

**TOWN OF MORAGA  
PLANNING COMMISSION MEETING**

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

February 21, 2012

7:00 P.M.

**MINUTES**

**I. CALL TO ORDER AND ROLL CALL**

- A.** Chairperson Levenfeld called the Special Meeting of the Planning Commission to order at approximately 7:00 P.M.

Present: Chairperson Levenfeld, Commissioners Socolich, Whitley, Wykle

Absent: Commissioners Driver, Obsitnik, Richards

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

**B. Conflict of Interest**

There was no reported conflict of interest.

**II. PUBLIC COMMENTS**

There were no comments from the public.

**III. ADOPTION OF CONSENT AGENDA**

There were no items on the consent agenda.

**IV. ADOPTION OF THE MEETING AGENDA**

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

**V. PUBLIC MEETING**

**A. Zoning Ordinance Amendments and Issues**

Planning Director Shawna Brekke-Read reported that progress was being made on issues that were raised at the Commission's joint meeting with the Town Council on November 30, 2011. Those issues included wine growing, designating an expanded area around the Rheem planning area as a Priority Development Area, and closing a bicycle and pedestrian gap along Moraga Road. Tonight, she wanted to focus on the following code/zoning issues: the appeal process; uses in commercial areas; disconnect between the General Plan, input from community visioning, and zoning ordinance; variances; and

Planned Unit Developments (PUDs). PUDs had inconsistencies with their zoning regulations which made structures legally nonconforming. Options to address this issue were creating individual zoning districts for each PUD in Town; creating overall guidelines for development in PUDs; adding exceptions to the code; and/or combining one or more of the approaches.

With respect to wine growing, there were four wineries in Town, all of which were in residential areas, and produced wine for domestic and retail use. Winery complaints included parking, traffic generation, the appearance of more than just a home use, and special events. The code did not address wineries making regulation difficult. Other cities had specific criteria for wineries and issued home occupation permits.

Commissioner Whitley owned part of a winery in Paso Robles where the discharge of wine waste was subject to extreme regulation. The site and smell of grape crushing fermentation was also problematic. He believed that crush pads should be located in commercial areas, not residential areas. Residents should be able to make wine in their own homes but there should be limitations on quantity and use.

#### PUBLIC COMMENT OPENED

Tony Inzerillo, 500 Rheem Boulevard, Boardmember of Lamorinda Winegrowers Association, stated that Moraga had a history of wine growing since the late '60s. Presently, there were four commercial wineries in Moraga, one of which he owned. In terms of licensing, a lay person could make up to 125 gallons of wine; a married couple could make up to 250 gallons of wine; anything above that required a commercial license. In the Lamorinda area, there were about 200 winegrowers, 50 winemakers, and 4 commercial wineries. Grape crushing only lasted one afternoon and fermentation took place in the garage so there was no smell; his horses elicited more of a smell than his wine. The Department of Alcoholic Beverage Control was stringent on making sure runoff was not going into waste water. On his ranch, where he had a lot of land, the runoff went into the soil. Of the 200 cases he made every year, he gave away 100 cases to the community. This was not a money making proposition, it was love for the product. It was simply a glorified home occupation.

#### PUBLIC COMMENT CLOSED

Commissioner Socolich said that his father made wine in the garage every year. Grape crushing lasted one day and provided a stringent odor throughout the neighborhood. Even though Inzerillo's ranch did not have neighbors in close proximity, there were some vineyards that did. There needed to be a way to protect those living near wineries. For wineries that did not have a lot of land to

disperse water, he suggested contacting the Regional Water Quality Control Board.

Commissioner Whitley thought that the production of wine for personal use should be encouraged; however, there was a difference between commercial use and industrial use. Wine produced on a scale above 250 gallons bordered if not crossed the line into industrial use and industrial uses in residential areas was inappropriate. He cautioned the Commission about separating commercial uses with industrial uses and allowing industrial uses in residential areas. There needed to be a division; maybe a property had to be a certain size, maybe a property had to be separated from residential areas, or maybe there was a limit on production amount. It was important to get input from the Lamorinda Winegrowers Association and the Regional Water Quality Control Board, and, to look at other cities that had wine ordinances and wine production regulations.

Commissioner Wykle wanted to know if the appeal process had been an issue in the past and whether or not a Commissioner or member of the Town Council had ever appealed an item.

Commissioner Whitley replied that a Commissioner or a Councilman had appealed an item in the past. The complaint was that it was too easy to appeal and gave less meaning to the decision that was made. All you needed was one person on the Commission or the Town Council to appeal.

Commissioner Socolich clarified that anyone from the community could ask a Commissioner to appeal an item without paying a fee. There was no input from the rest of the Commission as to whether it was a good idea or not.

Commissioner Wykle said that if an item was appealed then the Commission had already heard the issue. The issue had been discussed in the open where opinions were already laid out. The rest of the Commission may not have agreed but the debate on the issue would change from the Commission to the Council.

Commissioner Socolich stated that there had been a recent appeal on the 50-foot tall East Bay Regional Communications System Authority tower at Alta Mesa.

Chair Levenfeld said that in her years of serving on the Commission she was unaware of her ability to appeal an item. She knew that Council members could appeal, but did not know Commissioners held the ability to do so as well.

Commissioner Whitley recalled two situations where a Commissioner had been dissatisfied with a decision and appealed. More frequently, a member of the Council appealed. He was reluctant to remove from Council the authority to appeal a decision and not have to pay a fee; the Council would not want to give

up that right. He questioned taking that right away from the Commission because if a Commissioner felt strongly about an item he could appeal it.

Chair Levenfeld stated that Commissioners' comments were on record. If an item was appealed then the comments would go with the appeal.

Commissioner Whitley noted that when an appeal item went before Council, it went as a de novo review. The Council had the ability to read the record of the Commission but they were their own people. They had different constituencies and different concerns than the Commission when making decisions. It could be that a Commissioner felt correctly that a decision made by the Commission based on its own analysis would be differently decided by the Council because the Council decided in a different way.

Commissioner Socolich pointed out option b where a Commissioner or Councilmember could call up a matter subject to majority approval. The Commission or Council would have to agree that an item warranted further discussion and consideration.

Commissioner Whitley said there was another way to address the appeal process where a minority vote was required. The Commission would need approval from three Commissioners to file an appeal and the Council would need approval from two members to file an appeal. This removed pressure from an individual Councilmember but still allowed the right to appeal if they could convince another constituent to do it. It seemed like the right way to go because it did not require a majority but it did not require a single individual either.

Commissioner Wykle was fine with Commissioner Whitley's approach but he did not want to take away any power from the Council.

Commissioner Socolich liked that Commissioner Whitley's idea involved a minority of more than one.

Commissioner Whitley said the minority vote changed the Council's power in that there was an additional hurdle. It was a half way measure between eliminating power and keeping power; it also allowed other Council members to weigh in.

Chair Levenfeld asked how the appeal process would work in a public forum.

Commissioner Whitley answered that if it required a majority vote then under the Brown Act there would have to be a hearing on the matter. If it was a minority vote then there was no public hearing on the matter because a minority was not a quorum of the board or body and did not violate the Brown Act. The Planning Department would notice the appeal and take it to Council where the decision

would be jointly made. He noted that communication among any three members of the Council outside of a meeting was a quorum and violated the Brown Act.

Commissioner Wykle stated that he was comfortable with changing that approach for the Commission but not for the Council.

Ms. Brekke-Read reported that the code called for the Planning Director to make findings for all uses; findings required criteria and a certain amount of discretion. The Planning Director had the ability to determine whether the use met the findings, whether the use was controversial, and whether the use should be heard by the Commission. Currently, there was no over the counter permit. She wanted to make the process of opening a business easier; where, for example, for permitted uses, a nominal fee was paid and a zoning permit or an occupation permit was issued. Conditional uses were heard by the Commission. Since she started as Planning Director, she brought every land use permit before the Commission and people did not like it. She was doing it on purpose because she wanted the community to see that it was a problem that needed to be fixed.

Commissioner Whitley asked if the Town had received comments from the community on what the zoning ordinance should look like.

Ms. Brekke-Read replied that the Economic Development Action Committee, which consisted of members from the Chamber of Commerce, favored the idea of fixing the code so that a permitted use did not have discretionary findings. They also liked the idea of having business licenses.

Commissioner Socolich liked the idea of simplifying the permitted use process and the conditional use process.

Commissioner Whitley agreed that simplifying the process was a good idea. But when there was a business that Moraga did not like, residents liked being able to say no and the only opportunity to say no was under the current structure. If the code was changed to allow permitted uses and a use came up that Moraga did not like then the residents would not be able to say no and that would create stress.

Chair Levenfeld said that in the case of Dollar Tree there was nothing the Commission could do but allow it because of the findings. The findings were misleading because the public believed they could be changed. All the Commission could do at the time was listen to the public's frustrations.

Commissioner Socolich responded that meetings were good opportunities for the public to voice their concerns. It was their concerns that resulted in Dollar Tree doing things that set it apart from other Dollar Tree stores. It resulted in a nice establishment and part of that was from public input. He suggested that permitted

uses be noticed so people could voice their opinions. There had to be a mechanism in place where the public could comment even if the use was approved over the counter.

Commissioner Whitely suggested identifying uses the community wanted as permitted uses. Businesses that were objectionable could be conditional and subject to conditions and prohibitions. He questioned how the Commission would define the uses they allowed.

Chair Levenfeld was concerned that the businesses they wanted would not come because of the level of scrutiny.

Commissioner Wykle thought allowing permitted uses was a great concept but was unsure of the uses and wanted to see a list.

Commissioner Socolich argued that setting a square footage trigger did not work because you did not know what kind of business was going in.

Ms. Brekke-Read explained that the idea of size was related to big businesses. Some downtowns were small, pedestrian friendly with mixed uses. Others had store fronts that were combined into one and dependent on one larger tenant. Other places had an overconcentration of restaurants, nail salons, wireless carriers, or alcohol facilities.

Chair Levenfeld believed the topic warranted a broader conversation with the Chamber of Commerce and the community.

Commissioner Socolich said the information gathered at the Rheem workshops would be a good starting point for putting together something that the Commission could look at.

#### PUBLIC COMMENT OPENED

Renee Zeimer, former Economic Development Action Committee member, stated that the goal of EDAC was to streamline the process for opening a business in Moraga. They wanted to make it easier to attract businesses. They were told by the Chamber of Commerce, existing Town businesses, and commercial agents that Moraga had a reputation for being difficult. Even the small gift shop had to wait a long time before it could open its doors. Moraga was not located off a major arterial so people needed a reason to come in. It was too easy for businesses to find other places to go. The Town needed criteria that identified the businesses the residents wanted.

Commissioner Socolich was concerned that the current regulations were too onerous and discouraged businesses from coming into Town. They needed to figure out a way to make it easier.

Ellen Beans voiced that other cities had revised their codes so Moraga did not have to reinvent the wheel. It should not take a lot of time because there were models out there. In 2006 a conversation was held at the Soda Center on what people wanted to see in the Town. The focus was primarily on the Moraga Center but everything was applicable to the Rheem Center. People wanted smaller, friendlier businesses, not great big businesses; therefore it was important to consider size.

#### PUBLIC COMMENT CLOSED

Chair Levenfeld asked if the Moraga Center Specific Plan designated certain areas for businesses to come without having to go through a discretionary process.

Ms. Brekke-Read answered that the only MCSP area that was rezoned was R-20; the rest of the center had not been rezoned. The MCSP outlined permitted uses that were much more permissive than the zoning ordinance.

Chair Levenfeld suggested that the issue be brought back to another meeting where the Commission could consider recommendations from staff and not just alternatives.

Commissioner Socolich agreed stating that he wanted to see something put together based on the meeting's discussion.

Commissioner Whitley was concerned about formula businesses, floor area, and size.

Chair Levenfeld was concerned about the overconcentration of uses.

Commissioner Socolich wanted to see more information on zoning permits, occupancy permits, and over the counter ministerial actions.

Chair Levenfeld added that she did not want to make it harder for those businesses that the Town encouraged.

Ms. Brekke-Read inquired about having pop up stores in Moraga. Pop up stores stayed open for about 60 days, had a following, and then closed down. They could be an innovative solution for the Town's vacant storefronts. With respect to the disconnect between the General Plan and the zoning ordinance, she asked if the Commission wanted to see more pedestrian activity.

Commissioner Socolich thought that it made sense to encourage pedestrian activity in the shopping centers.

Chair Levenfeld wanted to encourage pedestrian activity everywhere; it was part of a good healthy lifestyle.

Ms. Brekke-Read recommended that the code be changed so that the Planning Commission heard all variance applications rather than the zoning administrator. The zoning administrator did not hold meetings on a regular basis so it did not make sense to have that position decide on variances. Variances were important issues that a body of seven should be making rather than a body of one.

Commissioner Socolich believed that it made sense for variances to come before the Commission.

Commissioner Wykle thought that variances should be heard by the Commission in order to protect the Planning Director.

Ms. Brekke-Read recommended option b for the Planned Unit Development issue because the information existed and did not require a great deal of research. The problem was that it did not address additions or remodels.

Commissioner Socolich figured that if each lot had its own criteria then each lot would be different. This could result in hodge-podge of houses with no uniformity.

Commissioner Wykle liked option b because it made everyone legal and conforming which was a big plus. Yet, it did not solve for additions and remodels.

Chair Levenfeld felt that the Commission needed to deal with this issue because it was not going to go away.

Commissioner Socolich did not see how overall guidelines would work. He had no problem with it as long as it was workable.

Chair Levenfeld felt the Commission was ready to move forward with option b.

Ms. Brekke-Read stated that Moraga measured setbacks from eaves and not from foundations. If the Commission was to bring forward a package of zoning text amendments, then she recommended that they include measuring setbacks from foundations and not the eaves.

Commissioner Socolich said that setbacks for decks, and other appurtenances that extended beyond the foundation, needed to be addressed.

## **VI. ROUTINE AND OTHER MATTERS**

There were no items under routine and other matters.

## **VII. REPORTS**

### **A. Planning Commission**

Commissioner Wykle reported that he attended the Moraga-Orinda Fire Department Liaison Meeting where he shared the Commission's recent approval of the gas station at 425 Moraga Road.

### **B. Staff**

Ms. Brekke-Read reported that the Hetfield project was ready for consideration but that it would not be heard until the Commission's second meeting in March in order to get the three newly appointed Commissioners acclimated to their positions. Agenda items for March 5, 2012 included an application for a new yogurt shop and 1800 Donald Drive. There had been many development inquiries regarding the Moraga Center Specific Plan, the Rheem Planning area, and the former bowling alley site. Rich Chamberlain, Senior Planner, was retiring March 23, 2012.

Chairperson Levenfeld wanted to recognize and thank Commissioner Whitely for his service to the Town.

Commissioner Wykle said that he would like to revisit the grading ordinance and lower the grading permit threshold.

## **VIII. ADJOURNMENT**

On motion by Commissioner Whitley, seconded by Commissioner Socolich to adjourn the Planning Commission meeting at approximately 9:08 P.M. to a regular meeting of the Planning Commission on Monday, March 5, 2012 at 7:00 P.M. at the Moraga Library Meeting Room, 1500 Saint Mary's Road, Moraga, California.

A Certified Correct Minutes Copy

Secretary of the Planning Commission