach would be open to more options than one in particular. He clarified again this was a Study Session with comments to be provided. He reiterated his recommended modification to Program 14 and suggested it would encompass all potential opportunities. He also understood Commissioner Bode's concerns and agreed they were valid, but was comfortable that 10 percent was not a barrier. He stated he would be more comfortable with the document if it reflected the general sense the Town Council and Planning Commission had provided during a prior joint session.

Ms. Hamid clarified the direction from the prior joint Town Council and Planning Commission meeting was to come back with a more detailed discussion in August, and while there was general support for inclusionary housing there remained a decision on Town-wide versus focused areas, which staff was looking at, to be discussed further in August. As to the recommended change offered to Program 14, she reiterated the Planning Commission would have a more robust discussion in the future and once the full details had been worked out a decision could be made on the language in the document.

Chairperson Hillis understood if there was no consensus from the Planning Commission on his recommendation he would stand down, but when asked there was consensus from Planning Commissioners Bode and Helber who supported the change while also recognizing the recommendation provided by staff that discussion and due diligence remained.



Assistant Town Attorney Karen Murphy explained that from the staff perspective when staff returned with more details on an Inclusionary Zoning Ordinance staff would also provide information on how HCD may respond to ordinances that were not Town-wide given other policies within the Housing Element related to AFFH throughout the Town as well as create affordable opportunities throughout the Town. The ultimate goal was for HCD to approve the Housing Element so that it could be adopted.

Commissioner Polsky liked the concept of inclusionary housing but did not want it to get in the way of development. He agreed with the staff recommendation and preferred that staff have the opportunity to conduct further study and he wanted to learn more about inclusionary housing before any language revisions were made.

Commissioner Thiel supported exploring the language offered by the Chair with input from the Town Attorney.

Ms. Hamid reiterated no action was being asked of the Planning Commission other than to receive the report.

## **7. ROUTINE AND OTHER MATTERS**

There were no Routine and Other Matters.

## **8. REPORTS**

### **A. Planning Commission**

There were no Planning Commission reports.

### **B. Staff**

Ms. Hamid reminded the Planning Commission of the regularly scheduled July 5 Planning Commission meeting at 6:30 p.m. to discuss the Housing Element, and reiterated the Town Council would be holding two meetings on the Housing Element on July 11 and July 13, 2022. At the end of July, the Working Draft of the Housing Element would be presented to HCD.

Ms. Murphy clarified when asked by the Chair that if the Working Draft of the Housing Element included the language as shown for Program 14 absent the revision the Chair had requested, and if after review by HCD the assumption would be that the policy would apply Town-wide absent further discussions with HCD. The Planning Commission would review the Housing Element at its July 5 meeting, with a recommendation to be made to the Town Council at which time the Chair's recommended language could be considered as a recommendation to the Town Council.

## **9. ADJOURNMENT**

On motion by Commissioner Bode, seconded by Commissioner Polsky and carried unanimously to adjourn the Planning Commission meeting at approximately 8:00 p.m.

A Certified Correct Minutes Copy



Secretary of the Planning Commission

