

Minutes
City of Clayton Planning Commission
Regular Meeting
Tuesday, February 23, 2021

1. CALL TO ORDER

Chair A.J. Chippero called the meeting to order at 7:00 p.m.

2. ROLL CALL

Present: Chair A.J. Chippero
Vice Chair Terri Denslow
Commissioner Bassam Altwal
Commissioner Frank Gavidia
Commissioner Ed Miller

Absent: None

3. PLEDGE OF ALLEGIANCE

Commissioner Gavidia lead the Pledge of Allegiance.

4. PRESENTATIONS AND ANNOUNCEMENTS

None.

5. ACCEPTANCE OF THE AGENDA

Chair Chippero moved and Commissioner Altwal seconded a motion to move Items 9.A and 9.B before Item 8.A on tonight's agenda. The motion passed 5-0.

6. PUBLIC COMMENT

None.

7. CONSENT CALENDAR

A. Approval of Planning Commission Meeting Minutes.

Approval of the minutes for the January 26, 2021, Planning Commission meeting.

Vice Chair Denslow moved and Commissioner Altwal seconded a motion to approve the January 26, 2021 Planning Commission meeting minutes, as amended. The motion passed 4-0-1 (Commissioner Miller abstained as he did not attend the January 26, 2021 Planning Commission meeting).

Approval of the minutes for the February 9, 2021, Planning Commission meeting.

Commissioner Altwal moved and Commissioner Miller seconded a motion to approve the February 9, 2021 Planning Commission meeting minutes, as amended. The motion passed 5-0.

9. ACTION ITEMS

A. PLANNING COMMISSION REPORT TO CITY COUNCIL (CHAIR CHIPPERO TO REPORT)

Chair Chippero requested that the Commission re-instate the rotation of each Commissioner to report at the City Council, with an alternative Commissioner to report in case the next scheduled Commissioner could not report, and with the order of the rotation occurring alphabetically by Commissioner last name.

Commissioner Gavidia indicated that he did not want to report to the City Council.

Commissioner Altwal moved and Commissioner Miller seconded a motion to approve the February 9, 2021 Planning Commission minutes. The motion passed 4-0-1 (Commissioner Gavidia abstained).

B. STRANAHAN PARKING

Commissioner Altwal inquired if his understanding was correct in that he recalled Community Development Director Matthew Feske suggesting a memorandum from the Planning Commission to be given to the City Council regarding Stranahan parking.

Director Feske indicated that, after extensive discussion regarding this issue, one of the suggestions that was brought up was that a memorandum from the Planning Commission be prepared. Director Feske also indicated that, at the last City Council meeting, a Councilmember explained that the Planning Commission should not initiate policy as that is the City Council's job.

Commissioner Gavidia indicated that he was not comfortable making a vote regarding this issue until the City Attorney was present to address two concerns:

- Does this constitute the Planning Commission attempting to make policy?
- If so, is it ok for the Planning Commission to make policy?

He suggested tabling the item until the City Attorney was present.

Commissioner Altwal indicated that the issue came as a result of the Planning Commissioners being asked for requests or to raise issues of concern that may briefly presented, presented, prioritized, and set aside for future meetings.

Commissioner Altwal moved and Vice Chair Denslow seconded a motion to table this item with no date. The motion passed 4-0-1 (Commissioner Gavidia abstained).

Commissioner Gavidia recused himself and left the meeting at 7:28 p.m.

8. PUBLIC HEARINGS

- A. Environmental Review ENV-02-16, Vesting Tentative Map MAP-01-16, General Plan Amendment GPA-02-18, Specific Plan Amendment SPA-01-18, Rezone ZOA-01-18, Development Plan Permit DP-01-19, and Tree Removal Permit TRP-31-19; Northwest of the intersection of Marsh Creek Road and Diablo Parkway (APN 119-070-008); West Coast Home Builders, Inc.** A continued public hearing for review and consideration of the Initial Study/Mitigated Negative Declaration (IS/MND), Vesting Tentative Map, General Plan Amendment, Specific Plan Amendment, Rezone, Development Plan Permit, and Tree Removal Permit for a proposed six-lot detached single-family residential subdivision with associated subdivision improvements. This public hearing was continued from the October 27, 2020, Planning Commission meeting.

The continued item was re-opened.

Community Development Director Matthew Feske provided a presentation.

The developer provided a presentation and summarized changes that the developer requested be made to the draft Conditions of Approval.

Chair Chipperero re-opened the continued public hearing.

Vincent Moita stated that he had submitted a letter dated December 18, 2020, and resubmitted the same letter this week, and he provided the following comments:

- This project could leave the City vulnerable to legal challenge if left the way it is.
- Per California Government Code Sections 66473.5 and 66474(B), a City cannot adopt a tentative map or parcel map if the City does not find that the provisions of the design or improvements are consistent with the General Plan or Specific Plan.
- The Development Plan proposed is not consistent with regard to the circulation roadway referenced as Saltbrush Lane.
- The Marsh Creek Road Specific Plan Circulation Element states that the road shall be built to a collector standard with a 48-foot right of way and 32 feet of pavement.
- The City is granted a high level of deference in interpreting applicable codes.
- The 24-foot wide roadway provided in the project Conditions of Approval is inconsistent with the Marsh Creek Road Specific Plan Circulation Element which requires a roadway width of 32 feet.
- Requested an amendment to the Conditions of Approval to require a 32-foot roadway width.
- The name of roadway should remain Oak Creek Canyon Drive and not be changed to Saltbrush Lane

Chair Chipperero closed the public hearing.

Chair Chipperero provided the following comments and questions:

- Was there a reason why Figure 1 in the staff report was not on the vesting tentative map?
- Was the project dependent on utilities being extended from neighboring properties?

- Was there a reason the name of the project roadway was changed?
- There is a large amount of landscaping in the right-of-way of the project road.
- It appears that there would be a loss of landscaped area in the right-of-way of the project roadway if the project roadway is widened.
- The project plans and maps need to be corrected and more consistent in order to better review the project.
- The documents presented to the Planning Commission are inaccurate to the point that he would not be able to approve the project.

Vice Chair Denslow had the following comments and questions:

- If the project site was part of the Marsh Creek Road Specific Plan (MCRSP), she would fundamentally agree with the concerns that were noted about proposed buildout.
- The process to establish the MCRSP commenced in 1991 and took several years to finalize by the time it was adopted in 1995. A large amount of public input was involved in the establishment process.
- What was the intent and purpose behind the sequential development identified in the MCRSP?
- Saying the City would oversee the collection of the fees makes it seem like the total buildout is called for.
- The sequential wording feels intentional if the small road was built out now and the larger road later.
- Concerned that some of the residences do not provide guest parking.
- Parking considerations are an important component of any proposal.
- Conceptually trying to see the plan, the complete buildout, and parking.
- Without the road being completely built out, there would be no parking.
- There were three proposed street names provided for the project: Oak Creek Canyon Drive, Saltbrush Lane, and Sage Lane—why was Sage Lane proposed?
- Wondering if Mr. Moita, the property owner of the land adjacent to and east of the project site, submitted an application to annex to Clayton? If not, was the deterrent the expectation that this application would be denied because there would not be enough access?
- The proposed trail was not included on the drawings.
- The constraint map shows that Lot 4 and Lot 5 contain areas of greater than 26% slope.
- Recommend that the applicant perform community outreach.
- Why was the open space not provided in perpetuity through conservation?
- The applicant should find ways to promote alternative measures for sound attenuation to prevent the construction of extensive amounts of sound walls that would detract from the aesthetics of the area.
- Did not see the sound walls on the drawings, so found it difficult to understand if the project complies with the MCRSP.
- Alternatives need to be explored.
- Did not see the Alameda Whipsnake addressed in the environmental document.
- The survey of mitigation of rare plants references avoiding rare plants, but the study expires in 2021, which calls into the question the time-sensitive validity and applicable feasibility of avoiding rare plants.

- Regarding compliance related to the Design and Development Policies listed in the MCRSP, no artificial slopes are to be steeper than the natural slopes, which is inconsistent with the constraints map that shows a 2:1 slope above Lots 3, 4, and 5.
- No concrete or masonry sound wall may be constructed; so what is the material of the proposed sound wall?
- Setback of the pipeline needs to be considered.
- It appears that the Tolling Agreement shall be extended to June 21, 2021, and shall be extended through any appeals that may be filed.
- Noted that the proposed on-site detention basin was changed to private from previously being public.
- The plans show a 56-foot right-of-way, and the Conditions of Approval call for a 48-foot right of way. Given that the setback is 37.5 feet, this setback would be reduced further if the right-of-way were 56 feet wide.
- The landscape plans are difficult to read and, overall, it is difficult to review plans that are out of date and to make an assessment based on the information provided.

Commissioner Altwal had the following comments and questions:

- Given the financing direction described in MCRSP Policy IM-14, his understanding was that individual developers should meet the needs of potential future developers while the City could collect the money from the future developers and pay the individual developer for costs incurred by construction of infrastructure and other improvements.
- Noted that MCRSP Policy IM-14 indicated that it can be very expensive for developers who provide improvements at the outset of the project, and that the City could collect money to help developers with construction of infrastructure and other improvements.
- The developer team mentioned earlier that, if the other developers or other potential developers are willing to pay pro-rata share of costs for construction of infrastructure and improvements, then the developer team would be open to considering this arrangement. This is something worth looking at during this review process.
- Noted that he spent a considerable amount of time reviewing the MCRSP.
- There are conflicts between the figures, plans, and the design required by the MCRSP.
- Inquired of Mr. Moita whether the width of the project roadway is to be consistent with the 32-foot roadway width shown in the MCRSP. If so, then would Mr. Moita be willing to pay his share if and when the amount is calculated by the City?
- Who pays for the expansion of the project roadway?
- How would the City arrange for the original developer to pay in the future if the six residences have already been sold?
- Wanted to bring to the developer's attention that the Commission received two development packages, one in October 2020 and one before this meeting.
- Since the MCRSP indicates that all developments shall contribute affordable housing units, would the developer provide them off-site or on-site?
- How would the developer address the MCRSP requirement that open space should have public access when private open space is being

proposed as part of the project?

- How would the developer address the steeper slopes being observable from Marsh Creek Road when the MCRSP stipulates that areas of a project site with slopes over 26 percent should not be visible from Marsh Creek Road?
- The MCRSP indicated that, in order for the City to approve the project with slopes greater than 26 percent, the City must make the finding that the development is not visible from Marsh Creek Road.
- Regarding traffic, the MCRSP specifies that Marsh Creek Road be signalized. How do we make sure that the developer pays for this improvement?
- Regarding the detailed routing for the road, the developer would need to coordinate with the City on a plan line study.
- Regarding the Conditions of Approval requiring architectural (and other) modifications to the plans, these modifications need to be shown on the plans, not just listed in the Conditions of Approval.
- Acknowledged that this was the first time he had seen a Tolling Agreement.
- The Commission needs to ensure that the proposed project-related sound walls comply with the MCRSP.
- Regarding the residential setbacks, the setback on Lot 1 does not show an 80-foot setback from Marsh Creek Road as required by the MCRSP.
- Expressed concerned about possible impacts to Lots 1, 2, and 3 caused by erosion generated by overflow from the water tank.
- Suggested there might be a conflict between attributes not being visible from Marsh Creek Road and having the sound walls that are visible from Marsh Creek Road.
- The drawings need to consistently reflect what is being proposed.
- There were a lot of differences between the requirements of the MCRSP and what was being presented to the Commission. What was presented to the Commission for this project was not accurate.

Commissioner Miller had the following comments and questions:

- What is the fiscal assurance for ultimate buildout and a 48-foot wide right-of-way?
- Is there a definition of pro-rata?
- Since the MCRSP allows for alternative open space, what is the alternate means of open space that the developer referred to?
- Regarding the affordable housing unit requirement, would the developer construct another housing unit to meet this requirement?
- It appears that the MCRSP is more for large-scale projects rather than a small six-unit “pocket” project.

Mr. Chen from the developer’s team had the following comments:

- No city builds out the ultimate infrastructure.
- Even with the 24-foot wide roadway, the developer was already exceeding the fair-share.
- For a 110-unit development, the six lots are five percent of the fair-share.
- Regarding Commissioner Altwal’s comments and questions:
 - The 48-foot right of way is defined in the MCRSP.
 - Each developer is responsible for their own development plan.
 - The developer has been coordinating with the Moitas since last year to find out if they are ready to move forward.

- The problem with building out the 48 feet of right-of-way is that the Moitas do not know what they need infrastructurally since there are no defined infrastructure needs.
- On page 126 of the MCRSP, there are several financing mechanisms identified; however, these are problematic since the neighboring property is located outside the City limits.
- If the desire of the Planning Commission is to build out the 48-foot right-of-way, the developer would need to know what the Moitas plans are.
- Regarding the collection of fees, the City would have to conduct an impact fee analysis to ascertain what the infrastructure needs are.
- He did not think the City wanted to establish an impact fee for all the development in this area.
- The City needs to decide about the urban limit line and potential annexations.
- The proposed 48-foot right-of-way is in conformance with the MCRSP guidelines.
- The developer team will review the MCRSP as it pertains to guest parking on the street.
- The residences are proposed with three-car garages plus a driveway for guest parking.
- Regarding the street name, the developer would have to go through a street naming process that would require approval by the Clayton City Council.
- As stated in Objective 1 of the implementation plan, the pro-rata is based on fair-share.
- Of all potential developments, which total 116 units, pro-rata for the proposed project of six units is five percent. So, ultimately, the developer would be responsible for five percent of a 48-foot wide roadway.
- We would have already built a 24-foot road, and the Moitas would refund us based on the pro-rata amount.
- The MCRSP addresses pro-rata, no just upsizing. If we install an 8-inch water line and a 12-inch water line is needed, 95 percent of the cost of the water line would not be paid by us.
- We are already making the 48-foot dedication, and the small road would be maintained as a private road as part of the Homeowners' Association (HOA).
- We want to fulfill our affordable housing requirement and are willing to work with staff on the on-site or off-site location and the moderate income, low income, or very low income status.
- We are proposing private open space with a public access easement over the trail.
- The proposed trail connects to the east side of the project site.
- We are already proposing another trail along Marsh Creek Road.
- The developer will construct a public access trail along the easterly border connecting to Saltbrush Lane.
- The slope within the building area is basically level after grading.
- The City collects traffic impact fees, and there is a condition of approval requiring the traffic impact fee to be paid.
- From the developer's perspective, no improvements, traffic or otherwise, are required for Marsh Creek Road as a result of this project. This is supported by the California Environmental Quality Act (CEQA) analysis.

- Regarding setbacks, there is a dashed line that indicates the 80-foot setback, and none of the residential building footprints are proposed in this setback area.
- In the deeds, we are requesting that any impact generated by the Contra Costa Water District property be disclosed.
- Regarding the accessory dwelling unit (ADU), we are proposing to construct one on-site ADU that would be deed restricted.
- Regarding community engagement, we did not hand out flyers and have not had any community engagement as we were relying on notifications done by the City and the City posting the project information on their website.
- The City prefers private open space so the City does not have to maintain it and, instead, has the developer maintain it.
- Regarding the sound wall, we followed the requirements and, as part of the alternatives offered, we are proposing landscaping of the sound wall.
- Regarding the loss of landscaping if the roadway is widened, we understand that there is a large amount of landscaping in the right-of-way which we would remove and plant new landscaping after the road is widened.
- Regarding the avoidance of impacting rare plants, the project is located in the East Contra Costa County Habitat Conservation Plan (HCP) area, so we will provide payment pursuant to the HCP, which is a form of mitigation.
- Regarding the slope, when slope exceeds 2:1, there must be a bench for grading.
- The MCRSP Policy states that the grading should not exceed the natural slope and should not be a steep slope of 2:1 without mitigation. The bench is the mitigation for the slope.
- We are proposing to keep the subdivision maintenance private through establishment of an HOA.
- Regarding the diagrammatical inconsistencies, we will make corrections prior to submittal to the City of the final map.
- Regarding fencing, the locations and design are shown on Pages 13 – 16 of the IS/MND.

Mr. English from the developer's team had the following comments:

- The City required the street name change and gave us options, so we picked one.
- Sage Lane may have been what was proposed initially before the street name was changed to Saltbrush Lane.
- Regarding community engagement, we relied on the City's notification process.

Ms. Nina from the developer's team had the following comments:

- Legal question is if the tentative map is consistent with the MCRSP, which it is.
- The MCRSP does not require a full buildout of the road.
- The policy Mr. Moita refers to calls for Saltbrush Lane to have a build out of 32 feet; it does not dictate when the buildout is to occur.
- As currently proposed, the Conditions of Approval meet the needs of today.
- Discovery Builders has agreed to build out the ultimate infrastructure if and when the Moitas submit a development application.

- The property owners pay the fair-share of improvements which is consistent with MCRSP Policies IM-13 and IM-14.
- The Conditions of Approval satisfy the constitutional limitation of rough proportionality which means it must be in reasonable proportion to the development impact.
- Since we are reviewing a six-lot subdivision, requiring the construction of a collector road to serve a yet undefined development is out of proportion.
- The condition is written to dedicate the full 48-foot right-of-way.
- To answer Commissioner Miller's earlier question, it is unreasonable for us to front the cost when there is no timeframe for reimbursement or no timeframe for when the Moitas would move forward on development of their property.
- Even the first sentence of the condition states the developer shall build it fair-share which is compliance with the Nollan-Dolan court case that emphasizes fair-share and specifically defines proportionality.
- Regarding the Alameda Whipsnake, the biological resources assessment table in the IS/MND states that there is low potential for it to occur
- Regarding rare plants, the mitigation is provided on Page 43 of the IS/MND.
- If construction does not commence prior to Spring 2021, then a new rare plant report will be prepared.
- Compliance with HCP is mitigation in itself, and the HCP states that construction should avoid rare plants.

Mr. Sean from the developer's team had the following comments:

- The assurances are that you can condition the Moita development for the full construction of the road.
- If there is a fair-share, that would be between the Moitas and us.
- If you have a full road improvement, there is a wide road with an abrupt end – basically a road to nowhere right now.
- No guarantee that the Moitas' property will ever be developed.
- We disagree that our development triggered the need for a traffic signal to be installed, especially since the idea that fair-share payment would be collected from future developments when, other than our project, there are no future proposed projects in this area of Clayton.
- The neighboring property asking roadway improvement for a speculative future development is not a constitutional fair share, violates the Mitigation Fee Act, and goes against the ruling on the Nollan-Dolan case.
- The owner of the neighboring property is talking about a speculative or theoretical development and is asking that Discovery Builders be burdened with a cost that is speculative or theoretical.
- Regarding MCRSP Policy IM-14, it is couched in "should" language and implementation needs to conform with the Constitution. This language gives the City wiggle room because there is no one-size-fits-all.
- It is not fair and not constitutional to require a full road for a hypothetical development.
- We disagree with the Condition of Approval requiring us to put all the money up front for all the infrastructure and the roadway.
- Without a project application for development being submitted for the neighboring property, and without any real efforts for proposing something concrete, what faith can we put into any development that may occur in the future?

- Until someone puts some effort into putting together a development proposal, with all due respect, we cannot take it seriously.
- The Constitution states fair-share. Requiring buildout is unconstitutional and exposes the City to vulnerability.

Chair Chippero allowed Mr. Moita to speak.

Mr. Moita then provided the following responses to Commissioners' questions:

- We are arguing about 24 feet versus 32 feet of pavement.
- The applicant is arguing that we have not defined a development, and that is not true because we have talked about 110-unit residential development.
- We have been working on this for years about this roadway access point.
- We have been trying to work with Seeno on the issue.
- This is the opportunity to have this done once and for all.
- In 1995, we applied for a minor subdivision and were denied.
- We are one of the originators of the MCRSP.
- Developers are sequential from west to east along Marsh Creek Road.
- We have been waiting for the Oak Creek Canyon development to come to fruition.
- We would pay our fair-share if the roadway were 32 feet in width with upsized utilizes servicing the 110 units that we would be proposing to develop.
- In the past, we have asked for the City Attorney to be involved in order for us to determine what the cost difference is for the utility upsizing that they should pay as a benefit of their project road in accordance with the MCRSP.
- This road would also provide access to a potential active open space/recreational park.

Director Feske provided the following comments:

- Speaking to his earlier comments about the difference between a vesting tentative map and a tentative map, he clarified that a vesting tentative map would entail the developer only needing to comply with current Conditions of Approval, fees, and codes.
- The question raised by Commissioner Altwal was referring to the other entitlements such as the rezone, development plan permit, etc.
- If those entitlements were to get close to expiration, then the developer's request for the entitlements to be extended would come back before the Planning Commission, and the Planning Commission would have the discretion to decide whether to approve the extension request.
- The City Council has the final say on street names.
- Mitigation measures were in the Mitigation Monitoring and Reporting Program.

Vice Chair Denslow moved and Commissioner Altwal seconded a motion to recommend to the City Council to deny the project, and directed staff to draft a resolution documenting findings of denial for the Commission's consideration at the next Regular Meeting of the Planning Commission. The motion passed 4-0.

10. PLANNING COMMISSION REQUESTS AND UPCOMING AGENDA DEVELOPMENT

This time is set aside for the Planning Commission to make requests of staff, and/or issues of concern to Planning Commissioners are briefly presented, prioritized, and set for future meeting dates.

None of the Planning Commissioners had requests or issues of concern.

11. ADJOURNMENT

The meeting was adjourned at 11:31 p.m. to the regularly-scheduled meeting of the Planning Commission on March 9, 2021.

Respectfully submitted:



Dana Ayers, AICP, Interim Secretary

Approved by the Clayton Planning Commission:



A.J. Chippero, Chair