

**TOWN OF MORAGA
PLANNING COMMISSION MEETING**

Moraga Library Meeting Room
1500 St. Mary's Road
Moraga, CA 94556

February 6, 2012

7:00 P.M.

MINUTES

I. CALL TO ORDER

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

ROLL CALL

Present: Commissioners Driver, Obsitnik, Socolich, Whitley, Wykle,
Chairperson Levenfeld

Absent: Commissioner Richards

Staff: Shawna Brekke-Read, Planning Director
Kelly Suronen, Assistant Planner

B. Conflict of Interest

There was no reportable Conflict of Interest.

II. ADOPTION OF MEETING AGENDA

On motion by Commissioner Obsitnik, seconded by Commissioner Socolich and carried unanimously to adopt the meeting agenda, as shown.

III. PUBLIC COMMENTS

There were no comments from the public.

IV. ADOPTION OF THE CONSENT CALENDAR

A. Approval of the December 5, 2011 Meeting Minutes

B. Approval of the January 17, 2012 Meeting Minutes

On motion by Commissioner Obsitnik, seconded by Commissioner Socolich to approve Consent Calendar Item A, the minutes of the December 5, 2011 meeting, as submitted.

Ayes: Commissioners Driver, Obsitnik, Socolich, Whitley,
Chairperson Levenfeld
Noes: None
Abstain: Commissioner Wykle
Absent: Commissioner Richards

Consent Calendar Item B was moved for consideration under Item VII. Reports C.

V. PUBLIC HEARINGS

- A. **UP 13-11 / Patrick Whelan (Applicant), Nick Ghassem (Owner), 425 Moraga Road.** Consider Conditional Use Permit application to allow the operation of an existing vacant service station to include an expanded and modified convenience store, a new automatic drive-through carwash, a modified service bay, an outdoor vacuum air station, and continued gas sales. The project would include converting an existing service bay to accommodate the expanded convenience store and expanding a second service bay to accommodate the car wash.

Assistant Planner Kelly Suronen explained that since the Planning Commission hearing on January 17, the applicant had revised the plans. There would now be one rather than two vacuum stations, a new landscaping plan consistent with the plant palettes in the Town's guidelines, a reduction in the carwash hours of operation, and a proposal to sell beer, wine, and hot food. She stated that the carwash dryer would exceed the Town's noise regulations and staff recommended the installation of different doors and sound attenuating insulation. The vacuum air station also exceeds the Town's noise standards and staff recommended a sound wall around the vacuum air station to mitigate the noise. Staff was of the opinion that the sale of hot food items would be similar to a quick service restaurant and would generate additional traffic. As such, staff recommended the prohibition of the sale of hot food items while allowing the sale of fresh items. The applicant also desired to sell beer and wine although under the previously approved Use Permit pursuant to Resolution 17-99, the sale of alcohol had been prohibited given the associated impacts. Staff recommended that those products be eliminated consistent with Resolution 17-99.

In response to the Planning Commission, Planning Director Shawna Brekke-Read explained that with the staff recommended mitigations to address the noise impacts the sound levels during the daytime would be 60 dBA consistent with Resolution 17-99.

Ahmad Mohazid, Project Architect, Tecta Associates, 2747 19th Street, San Francisco, explained that some changes had been made to the project since last seen by the Planning Commission on January 17.

Mr. Mohazid requested some language changes to the Conditions of Approval which he would like to discuss after comments from the Project Manager.

Patrick Whelan, Project Architect, advised that information provided by the manufacturer of the car wash had shown that the installation of polycarbonate doors at the entrance and exit of the carwash would reduce noise levels. With the doors installed at the property line on Moraga Road the sound level would be 63 dBA, close to the 60 dBA the Town required. A survey with a decibel meter of the ambient noise at the site had found that whether from the front, north, or closest residential neighborhood on Rheem Boulevard, the decibel level was consistently measured at 65 to 75 dBA, which demonstrated that the ambient levels were slightly higher than the noise created at the property line along Moraga Road. He suggested with the additional mitigation measures the project would satisfy the spirit of the Town's Noise Ordinance. He added that the initial landscape plan had included materials that would have attracted deer; the plans had been reevaluated revising almost all of the plant material to be compliant with the Town's list of preferred plant materials. To further reduce noise impacts from the entrance of the carwash at the rear of the building, rosemary would be planted to overhang the wall and absorb any echo.

Mr. Mohazid spoke to Attachment D, the draft resolution of approval as contained in the February 6 staff report and asked for the following modifications:

- Eliminate Condition 16 given that the applicant had demonstrated acoustical adequacy;
- Condition 39 to be modified to read:

If excess noise generated by the service station adversely impacts the neighboring properties an acoustical analysis prepared by a qualified professional shall be submitted to the Town of Moraga Planning Department demonstrating compliance with the required noise levels. Documented excessive noise shall be mitigated by noise attenuating wall landscaping and other methods.

- Requested that the applicant be allowed to sell beer and wine with the sale of alcohol;
- Condition 41 to be modified to add the following language to the condition as shown:

Including items that can be microwaved. Sale of hot and prepared food shall be limited to hot dogs, tacos, and other types of prepared fast food items requiring simple hot food preparation. No cooking or preparation of food items shall be permitted.

Mr. Whelan described the polycarbonate doors proposed for the carwash which were available in clear or opaque glass and which were proposed to be opaque for the facility. The material would be locked in with the equipment itself whereby when the equipment stopped the polycarbonate doors would open. In speaking with the carwash manufacturer, he stated that the use of this material appeared to be the best way to deal with any noise concerns.

Mr. Mohazid added that the vacuum and air station would be an outside unit near the parking spaces and although staff had recommended an additional sound wall, the only thing close to the vacuum station was the self-storage units located adjacent to the site. He added that the facility was situated away from any residential properties.

Mr. Whelan noted that the vacuum equipment at the front property line would have a sound level of approximately 63 dBA. The vacuum station that had been closer to the front property line had been eliminated from the design. He suggested that the vacuum equipment and air station should not be a noise concern given the location adjacent to a commercial use as opposed to a residential facility. He preferred not to have to install a sound wall.

Ms. Brekke-Read explained that if the sound could not be attenuated down to 60 dBA, staff had recommended a sound wall and landscaping to mitigate the sound levels of the air station. The wall would be located on three sides of the site containing the air station area.

Mr. Whelan asked that the facility be allowed to open and operate first and if there was a sound issue then the sound mitigation could be considered.

Mr. Mohazid suggested that if Condition 39 were allowed to be revised, as requested, that would address any complaints that may arise with non-compliance in the future. He explained that the issue of food was related to the convenience store brand desiring certain things. As to the sale of alcohol, if the Town prohibited the sale of alcohol, beer, and wine, his client (while not pleased) would like the gas station to be approved. In this case, he did not see that the brand (Union 76) would be opposed to allowing a franchise that did not sell beer and wine although it was desired in terms of revenue.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Ms. Brekke-Read advised that the public noticing requirements for the application had been expanded to 500 feet. Staff had not received any comments from the public. When asked, she identified the location of the catch basin located on the property explaining that Condition 13 of the draft resolution had been part of the 1999 approved Use Permit. That condition could be modified at the Commission's direction. She also clarified the sound level requirement, as shown in the 1999 approved Use Permit, and explained that the Town's noise standards had not changed since the 1999 approval. As to whether or not any other gas stations sold hot and prepared food items or alcohol, she was unaware of any stations in Moraga which allowed the sale of those items. The sale of alcohol had been an issue for the Police Department given that there were other businesses (7-Eleven and CVS Pharmacy) which sold alcohol with issues with shoplifting and which were within close proximity to the subject site. The Chief of Police had been pleased that the sale of alcohol was not a part of the application. She added that there had been some concerns with the number of outlets selling alcohol in the community. Additionally, the Use Permit application had not been noticed to the public with the sale of alcohol. If that were permitted, she recommended additional conditions of approval.

Chairperson Levenfeld found that the gas station and carwash would be a convenience for the community and would occupy a vacant gas station site. She was comfortable with the 65 dBA noise level during the day, recognized that the vacuum equipment would not be an ongoing operation, but was not necessarily comfortable with the applicant's revision to Condition 39. She was comfortable with the preparation of food items, similar to food items sold by 7-Eleven given that this would be a convenience store and such food items were expected.

Commissioner Socolich was comfortable with the applicant's proposed modification to Condition 39 that as long as the sound requirements were not met the applicant would be required to provide mitigation to the level desired. He also was not opposed to the sale of food items similar to what was sold by 7-Eleven stores.

Commissioner Whitley preferred to hold to the 1999 Use Permit resolution and conditions but had no problem with a modification to the condition to allow the sale of additional food. He was concerned with comments made by the Police Chief regarding public safety concerns and the potential for additional traffic which could result from the sale of alcohol. He preferred that the conditions imposed as part of the 1999 application prohibiting the sale of alcohol be upheld. He was also concerned with the fact that the project, as proposed, would not comply with the Town's sound restrictions for 55 dBA during the daytime and 50 dBA during the evening, and while there was a lot of traffic along Moraga Road the project would exceed the allowable dBA levels in the daytime hours based on the ongoing operation of several components of the facility, at approximately 63 dBA. He saw no choice but to deny the Conditional Use Permit request.

Ms. Brekke-Read commented that there were other methods to attenuate sound which staff had researched. She cautioned the Commission not to modify the conditions, specifically Condition 39 as proposed by the applicant, since that would make the sound concerns a code enforcement issue. She would rather retain Condition 16 which put the applicant in the position of providing proof of sound compliance ahead of time.

Commissioner Driver also expressed concern with the proposed modification to Condition 39, agreed that the modification could become a code enforcement issue, preferred to retain Condition 16, suggested it was not out of bounds for the Commission to require compliance with the Town's guidelines with the applicant to provide a design that was compliant with the Town's direction, and was not opposed to the sale of the proposed food items but supported the Chief of Police's direction that the sale of alcohol be prohibited. He supported the retention of the conditions of approval as part of the 1999 approved Use Permit prohibiting the sale of alcohol.

Chairperson Levenfeld was not necessarily opposed to the sale of beer and wine but was opposed to the fact that the project had not been noticed to the public for the sale of beer and wine which may have impacted public comment.

Ms. Brekke-Read clarified that staff had noticed the application as the applicant had proposed. Staff had not issued another public notice for this meeting since the Commission had continued the item from the January 17 meeting to a date certain. The applicant had introduced the sale of beer and wine as a new element.

Commissioner Whitley understood that the Commission may prohibit the sale of alcohol and the applicant may request an amendment to the Conditional Use Permit application as a separate application.

Chairperson Levenfeld suggested that such direction would be better for the community, allowing the community to comment on the proposed sale of alcohol.

Ms. Brekke-Read also clarified, when asked, that the Town did not have noise contours in its General Plan or in the Environmental Impact Report (EIR). The noise level along Moraga Road may be approximately 65 dBA which was the reason staff had recommended a qualified acoustical professional provide accurate noise readings. The applicant was being held to a consistent standard in terms of the required conditions as set by the Town's ordinances.

As to whether or not the applicant would be willing to modify the plans to comply with the Town's required sound levels Mr. Mohazid explained that they could not given that they had chosen the quietest and smallest equipment possible, and placed the best doors and sound isolation for the carwash. He understood that they could not reduce the sound level any further.

Mr. Whelan reiterated that with the installation of the doors and insulation on the inside of the carwash it would reduce the sound, although he had no data to show the level of reduction and could not prove the sound levels until the facility was in operation. He suggested that a sound level of 65 dBA was consistent with a normal level for conversation, understood the need to comply with the sound requirements for residential operations, reiterated the location of the site which was not within close proximity to residential properties, and suggested that the applicant had shown that the proposal would be close to the Town's sound requirements which was the reason they had proposed the modification to Condition 39. With the requested modification to that condition, if additional sound attenuation was necessary it could then be addressed.

Commissioner Whitley commented that even with the ambient sound level the carwash would consistently operate in excess of the Town's required sound levels which was why he could not approve the use.

Commissioner Wykle recognized that at this time the Commission had the best sound data available until the facility was open and operating.

The Planning Commission individually evaluated each of the conditions of approval. By consensus, the Commission made the following determinations:

- Condition 16 to be retained, not eliminated as proposed by the applicant, but modified to be consistent with the ongoing use and 1999 resolution allowing 65 dBA during the daytime and 55 dBA during the evening whereby according to the applicant's data a sound level of 63 dBA at the curb would be acceptable.
- Condition 39 to be modified to change the reference from "60 dBA" to "65 dBA" with the original language as shown, not modified as proposed by the applicant.
- Condition 40 to be retained as shown, with the sale of alcohol prohibited but allowing the applicant to apply for a separate Use Permit application for the sale of alcohol.
- By a 3-2 straw vote, the Commission also accepted the applicant's modification to Condition 41 regarding the sale of food items.

In response to the Chair, Ms. Brekke-Read acknowledged that the Chief of Police had also expressed concern with loitering in the area and the 7-Eleven had to remove chairs to ensure loitering would not take place. She identified Conditions 55 and 56 which dealt with loitering and which could be modified if the Commission so desired.

The Commission further discussed modification to Finding 6 on Page 5, to be amended to reflect sound levels of 65 dBA at the property line during the day and 55 dBA during the night consistent with the previous use approved in 1999; Page 6, Condition 5(a) to be amended to read "65 dBA" at the property line; and Condition 5(b) amended to read "the sound wall landscaping shall be installed around three sides of the vacuum air station if required to attenuate sound levels to 65 dBA during the daytime and shall be subject to Design Review Approval;" Condition 13 on Page 8 to be amended to read "An on-site 18 inch x 18 inch catch basin;" Condition 16 to be amended to read "65 dBA during the daytime and 55 dBA during the evening;" Condition 39 on Page 10 to be amended to read "65 dBA during the daytime;" and Condition 41 on Page 11 to be revised as follows:

Packaged food items (Including items that can be microwaved). Sale of hot and prepared food shall be limited to hot dogs, tacos, and other types of prepared fast food items requiring simple hot food preparation. Other than as provided in the immediate preceding sentence, no cooking or preparation of food items shall be permitted;

And Condition 52 on Page 12 to be amended to include the language "On-site storm drain system."

On motion by Commissioner Socolich, seconded by Commissioner Wykle to adopt a Draft Resolution next in number to approve UP-13-11 for Whelan at 425 Moraga Road subject to the findings and conditions as shown, and as amended as follows:

- Finding 6 on Page 5 to be amended to reflect sound levels of 65 dBA at the property line during the day and 55 dBA during the night consistent with the previous use approved in 1999;
- Page 6, Condition 5(a) to be amended to read "65 dBA" at the property line;
- Condition 5(b) amended to read "the sound wall landscaping shall be installed around three sides of the vacuum air station if required to attenuate sound levels to 65 dBA during the daytime and shall be subject to Design Review Approval;"
- Condition 13 on Page 8 to be amended to read "An on-site 18 inch x 18 inch catch basin;"

- Condition 16 to be amended to read "65 dBA during the daytime and 55 dBA during the evening;"
- Condition 39 on Page 10 to be amended to read "65 dBA during the daytime;"
- Condition 41 on Page 11 to be revised as follows:

Packaged food items (Including items that can be microwaved). Sale of hot and prepared food shall be limited to hot dogs, tacos, and other types of prepared fast food items requiring simple hot food preparation. Other than as provided in the immediate preceding sentence, no cooking or preparation of food items shall be permitted;

- Condition 52 on Page 12 to be amended to include the language "On-site storm drain system."

The motion carried by the following vote:

Ayes:	Commissioners Driver, Obsitnik, Socolich, Wykle, Chairperson Levenfeld
Noes:	Commissioner Whitley
Abstain:	None
Absent:	Commissioner Richards

Ms. Brekke-Read advised of the ten-day appeal process of a decision of the Planning Commission in writing to the Town Clerk.

VI. ROUTINE AND OTHER MATTERS

A. Planning Department Projects, Work-Plan and Update, and Initiation of Zoning Changes

Ms. Brekke-Read advised that the Planning Commission would next meet on Tuesday, February 21 at which time she planned to discuss the proposed zoning changes. She took the opportunity to update the Commission on planning projects for: 1800 Donald Drive, Hetfield Estates, Bollinger Valley, Saint Mary's College Recreation Facility, and the tentative meeting dates for Planning Commission hearings. She added that Senior Planner Richard Chamberlain would be retiring on March 23 and would be providing feedback on the Zoning Ordinance. Interviews for the Planning Commission would be held on Wednesday, February 8.

VII. REPORTS

A. Planning Commission

There were no reports.

B. Staff

Ms. Brekke-Read reported that the January 23 Design Review Board (DRB) meeting had included an ongoing discussion for a fence located at 312 Rheem Boulevard and a Study Session for a project located at 1800 Donald Drive.

C. Approval of the January 17, 2012 Meeting Minutes

The following revisions were made to the minutes of the January 17, 2012 meeting:

To the fifth paragraph on Page 19:

Vice Chair Socolich commented that he could recall half a dozen variances over the two years he had been a member of the DRB.

On motion by Commissioner Socolich, seconded by Commissioner Driver to approve the minutes of the January 17, 2012 meeting, as amended, with Commissioner Obsitnik's abstention.

VIII. ADJOURNMENT

On motion by Commissioner Obsitnik, seconded by Commissioner Wykle to adjourn the Planning Commission meeting at approximately 8:40 P.M. to a regular meeting of the Planning Commission on Tuesday, February 21, 2012 at 7:00 P.M. at the Moraga Library Meeting Room, 1500 St. Mary's Road, Moraga, California.

A Certified Correct Minutes Copy

Secretary of the Planning Commission