



**TOWN OF MORAGA  
SPECIAL MEETING**

**May 11, 2021  
MINUTES**

**5:30 p.m. Special Meeting**

**TELECONFERENCED MEETING LOCATION ONLY**

**\*COVID-19 NOTICE\***

**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 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 Executive Orders Nos. N-25-20 and N-29-20 from Governor Gavin Newsom and the Contra Costa County Health Officer Orders including the most recent dated February 25, 2021, the May 11, 2021 special meeting was not physically open to the public.**

***All Town Councilmembers and Town staff participated in this meeting via teleconference (Zoom webinar)***

**1. CALL TO ORDER**

The special meeting was called to order at 5:33 p.m. by **Mayor Mike McCluer**.

**ROLL CALL**

Councilmembers present: Mayor Mike McCluer, Vice Mayor Steve Woehleke, and Councilmembers Teresa Onoda, Renata Sos and David Stromberg

Councilmembers absent: None

**2. PUBLIC COMMENTS AND SUGGESTIONS**

**Mayor McCluer** reported no comments had been received for this item.

**3. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION**

**A. Planned Development Process**

Conduct a Study Session to Provide Policy Direction on the Project to Streamline the Three-step Planned Development Process *(continued from April 28, 2021)*

Town Manager Cynthia Battenberg reported that for the past three years the Town Council had adopted a goal to develop a plan and initiate re-evaluation of the Town's Three-step Planned Development Process development regulations, needs, and Design Guidelines taking into account feedback from residents and other interested stakeholders. As part of this year's Town Council Goal Setting process, the Town Council had requested that staff return to the Town

Council and discuss this goal to obtain feedback on some of the policy issues to determine how to move forward.

Planning Director Afshan Hamid acknowledged the complexity of the project which involved multiple staff including herself, the Senior Planner, the Assistant Town Attorney and the Town Manager. Ms. Hamid provided a PowerPoint presentation and requested the Town Council provide direction to staff regarding revisions to Moraga Municipal Code (MMC) Chapter 8.48, Planned Development District, to address a 2021 Town Council and Community Goal to complete a review of the Three-step Planned Development (PD) Process to create a more strategic process that supported State objectives, the General Plan, the Housing Element and Town Council Goals.

Ms. Hamid identified the Town policies involved specifically Goal H4, Policy H4.1 (Improve the Development Process) of the adopted Town of Moraga 2015-2023 Housing Element, along with other potential changes. She highlighted Section VII. Housing Constraints, a summary section of the Housing Element, and noted that for large subdivisions of planned unit developments (PUDs) the Town had used a three-part approval process which developers had found to be slow and burdensome, while community members had supported a thorough and deliberate approval process, and the Town was interested in reducing the time and cost while still allowing appropriate review. She explained that Implementation Program IP-H14 (Streamlined Review Process), where the Town would explore changes to the development review process.

Ms. Hamid reported the State of California had recently passed numerous housing laws to accelerate housing production specifically Senate Bill (SB) 330, a five public meeting limit for new residential projects that were consistent with General Plan land use designation and zoning (with General Plan Amendments (GPAs) and rezoning exempt) and SB 35, streamlining of certain housing projects with an affordable component to meet the Regional Housing Needs Allocation (RHNA) approved as a ministerial application. The State of California, Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) had been closely monitoring housing production on an annual basis. The Town of Moraga had submitted its Housing Element Annual Report to the State Department of Housing and Community Development (HCD) on April 1, 2021. Staff reported the Town was not meeting its overall RHNA numbers, specifically for Moderate, Low, Very Low, and Extremely Low Income households, but exceeding the RHNA for Above Moderate households. It was noted that the State was linking benefits, such as grants and technical support, to meeting the RHNA and pro-housing incentives were being offered.

Ms. Hamid provided an overview of the history of the Town Council Goals to streamline the Three-step Development Process and the receipt of SB 2 grant funds in the amount of \$89,000 to fund the project. The grant required the project to result in the adoption and implementation of measures to streamline housing production.

Senior Planner Steve Kowalski continued the PowerPoint presentation and provided an overview of the Town's current Three-step Development Process which included the Conceptual Development Plan (CDP), General Development Plan (GDP), and Precise Development Plan (PDP) stages of review; the areas of concern staff had identified with the current processes; areas of confusion with the process; and the results of a staff survey of the processes used by other Bay Area municipalities which had been outlined in the May 11, 2021 staff report.

Based on analysis, staff identified several areas of concern. The CDP required major expenditures and extensive project details early on. "Conceptual" was misleading terminology and not accurate for the review. The CDP requirements did not include California Environmental Quality Act (CEQA) review, yet CEQA was conducted at the CDP stage when an application was submitted. CDP typically had numerous conditions and mitigation measures making subsequent project revisions at GDP/PDP steps difficult. Overlap of submittal requirements between the three

steps caused confusion. Complete civil engineering plans were not required until the PDP step but needed at the CDP step to complete CEQA review.

Staff surveyed eight jurisdictions and found that seven cities used a one or two step process, Lafayette used a three step process; however, it was lengthy and dated. Orinda also had a lengthy process. Dublin, Fremont, Mountain View, Napa and San Leandro had recently updated and streamlined their codes. A PD approval process took one to two years. All eight municipalities required Planning Commission and Council approval for all PDs. Staff found that municipalities with updated Ordinances had processed PDs more efficiently even with a requirement for Council approval.

Staff concluded the current PD process was 40 years old, had not been updated to address the impact of California Environmental Quality Act (CEQA) requirements and numerous State laws, and was inconsistent with the Housing Element policy language calling for streamlined review processes for new housing projects. Additionally, the length of project review time was further impacted by the Town Council, Planning Commission and staff turnover during the process which added to the confusion and additional time to bring everyone up to speed.

Ms. Hamid identified modification to the new PD process considerations to retain local control to the greatest extent feasible while streamlining and improving the PD process to meet State requirements and provide greater clarity and certainty of review to decision making bodies, the public, staff and applicants. The role of the Planning Commission was detailed with the current PD process allowing the Planning Commission to act as the final decision-making body on PDs that did not require a GPA or rezone. In those cases, decisions of the Planning Commission were appealable to the Town Council. Staff instead recommended the Planning Commission role on PDs be modified with the Planning Commission to be an advisory body to the Town Council and therefore Council would have the final say on all PDs.

Ms. Hamid also stated that public outreach was recognized, valuable, necessary, and important, although SB 330 limited the total number of public meetings to five meetings including neighborhood meetings, study sessions, public hearings, workshops and an appeal. PD applications that required a GPA, rezone, and projects located in the High Fire Severity Zone would be exempt from the five meeting maximum. The PD process and CEQA requirements were also highlighted with staff recommending the CEQA PD process be clarified at the onset of the application process in the CDP stage.

Other areas of technical review for PDs were identified including a requirement for all PDs to meet MMC grading requirements including obtaining a grading permit issued by the Public Works Department following project approval, and adherence to MMC requirements regarding view sheds and compliance with the Hillside and Ridgeline Ordinance and Scenic Corridors as part of a PD application. The Moraga-Orinda Fire District (MOFD) was involved throughout the PD development process and the criteria for MOFD review was outlined. The objective standards as part of SB 330 were highlighted with staff requesting input from the Town Council on other items to be analyzed and considered as part of the PD process.

Staff requested the Town Council provide input and feedback on the following:

Should the Town update the PD process to combine the CDP and GDP steps into a single step?

Should the Town further evaluate and update as necessary the procedures, steps and submittal requirements for an application?

Should the Town explore requiring Town Council approval of all PD applications?

Were there any other considerations?

Ms. Hamid recommended the Town Council provide direction to staff regarding the revisions to MMC Chapter 8.48 to clarify and streamline the Three-step PD process to comply with State legislation, implement the Town's 2015-2023 Housing Element Implementation Policies and achieve a long-standing Town Council Goal. As part of the next steps, staff requested input and feedback from the Town Council which may require additional analysis, and Planning Commission consideration with a recommendation from the Planning Commission to the Town Council, or the input and feedback from the Town Council and continue with additional discussion and analysis.

Responding to the Council, Ms. Hamid, Ms. Battenberg, and Mr. Kowalski clarified:

- State housing legislation was trying to link more pro-housing policies that encouraged more residential development from local jurisdictions to additional State grants and technical assistance for housing and infrastructure improvements. Some grants were One Bay Area Grants (OBAG) for transportation improvements.
- Of those municipalities that used a single step PD process they had involved the submittal of an application to be reviewed by staff first for conformance with applicable General Plan policies and development standards. Once the plans were ready for review by the decision making bodies those municipalities with a single-step PD process would have the application reviewed by the Planning Commission with a recommendation from the Planning Commission to the Council.
- If the CDP and GDP stages were combined, the current ambiguity and a lack of clarity would then allow the advantage of a clearer process with the required technical review at the appropriate stage. There would be no loss of a robust public process or public hearings. Staff would still process the PD application with the decision making bodies directing the decisions and reviewing the analyses. Staff sought more clarity in the process and review to bring it into compliance with CEQA and current State laws.
- The GDP process built upon the CDP stage and was a more fined-grained analysis of the CDP. Many technical documents were required up front as part of the CDP stage (such as environmental review) although they were currently occurring at a much later stage. Staff recommended the entire application occur up front along with the CEQA requirements to provide the Planning Commission and residents all the information. The current process did not reflect the best practices staff was conducting. One of the challenges was that decisions were being made in the CDP stage and when the mitigation measures were established, CEQA was done, and later when an application reached the GDP stage, there could be additional changes desired but were challenging given the limited flexibility at that point. If all of that information was available initially all decision-making bodies, staff and the public would have a better understanding of what was being approved and have conditions identified or addressed at the time. Once CEQA was done, the Environmental Impact Report (EIR) could not be revised. Combining the CDP and GDP stages enabled a greater understanding of what was being approved and would not lock the Town in before all information was available. Providing the CEQA and all technical analysis up front would allow a greater understanding of project issues.
- Staff had recommended consolidating the CDP and GDP stages to allow for a comprehensive application. Once an EIR and CEQA review were complete there would be a full understanding of an application. Currently decisions were being made up front without the benefit of all information. The Town's current three-step PD process made sense prior to the passage of CEQA, but with the CEQA requirements they could not be

done in the phase that made sense for staff, which was the GDP stage where most studies were done.

- The PD processes followed by other jurisdictions, as detailed in the staff report and in the PowerPoint presentation, were again highlighted with every jurisdiction looking at the PD process a bit differently. An example from the City of Fremont was provided where there was a two-step process with an option to combine the two steps into one with Planning Commission and Council review on one occasion.
- Staff was not making specific recommendations at this time since more study was needed. The subject discussion provided an initial conversation for the Town Council to provide feedback, with staff and legal counsel to do more research, develop a plan, and analyze the options with Planning Commission input in order to bring forward a fully fleshed out recommendation to the Town Council for consideration and a decision.
- If the CDP and GDP stages were combined, similar to the cities of Fremont and Dublin with a two-step process, it would result in a higher percentage of a complete plan.
- The benefits of conducting a study session up front for PDs was being researched by staff. One of the advantages of a study session was to provide a broad direction to a developer up front and engagement with the community on an active application and based on perception without technical analysis and clarity of information. The disadvantage was that the direction to the developer was broad, unspecific, and not based on any technical review or merits. Staff would like to evaluate further with Moraga's community character.
- Concerns with the Moraga Center Specific Plan Implementation Project (MCSP-IP) Citizens Advisory Committee (CAC) process were acknowledged. The MCSP-IP CAC had been a challenge since the MCSP had already been adopted in 2010, its policies had not been under discussion, and the discussion was on the implementation of the MCSP. Staff was confident the MCSP-IP CAC process was not something that would be specifically followed for PD applications, although community outreach was important throughout the process. How to obtain meaningful feedback and establish information correctly so that staff, decisions makers and the public had the information and clarity up front was important to allow for comments based on information that had been vetted. The most successful community meetings were those where the developer was asking questions they wanted to know the answers to so as to meet the needs of the community.
- While a preliminary step followed by a final step process could be analyzed by staff, the project description dictated the level of environmental review to be determined by the lead agency. Since CEQA was required when an application was submitted it required a detailed review at the CDP stage.
- Of the PD processes used by municipalities that had been reviewed by staff, the City of Napa had used an interesting process after updating its entire zoning code, which staff could review further and discuss with City of Napa staff to determine how that process was working for its community.

#### PUBLIC COMMENT OPENED

Suzanne Jones, Preserve Lamorinda Open Space (PLOS), submitted a letter on behalf of PLOS for Town Council consideration. She noted that CEQA was one of the first things done and oftentimes the first meeting for a PD included a CEQA scoping session. If that was not done, the first meeting should be comments on the Draft EIR (DEIR) the first time the public interfaced with the project. She asked staff to clarify what would be different from what the Town was doing now

in terms of doing CEQA up front. She also commented that the DEIR included an alternatives analysis to determine the least environmental damaging project alternative. She expressed concern after going through the CEQA process that the Planning Commission may have identified a significantly less dense project alternative as the preferred alternative rather than the developer's preferred project, which should be determined as early as possible prior to asking an applicant to prepare all of the entitlement submittals.

## PUBLIC COMMENTS CLOSED

Responding to the comments from Ms. Jones, Ms. Hamid explained that the Town's current PD process allowed CEQA to be done at various stages of the PD development. Staff was asking that CEQA be done up front now and be clearly outlined and provide the clarity of analysis up front. In terms of the DEIR, the Planning Commission may review an alternative as part of the decision making body's review and analysis.

**Councilmember Onoda** stated that the City of Napa was larger, flatter, and located in a valley and should not have been compared to the Town of Moraga. The Town of Moraga's population was highly educated, wanted to be involved in the process, and the Town Council served the residents of Moraga, not developers. Residents should have every possible opportunity to discuss the CEQA scoping and EIR.

**Councilmember Onoda** was happy with the Town's current process which was similar to the process utilized by the City of Lafayette over Dublin or Napa. She stated "if it was not broken don't fix it." She also commented that she had not seen a Councilmember or candidate for the Town Council suggest the current process needed to be fixed, and stated it had been suggested by former Planning Directors. She recommended consideration of what she described as a four-step process; a CDP without CEQA, an application which triggered CEQA, a deeper dive analysis, and then the current PD process.

**Councilmember Sos** suggested the current process was, in fact, broken which was why this discussion should proceed. She found the recommendation for a four-step process to be a tactical level of discussion and preferred the Town Council defer to staff, with staff to provide a recommendation for the Town Council to consider and provide feedback. It was time to make improvements in the current PD process which would benefit the public, the Town, and provide some clarity and precision into a process that had not served the Town especially well. She recognized the PD process required harmonization with current State laws, General Plan considerations, RHNA mandates, and the community's desire to maintain the semi-rural environment and protect the Town's remaining open space.

**Councilmember Sos** wanted to maintain as much local control as possible within the confines of recent State law. Any changes made to the current process should allow for timely notice and meaningful and productive public input at the appropriate milestones in the approval process. She favored a process that had off-ramps for proposed developments in areas that neither merited nor were appropriate for streamlined consideration and on-ramps for those that did. As an example, a PD in a flat already developed area in the downtown would arguably lend itself to a simpler and more streamlined path through the approval process since there should be fewer CEQA and General Plan considerations, grading or slope issues, issues under the Hillside and Ridgeline Ordinance, and wildfire risk considerations. Development in a more remote area, on a hillside or near open space may raise different and more complex considerations including CEQA issues, General Plan, hillside and environmental and natural habitat challenges, with an increased wildfire risk that would have to be addressed and mitigated.

**Councilmember Sos** suggested if the improved process was clearer and had the effect of encouraging future development towards the center of the Town and away from open space and high fire danger areas all the better, and it would enable the Town to take future steps to

implement its RHNA from the State and pave the way for diversified housing stock. She suggested the streamlined process should not come at the expense of thorough and serious consideration of environmental, CEQA and General Plan issues, or the opportunity for meaningful public input. Whatever process was chosen, it was important the process start with clear guidance to the developer so that there were no surprises if the Planning Commission or the Town Council made changes or expressed opposition in the future. She suggested that taking a look at combining the CDP and GDP stages was worth consideration as long as it was guided by quality information and quality of decision making with respect to vesting rights.

**Councilmember Sos** also recommended reviewing the respective roles of the Planning Commission and the Town Council with acknowledgement and use of the deep technical expertise the Planning Commission offered, although she questioned the efficiency and the costs associated with the appeals process to the Town Council when the Planning Commission was the decision-making body. She found the discussion long overdue and was confident that staff would return with a proposal the Town Council could thoroughly discuss.

**Councilmember Stromberg** commented he had been struggling with the topic given his perspective was different from other Councilmembers. As a former member of the Planning Commission, he had looked at the current three-step process as affecting current projects and had found the process not to be inefficient but in many respects unfair to applicants. He had multiple communications with Town staff and suggested because of one overriding issue, having the primary focus of the discussion to be on changing the current three-step PD process to a two-step process had missed the mark given SB 330 and the restriction on the number of public meetings that could be performed and conducted.

**Councilmember Stromberg** cited past PDs in Moraga where it had not been uncommon to have 15 to 20 public meetings, which were necessary, had reason and purpose, and provided the opportunity for the public to provide its input and perspective. He acknowledged the Town no longer had that luxury given the confines of SB 330 with a limit of five public meetings. He offered scenarios where it would be difficult for the Planning Commission and the Town Council to do their jobs effectively with so few meetings. Given the limitations of SB 330, he questioned how to best facilitate an approval of a PD application while also obtaining the necessary input from the public and feedback from the governing bodies while also complying with all applicable CEQA regulations and processes.

**Councilmember Stromberg** asked how the Town Council could be asked to make a determination on whether a two- or three-step process should be considered prior to discussing the parameters of SB 330 and whether or not that helped to dictate whether a two- or three-step process was appropriate. He was not persuaded of either since there was not one process that would fit everything and how it was legitimately possible.

**Vice Mayor Woehleke** was also concerned with the limitations dictated by SB 330. He supported joint meetings with the Town Council and the Planning Commission, if needed, to economize meetings but he did not want to make that universal given the need to leverage the expertise of each body. He disagreed with the input from PLOS that developments in the hills were more important than in-Town projects.

**Vice Mayor Woehleke** suggested the Town's current process was really a four-step process given study sessions and he was an advocate for earlier study sessions which could identify problems early on. He cited a number of projects including the Palos Colorados project in Moraga, the Wilder project in Orinda, and the Terraces project in Lafayette as examples where the municipalities had lost control of the properties. He also cited the Moraga Town Center Homes Project, which had been treated as a PD, with decisions made up front at the CDP stage which could not be revisited when necessary.

As to whether or not to combine the CDP and GDP stages, **Vice Mayor Woehleke** did not want to be tied to combining those stages since it was too early to narrow it down to two options. He emphasized that whatever process was chosen must be clearly communicated with minimal opportunity to dispute the intent. Stakeholders must be provided the opportunity to provide input during the process, stakeholders included surrounding communities, and they must recognize the reality of the current PD process which had been in place for over 40 years while other processes had evolved to comply with regulations such as CEQA.

**Mayor McCluer** recognized the current process was 40 years old and suggested it was time to take a fresh look given the GP was not adopted at that time. He welcomed a discussion of all the ideas and liked the CDP stage with discussions with staff which offered some direction to a developer but found it was not time for public input given the limited detail. He suggested the option offered by Councilmember Onoda was reasonable and suggested staff do the analysis and provide direction on the policies. He would like to see staff provide information on the best practices with a process that was fair for all, and a PD process that served the character and values of the Town. He agreed that the municipalities that staff had researched did not look like the Town of Moraga. He asked staff to find an updated and recent PD process from a municipality that looked more like Moraga with some development town centers like the Moraga and Rheem Centers, with open space and hills.

**Mayor McCluer** suggested the PD process for a town center and communities with hills and open spaces would be different and it was an intriguing area for two processes which he would like to see staff also consider while also taking into consideration the limitations of SB 330. He supported combined meetings between the Planning Commission and the Town Council, and the staff recommendation for the Planning Commission to have an advisory role and the Town Council to approve, although he was uncertain how that would impact the role of the Planning Commission and wanted more time to think about that option. He also suggested the idea of doing everything in virtual steps in order to be fair to everyone and have some idea up front of what a PD would look like prior to hitting 98 percent completeness. He asked if there was an effective two-step process where everyone did some work and analysis and allowed the process to move into step two which he understood was challenging given the limitations of SB 330.

As to the questions that staff had asked of the Town Council, Ms. Battenberg acknowledged the input and thanked the Town Council for the helpful feedback.

Ms. Hamid acknowledged the receipt of direction from the Town Council to allow staff to proceed with further analysis taking all points of view into consideration.

**Mayor McCluer** thanked Town staff and the Town Council for the input on a complicated issue.

**Councilmember Onoda** acknowledged that the limitations of SB 330 may work fine for the Rheem Center and the MCSP Area but may not work well for other areas of the Town.

**Councilmember Sos** commented that the limitations of SB 330 may in some ways dictate everything else, including how to end up with five meetings while also meeting all other considerations under discussion, which was the largest challenge particularly in those areas that were more complex and merited some additional considerations.

**Vice Mayor Woehleke** referenced the specific concerns with study sessions and clarified the study sessions in which he had participated as a former Planning Commissioner had worked well, involved smaller groups with communication to the applicant on the norms for the Town and the Planning Commission's interpretation of the Town's code, unlike the sessions for the MCSP-IP.

#### 4. ADJOURNMENT



**ACTION: It was M/S (Woehleke/Onoda) to adjourn the Town Council meeting at 7:35 p.m.  
Roll Call Vote: 5-0.**

Respectfully submitted by:

  
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Marty C. McInturf, Town Clerk

Approved by the Town Council:

  
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Mike McCluer, Mayor