



AGENDA

REGULAR MEETING

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CLAYTON PLANNING COMMISSION

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TUESDAY, MARCH 09, 2021

7:00 P.M.

***** NEW LOCATION*****

This meeting is being held in accordance with the Brown Act as currently in effect under the State Emergency Services Act, the Governor's Emergency Declaration related to COVID-19 and the Governor's Executive Orders N-25-20 and N-29-20 that allow members of the Planning Commission, City staff, and the public to participate and conduct a meeting by teleconference, videoconference or both. In order to comply with public health orders, the requirement to provide a physical location for members of the public to participate in the meeting has been suspended.

Chair: A. J. Chippero

Vice Chair: Teri Denslow

Planning Commissioner: Bassam Altwal

Planning Commissioner: Frank Gavidia

Planning Commissioner: Ed Miller

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review on the City's website at www.ci.clayton.ca.us
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at www.ci.clayton.ca.us
- Any writings or documents provided to a majority of the City Council after distribution of the Agenda Packet and regarding any public item on this Agenda is available for review on the City's website at www.ci.clayton.ca.us
- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7300. To protect our residents, officials, and staff, and aligned with the Governor's executive order to Shelter-at-Home, this meeting is being conducted utilizing teleconferencing means consistent with State order that that allows the public to address the local legislative body electronically.

Instructions for Virtual Planning Commission Meeting

To protect our residents, officials, and staff, and aligned with the Governor's executive order to Shelter-at-Home, this meeting is being conducted utilizing teleconferencing means consistent with State order that that allows the public to address the local legislative body electronically.

To follow or participate in the meeting:

Videoconference: to follow the meeting on-line, click here to register:

1. https://us02web.zoom.us/webinar/register/WN_5tiTsbVvRfqDUYevLdnzIA
2. After clicking on the URL, please take a few seconds to submit your first name, last name, and e-mail address, then click "Register" which will approve your registration and a new URL to join the meeting will appear.

Phone-in: Once registered, you will receive an e-mail with instructions to join the meeting telephonically, and then dial Telephone: 877 853 5257 (Toll Free)

1. Using the Webinar ID and Password found in the e-mail.

E-mail Public Comments: If preferred, please e-mail public comments to Mr. Feske at mfeske@ci.clayton.ca.us by 5 PM on the day of the Planning Commission meeting. All Email Public Comments will be forwarded to the entire Planning Commission.

For those who choose to attend the meeting via video conferencing or telephone shall have 3 minutes for public comments.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PRESENTATION AND ANNOUNCEMENTS:

A. PRESENTATIONS:

None

B. ANNOUNCEMENTS:

None

5. ACCEPTANCE OF THE AGENDA: The Planning Commission will discuss the order of the agenda, may amend the order, add urgency items, note abstentions or "no" votes on Consent Calendar items, and request Consent Calendar items be removed from the Consent Calendar for discussion. The Planning Commission may also remove items from the Consent Calendar prior to that portion of the Agenda.

6. PUBLIC COMMENT (Non-Agenda Items): This time has been set aside for members of the public to address the Planning Commission on items of general interest within the subject matter jurisdiction of the City. Although the Planning Commission values your comments, pursuant to the Brown Act, the Planning Commission generally cannot take any action on items not listed on the posted agenda. Three (3) minutes will be assigned to each speaker.

7. CONSENT CALENDAR

The following routine matters may be acted upon by one motion. Individual items may be removed by the Planning Commission for separate discussion at this time or under Acceptance of the Agenda. The ordinance title is deemed to be read in its entirety and further reading waived on any ordinance listed on the Consent Calendar.

A. MINUTES:

February 23, 2021 minutes

8. PUBLIC HEARINGS

A. None

9. ACTION ITEMS

A. A Resolution of the Clayton Planning Commission recommending that the City Council deny without prejudice the proposed subdivision and development of six detached single-family residences on approximately 9.03-acres located on the north side of Marsh Creek Road at the intersection with Diablo Parkway,

APN 119-070-008 because the proposed project does not conform with the Marsh Creek Road Specific Plan.

10. PLANNING COMMISSION REQUESTS AND UPCOMING AGENDA DEVELOPMENT

This time is set aside for the Planning Commission to make requests and/or issues of concern to the Planning Commission and set for future meeting dates.

11. ADJOURNMENT

The next Planning Commission Regular Meeting is Tuesday, March 23, 2021.



MINUTES

REGULAR MEETING

* * *

CLAYTON PLANNING COMMISSION

* * *

**TUESDAY, February 23, 2021
7:00 P.M.**

12. CALL TO ORDER

7:00 P.M.

13. PLEDGE OF ALLEGIANCE

Commissioner Gavidia

14. ROLL CALL

Chair Chippero, Vice Chair Denslow, Commissioner Altwal, Commissioner Gavidia,
Commissioner Miller

15. PRESENTATION AND ANNOUNCEMENTS:

None

16. ACCEPTANCE OF THE AGENDA:

Motion and vote 5-0

- Move items 9.A. and 9.B. before Public Hearing

17. PUBLIC COMMENT (Non-Agenda Items):

None

18. CONSENT CALENDAR

A. MINUTES:

January 26, 2021 minutes

Motion and Vote 4-0 with corrections

(Commissioner Miller not present for this meeting)

February 9, 2021 minutes

Motion and vote 5-0 with corrections

19. PUBLIC HEARINGS

A. CONTINUED - PUBLIC HEARING:

The Oak Creek Canyon Project.

Commissioner Gavidia:

- Prior recusal stands – Commissioner Gavidia left the meeting prior to announcing item and any discussion or testimony and motion and vote.

Prestation by staff

Presentation by Applicant

Applicant request for modifications to conditions

- Under Affordable Housing, #1 (pg 4), change to:
“The Developer shall provide 1 dwelling unit as part of the Affordable Housing Plan for the Project, and comply with the Municipal Code, which Plan shall be approved prior the approval of a Final Map.”
- Under Open Space, #1 (pg 4), change to:
“To meet the intent of active open space, the Developer shall provide an offer of dedication for the trail on the Final Map, and construct the trail as shown on approved plans.”
- Under Modifications, #2 (pg 4), change to:
“Saltbrush Lane shall be modified to provide an ultimate right-of-way (R/W) of 48’ as shown in the Marsh Creek Road Specific Plan (MRCSP). The Developer shall construct the MRCSP buildout infrastructure (grading, roadway, utilities, etc.) within the ultimate R/W, provided the adjacent developer (Moita) defines his infrastructure needs through engineering plans, obtains City approval for such plans, and pays his pro-rata fair share cost for said infrastructure (in accordance with MCRSP Implementation Objective #1 – Chapter III.J.1 on pg 22).”
- #15, pg 23, change to:
“Prior to filing of the Final Map, the Developer shall provide a performance bond, in an amount to be determined by the City Engineer, for use by the City to ensure the completion of the public improvements as show on the grading and improvement plans, in accordance with the Subdivision Improvement Agreement.”

Public Comment:

- Mr. Moita
 - Letter dated December 18 of last year and resubmitted the same letter this week.
 - This project could leave the city vulnerable to legal challenge if left the way it is.
 - California Code Section 66473.5 66474B
 - City cannot adopt a tentative map or parcel map if it does not find that the provisions of the design or improvements are not consistent with the General Plan or Specific Plan.
 - Development plan proposed is not consistent in regards to the circulation roadway referenced to all as Saltbrush Lane.
 - Circulation Element policy CI-2b explicitly states

- 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
- Here that standard is violated because no reasonable person could find consistency
 - Staff report on page 10 even states that
- The COA states a mere 24-foot roadway
- Policy CI-2b
 - Plain language of 32 feet
 - On review no reasonable person could find conformance leaving the city vulnerable
- Request an amendment to the COA
 - Require build out of 32 feet roadway
- Do now and not later
- City should not take action that is prohibitive
- Name of roadway should remain Oak Creek Canyon Drive and not Saltbrush Lane

Chair Chippero:

- Is there a reason why Figure 1 in the staff report is not on the vesting tentative map? (to applicant)
- Waiting on utilities from the neighboring property?
- What is the reason behind the name change of the road?
- Looks like trail goes straight up along the east border?
- Landscape – Road
 - It looks like a lot of landscaping on the right of way
 - It appears that there would be a lot of landscape removed if the road is widened
- A lot of the plans and maps could have been clearer to better review the application
- The documents before us tonight are not accurate and that is the reason for not being able to approve it for me.

Vice Chair Denslow:

- Were you part of the original Marsh Creek Specific Plan?
- I fundamentally agree with the suggested build out.
- When I see language of sequential, I wonder if that is what was intended.
- Document was done over many years with lots of public input.
 - Is there content to the sequential development or intent of the document (MSRSP).
 - 3A saying the city would oversee the collection of the fees makes it seem like the total build out is called for.
 - The sequential wording and feels intentional.
- If you build out the small road now and the larger road later.
 - Some of the largest homes with no guest parking.
 - Only garage and driveway parking.

- Being a rural nature, parking is an issue in Clayton
 - Conceptually trying to see the plan, the complete build out and parking
 - Without the road being completely built out, there is no parking
- There were 3 names: Sage, Saltbrush, Oak Creek ... where did Sage come from?
- Mr. Moita – Have you submitted an application to annex?
- Is it your expectation that your application would be denied because you would not have enough access?
 - If not is not feasible for you not to be the first mover
- The meandering path or the trail that has been conditioned?
 - Trail not included on the drawings
- Constraint map shows areas of slope greater than 26% in lots 4 and 5
- The red box around lot 4 and 5 shows greater than 26% slope (constraint map)
- Chapter 3 D
 - Promote alternative measures for needed sound attenuation to prevent needless endless walls
- We recommend the applicant engage the community
 - Did you engage the community?
 - Community sentiment goes a long way with community engagement
 - That is why we suggest community engagement
- Chapter 6 RE2
 - Why was the open space not provide in perpetuity or conservation?
- Chapter 3 7d – Sound Wall
 - I don't see the sound walls on the drawings and it is difficult to understand how far we are straying from the Marsh Creek Specific Plan
 - Were there alternatives explored?
 - Without seeing it in the plans, how were the alternatives explored?
- Chapter 3 F2 – Rare or Endangered Species
 - Alameda Whip Snake – did not see that addressed in the environmental report
 - Not clear if that was in the scope
 - Page 41-44 Survey of mitigation of rare plants
 - Referencing avoiding rare plants by the study done in 2018 and expires in 2021
 - Difficult to ascertain with the report expiring soon
 - That talks about mitigation, not avoidance of rare plants
 - With the study about to expire, it's hard to see avoidance
- Policy DD-4 E Slope
 - No artificial slopes are to be greater than the natural slopes
 - Constraint Map shows above 3,4, and 5 states a 2:1 slope
 - Not clear what the special circumstances that would allow for exception to this policy.
- 7D 13 C page 75

- No concrete or masonry sound wall may be constructed
 - What is the material of the sound wall?
- Setback of pipeline
- Tolling Agreement
 - Shall be extended to June 21, 2021
 - Shall be extended through all appeals
- Page 7 staff report
 - Zoning map amendment
 - Detention basin was public and now private
- Development Plan Permit
 - It is challenging to do this assessment with the plans in hand
 - The plans are showing a 56 foot right of way and conditions say 48 feet and the setback is 37.5 feet and would be reduced with a 56 foot right of way
 - Landscape plans are difficult to read and were in the environmental
 - Difficult to review with plans that are out of date
- It is difficult to do the assessments with the plans provided
- Fencing
 - Is the same tree plan in the environmental document
- Conditions
 - Is there a reason mitigation 5 left out?
 - Mitigation Measure 12, 13, and 14 should be 10, 11, and 12
- The project is not too far off but without accurate drawings and some of the answers did not provide enough to clear the grey areas.

Commissioner Altwal:

- I had this question in my list for further on but since we are on the subject maybe it is better to ask right now
- If we look at the Marsh Creek Specific Plan policy IM-14 item 3a page 126
 - Emphasize their project
 - But my understanding is that individual developers should meet the needs of potential future developers while the city could collect the money form the future developers and pay the individual developer for what cost he incurred doing that
 - Is my understanding correct or could you please explain it to me?
 - Can I ... I do understand ... I agree with you on your point
 - Regardless, this particular item 3a of IM14 page 126 says it can be very expensive for developers who provide improvements at the outset of the project thus why the city would collect money to help the developer with that
- Your team earlier did mention that if the other developers or other potential developers are willing to pro rata and pay for this improvement to meet this section then you guys might be open for it.
 - I'm just following the exact language of what's in front of me because I can't work on emotion I can work on documentation and what I could see in the documentation even if I don't like it, I might work with

- it or vice versa
 - So, this particular item I am just seeing this developer prepayment
 - I agree with his explanation but I don't think his explanation is the interpretation of this item
 - That's my understanding of reading this as well, it is up to the city to create the problem
 - But yes, my understanding is to be maybe collected or maybe be put the road right now, instead or 2 or 3 times
- To add to my earlier question that's not just about the road itself but applies to utilities
 - So, something worth looking at ... at this time
- I spent lots of time on marsh creek plan ... I mean lots of time
- I want to follow up on the 2 items ignored because those are 2 items that are questions of mine as well
- And I would love to see Mr. Moita participate as well and answer some questions because this would some clarifications for all of us
- Regarding item number 2 Chair, figure 1 on page 10 as you notice does not the section on the plans exhibit 1 on the vesting tentative map
 - But also, does not match the design on the Marsh Creek Road Specific Plan on page 95 figure h
 - So, we have 3 different designs and you know I like to see it on the plans in all honesty ... I don't like to see it in conditions
 - So just want to mention it to you guys ... 3 different designs not 2 designs regarding this road section
- Going back to point number 1 the Director just stated when he presented this project that all conditions set and after voting if approved it can't be changed and so I go back to something that always bothers me for every project we go through if this approved if this project got approved and the developers fails to build it does the use reverse back to prior zoning or does the use will stay as the new approved because according to Director Feske if we approve something right now that's it its approved regardless if it was built or not do correct if I'm wrong please
 - So, if it is expired it goes back to the original zoning before they applied for the change
 - If the developer does not build for so many years or whatever and it expires, the city will bring it back in front of us? Or does a new developer bring it back in front of us?
- Policy IM14, item 3A, page 126
- Before we let Mr. Moita back in, I want to follow go back to something Ms. Berglund said regarding it's not fair
 - Do you know or case history basically for your argument was it in court and do we have a precedence?
 - That was commercial property?
- We jumped another subject
- The Marsh Creek Specific Plan does mention the current and if I understand wrong it is our bible to follow for development

- I understand the city might have missed it
- I want to follow up with a couple of question for Mr. Moita
 - I want to confirm that if that land that road is to follow the figure 11 of Marsh Creek of 32-inch wide road, you as the land owner I don't want to say developer, you as the land owner are willing to pay your share if calculated, if/when calculated by the city
 - No, pay the pro-rata right now when the city tells you your pro-rata is this much money
 - I do understand what you are saying but I disagree actually
 - I understand about the infrasizing but I also understand about from what I just read but I digress on this
 - One other question – are you or other family members owners on top I understand that you foreclosed on the Heartland or you took that. Are there other property owners that could benefit from this or are you the only property owner that benefits from this?
 - Yes no ... I agree this is not a road to nowhere ... that part I agree on
- I want to go back to Commissioner Miller area of question because I had that same question
- This is for everybody
- This is not just for Mr. Moita ... sorry I was starting Italian and switching back to English
- If that road is being built per one of the other section say 21 feet or the other section but not the 32 feet and in the future the development of the hill is being development and that road needs to be expanded who pays that?
 - Who pays for the expansion of the road?
 - And if we have to go back to the original developer of the 6 houses that most likely has sold them and moved on what can we do?
 - I don't know who can answer that question but go ahead
 - Do I need to repeat it?
 - Let's assume that we approve the road per your plan which is 20- or 21-foot wide road, I don't recall, and we have the right of way 48 feet and in the future that right of way needs to be developed for the future access development who do you think is responsible for that widening and pays for it
- Page 7 Housing Element
 - Just so the developer knows, we received 2 packages, one back in October and one right now
 - Some changes between them but anyhow
- The Housing Element and here it says
- The city says provide 1 low-income housing unit off-site as part of affordable housing plan
- Earlier you guys presented on-site
- But let me finish my question – I'm going back to my bible which is Marsh Creek Road Specific Plan AU-14 page 25 and repeated on page 47
 - “All developments are to contribute affordable housing units”
- Are we having a low-income housing on site, off site?

- I know in the conditions, I remember, I have it noted somewhere, for on-site
 - Could you please somebody clarify this for me
- Language on page 7 clearly says off-site the last line of the Housing Element
- Go over to my other question – regarding the open space
 - Page 3 talks about private open space
 - You want to change it to private open space
 - Page 18 of the Marsh Creek item 6 they require public access
 - Also, MU6 Page 48 requires public access
 - But here we are moving it to private open space, correct
- Okay thank you (trail)
- I have another question about that road but maybe should skip that question
- Under street section the City says the road does not conform to the Marsh Creek Road Specific Plan
 - So, there is a statement here in our package on page 9 under street section
 - Saying that the road does not confirm to the plan per the city
 - So, I'm going to leave that subject aside and go back to
- What is, can somebody tell what the slope is
 - Is the slope over or less than 20%?
- That is after you do some work on it (slope)
- I'm looking at ENGO figure 10 which is the report
 - I have a 48% slope maybe that is before grading around 48%
 - That is Figure 10 of ENGO
- I go back to Marsh Creek plan it says page 24 item mu5 item 5b
 - Development should not be visible from Marsh Creek Road if we have slopes between 26% and 45%
 - Care to answer that
- Yes, lots 4 and 5
- Let me read you that on page 24 because I have it in front of me
 - Page 24 5b item 3
 - The development is not visible when viewed from Marsh Creek Road or developed portions outside the study area
 - In order for the city to approve development with building footprints with slopes between 26% and 40% the city must make the following findings regarding such developments and the finding is MU 5b Item 3 the development is not visible when viewed from Marsh Creek Road
- That's my question for this part you don't have to answer right now but this is and if you want to answer later that is fine, I could move on but I want to bring that to attention to everybody including the Planning Commissioners
 - Should I move on
- Can you show your plan the blue and red on that was a good plan?
- This may be something that needs to be investigate more by the developer but I just wanted to bring this to everybody's attention while going through the Marsh Creek plan

- I am jumping all over the place because my notes as I see but I want to jump to traffic
 - It is a big deal for me
 - Everybody that lives in Clayton knows dangerous that road
 - Lost 2 young kids 2 years ago a few hundred feet from that road
 - C1-3 says Marsh Creek Road is to be signalized
 - When the time comes how do we make sure this developer pays
 - How do we get the pro-rata or they don't pay anything?
 - C1-4 detailed routing for the road
 - This is required by the Marsh Creek plan
 - Cannot be approved without it
 - This particular policy the project can't be approved without this study
 - Okay ... that's fine
 - We will get to that (CEQA)
- Conditions of approval
 - Item C – City has given to us
 - As an Architect I like to see changes on the plans and not in writing
 - Years down people will pull the plans from microfiche and not the writings
 - I am looking at the modifications
 - Items 1 -11 to be represented on the plans
 - This is a statement not a question
 - Page 18 of the same condition
 - Item 1 Item 3 Item 4 Item 8 on page 19 being on the plans
- Exhibit E the Tolling
 - First time I have seen
 - This is more a statement than a question
- MND
 - Point of order, some pages are not in order
 - 2 page 3's but I will go by the numbers by the city
 - Page 11
 - 6-foot-tall sound wall
 - I don't have a reference but the MCRSP talks about it
 - Chapter 3 D
 - There are 3 sound walls
 - Setbacks
 - Marsh Creek Road MU5B page 38
 - Talked about that visible
 - 80 feet setback
 - House #1 doesn't show setback Figure 7 page 9
 - Shows a 40-foot setback to unknown

- Visual comparison has less than 80 feet setback
 - I see it now
 - Deeds
 - House # 1 #2 #3 – erosion from the water tank
 - Page 57 of the Negative Declaration
 - The project is not causing this; the project is a lot of dirt moving and what is the relation to the water tank and the finding is less than significant
 - This is language shows to me that it is more than significant
 - Not expecting an answer this is a statement
 - My other questions related to traffic I leave that for future
 - Not being visible from Marsh Creek Road and having the sound walls that are visible we might have a conflict there
 - Sound Wall
 - On the plans ... lot 1 lot 6 and lot 2
 - Figure 12 of the layout plan of the MND
 - Fencing around lot 6
 - The drawings need to accurately reflect and cannot be written
 - There is a lot of differences between the Marsh Creek Specific Plan and what is presented here
 - I would like to see 6 new homes built and I am pro development in general
 - What was presented to us is not accurate and no one from years of now will be looking at the writings they are looking at the plans

Commissioner Miller:

- What is the fiscal assurance for ultimate buildout?
- What is the assurance for the 48 feet of right of way?
- There will be 20-foot driveway 20 feet in almost 400 square feet of parking in the meantime
- Is there a definition of pro-rata?
 - Usually documents like this have legal definitions
- Rezone
 - Request is to rezone or move zone to accommodate for development
 - The developer referred to alternative means of meeting the open space
- Dwelling units
 - Are you talking about another housing unit?
 - Don't see this as being sold separately.
- Marsh Creek Road Specific Plan does allow for alternative open space (page 3 of report)
 - The General Plan designates this as private open space
- It seems like the Marsh Creek Road Specific Plan is more for a large-scale project of 300 units not a 6-unit pocket project

Applicant Team:

- Mr. Chen

- No city builds out the ultimate infrastructure and builds as it is buildout
- Even with the 24 foot of roadway already exceeds the fair-share
 - For a 110-unit development the 6 lots are 5% of the fair-share
- Commissioner Altwal – Want to add a few things
 - 48 foot right of way is defined in the Marsh Creek Road Specific Plan
 - Each developer is responsible for their own development plan
 - I have been coordinating with the Moita's late last year to find if they are ready and if I can get the data to get what they need
 - The problem with building out the 48 feet of right of way is that the Moitas don't know what they need
 - There is no defined infrastructure needs
 - Yes, page 126 talks about 1 financing mechanism that is developer prepayment
 - Also talks about other mechanism as well b, c and d
 - These are problematic also as the Moita's property is outside the city limits
 - We have not had a chance to make the change, we want to get through the Planning Commission for input for direction
 - Corrections will be made prior to going to City Council
 - Yes, if the desire of the Planning Commission is to build out the 48 foot right of way, we need to know what the Moita's plans are
 - As of December, last year, there has been no plans presented by the Moita's
- Not a part of the Marsh Creek Road Specific Plan and do not know what happened back then
- 3A is one of 4 methods of collection of fees
 - The reimbursement would be a high impact to the city because the city would have to do an impact fee and what the infrastructure needs are
- I don't get the feeling the city wants to do a master impact fee for all development here
- City needs to decide about the urban limit line and annexation
- The 48-foot ROW will be in conformance with the specific plan and will have to see if the specific plan calls out guest parking on the street
- These are 3-4 garage plus driveway for guest parking
- Page 95 with the 48-foot-wide collector road has parking on 1 side
- 3 car garages
- We have to go through a street name process anyways
- As stated in objective # 1 of the implementation plan it is the pro-rata fair share
 - Pro-rata of the entire developments so a total of 116 units of which 6 are ours or 5%

- So ultimately a 48 foot right of way, we would be 5% of that
 - By that time, we will have already built a 24-foot road and the Moita's will refund us based on the pro-rata
- Vince said that he would be willing to pay on the upsizing, that is not what the specific plan says
- The specific plan says pro-rata not just the upsizing
 - We put in the 8-inch water line and he needs a 12-inch line that he pays for the difference 4 inches ... no ... he pays for 95% of a 12-inch water line
- We are already making the 48-foot dedication and the small road would be maintained as a private road and the HOA maintains.
- This is the developer's fulfillment of affordable housing and work with staff on the on-site or off site and low income very low income or moderate income
- It is private open space with a public access easement over the trail
- It's a trail that is conditioned and its actually on the plan that connects to the east side
- Already have a trail along Marsh Creek Road that is in the public right of way
- Will be constructing a public access trail along the easterly border
- It is on the tentative map and hard to see and we will clarify – 10-foot PPE
- Yes, along east border and it connects to Saltbrush Lane
- The slope within the building area is basically level after grading
- The constraint map shows the slope
- Go back to the slope study – constraint map
- The constraint map showing the total area of 26%
- The city collects traffic impact fees and there is a condition that the traffic impact fee is paid
- I think they are talking about traffic routing
- I believe CI4 is talking about Marsh Creek Road improvements
 - No improvements required by this development
- The traffic was studied under CEQA and is in the Initial Study
 - No required improvements
 - No impacts
 - The study was done under CEQA
- Setback
 - There is a dashed line that indicates the 80-foot setback and none of the footprints are in the setback area
- Deed – Request of CCWD as disclosure
- Dwelling unit
 - On-site would be an ADU
 - The accessory unit would be Deed Restricted
- Community engagement
 - Did not hand out flyers
 - The city posts it to their website

- Notifications are done by the city
 - Have not had any public engagement
 - Except for the Moita's
- Chapter 6 RE2
 - City prefers private open space so the city does not want to maintain open space rather have the development maintain it.
- Sound Wall
 - We followed the recommendations as required
 - Alternatives – the sound walls can be landscaped
 - Landscape showing the landscaping of the sound wall
- Landscape – Road
 - Yes, a lot of landscaping in the right of way
 - Yes, we have done this before and we would remove and plant new landscaping with a widening of the road
- Avoid rare plants
 - Project is in the HCP and payment to HCP is a form of mitigation
- Policy DD-4 E Slope
 - When you have a slope above 2:1 you have a bench for grading
 - A 3:1 slope does not require a bench
 - Code requirement
 - Typical mitigation for steep slopes
 - The policy states that the grading should not exceed the natural slope and not be a steep slope of 2:1 without mitigation
 - The bench is the mitigation
- 7D 13 C page 75
 - Typical is CMU but in this case alternative material would be used like pre-cast
- Page 7 staff report
 - Zoning map amendment
 - Keep the maintenance private by the HOA
- Development Plan Permit
 - There is a list of modifications that we will make corrections prior to final map
- There needs to be some corrections to the plans
- Fencing
 - Shown in the landscape plan
 - The fence along the property line
 - We have a fencing plan not here
- Mr. English
 - City required the name change
 - City gave us options and we picked 1
 - Maybe that was the original (Sage)
 - We were following the cities lead

- Community engagement
 - What was the city notification?
- Ms. Berglund
 - Legal question is if the tentative map is in harmony or consistency with the specific plan – here it is
 - The specific Plan does not require a full build out 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 build out is to occur
 - Condition as proposed meets the needs of today
 - Discovery Builders has agreed to build out the ultimate infrastructure if and when the Moita's have a development application
 - Consistent with Policy IM-13 and IM-14
 - The property owners pay the fair share of improvements
 - The condition meets the constitutional limitation of rough proportionality
 - Condition must be in reasonable proportion to the development impact
 - Here we are looking at a 6-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 Mr. Miller earlier question – to front the cost when there is no timeframe as to when there would be reimbursement or if the Moita's would be able to develop their property
 - Even the first sentence states the developer shall build it and fair share
 - The Nolan/Dolan states fair share
 - 2 key cases
 - Nolan and Dolan
 - Nolan specifically defines proportionality
 - Alameda Whip Snake
 - The biological resources assessment table states that there is low potential for it to occur
 - Rare plants
 - Mitigation is on page 43 of the MND
 - IF construction does not start before spring of 2021, then a new report will be done
 - Compliance with HCP is mitigation itself and states construction should avoid rara plants
- Mr. Marciniak
 - 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 Moita's 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 neighboring property will ever develop
- Gave example of traffic signal
 - Because your development tripped the need for a traffic signal and therefore you have to install the traffic signal
 - The fair share would be collected from future developments
- This is not the same as tripping the requirement for a traffic signal
- The neighbor is asking for the road for a speculative future development
 - That is not considered as constitutional fair share
 - Violates the Mitigation Fee Act
 - Goes against the ruling of Nolan/Dolan
- The neighbor is talking about a speculative or theoretical development and is asking that Discovery Builders be burdened with a cost that is speculative or theoretical.
- One other point IM14 – couched in should language
 - Implementation needs to conform with the Constitution
 - The language gives the City wiggle room because there no one-size fits all
- There is a very hypothetical development and no one has been able to explain to us a develop
 - It's not fair and not constitutional to require full road
- If the condition would be to put all the money up front for all the infrastructure and the roadway
- Without a project application, without any real efforts for proposing something concrete what faith can we put into anything
 - Until someone puts some effort into putting together a development proposal, it is suggested no to be taken seriously with all due respect
- The Constitution states fair share
- Each house has garage parking for 3 cars
- Requiring the build out of the road is unconstitutional and exposes the city to vulnerability
- The development plans embody that part of the policy (road)

Mr. Moita (allowed to speak and answer Commissioners questions):

- We are arguing about 24 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 home development
- Been working on this for years about this access point
- We have been trying to work with Seeno
- This is the opportunity to have this done once and for all
- 1995 we applied for a minor subdivision and was denied
- We are one of the originators of the plan
- Developers are sequential for west to east
- We have been waiting for Seeno development

- We have had discussion and it is not feasible and we are here today
- Let me see if I understand, if the road is 32 feet with upsized utilizes to the 110 units that we would pay the fair share of the difference of the 24-foot road?
- If we could determine that, in the past we have asked for the City Attorney to be involved and if we can determine what that cost difference is for the utility upsizing and they should pay as a benefit of their project the road per the specific plan
- There are others, the Morgan Family but not removing the limit line they would not benefit
- This road would feed into a potential park

Director Feske:

- I was specifically talking about the difference between a vesting tentative map and a tentative map
 - The conditions, the fees, the code used are set now.
- The question Commissioner Altwal was asking about was the entitlement – zone change, development permit and all of those
 - If those expire, then it comes back before the Planning Commission and the Planning Commission decides to extend the entitlements or they are expired.
 - Once they are expired, they are expired
 - That would be at the discretion of the Planning Commission to extend or not extend the entitlement
 - If the entitlement expires and it is brought before the Planning Commission to decide if there is an extension granted or not
- City Council has final say on street names
- Most mitigation measures are in the MMRP

Motion and Vote 4-0

Recommend Deny and bring back the deny resolution with findings per the Planning Commission

20. ACTION ITEMS

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

Chair Chippero:

- Yes, rotate and have an alternative
- Present to the Council, it is towards the beginning of the meeting so no need to stay for entire meeting.
- Important to have everyone have time in front of Council
- Yes, all 5 with alternatives and start alphabetical by last name

Vice Chair Denslow:

- That means that Commissioner Miller is in the position of presenting 2 meetings in a row

Commissioner Altwal:

- We would just do a 4-person rotation

Commissioner Gavidia:

- Repeat my position from before, no matter how this vote comes out, I decline to report to the City Council

Commissioner Miller:

- Basically, attending a meeting, City Council meeting about every 2 ½ months

Motion and Vote 4-0-1 (Abstain: Commissioner Gavidia)

Rotation of all 5 Planning Commissioners with alternative to report to City Council

B. STRANAHAN PARKING (COMMISSIONER ALTWAL)

Chair Chippero:

- Commissioner Altwal you can bring this forward as a citizen before the Council

Vice Chair Denslow:

- No comments on subject matter

Commissioner Altwal:

- If I recall the Director is expecting some kind of memorandum to forward to the City Council
- The whole thing started from something similar to Item number 10 planning commission request for upcoming agenda developments
- You were asked for our opinions and what we want to do and that is where it was coming from
- If you don't want us to any requests then don't ask us to do any requests it's as simple as that

Commissioner Gavidia:

- I am not comfortable making a vote on this matter at all until we have clarification from the City Attorney present here.
 - Does constitute us attempting to make policy?
 - Is it okay for us to do so?
- Otherwise, I am not comfortable with taking a vote
- I think it should be tabled until clarification and the City Attorney present

Commissioner Miller:

- No comments made

Motion and Vote 4-0-1 (Abstain: Commissioner Gavidia)
Table with no date

21. PLANNING COMMISSION REQUESTS AND UPCOMING AGENDA DEVELOPMENT

Chair Chippero:

- None

Vice Chair Denslow:

- None

Commissioner Altwal:

- None

Commissioner Gavidia:

- None

Commissioner Miller:

- None

22. ADJOURNMENT

11:31 P.M.

**CITY OF CLAYTON
PLANNING COMMISSION
RESOLUTION NO.**

A RESOLUTION OF THE CLAYTON PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL DENY WITHOUT PREJUDICE THE PROPOSED SUBDIVISION AND DEVELOPMENT OF SIX DETACHED SINGLE-FAMILY RESIDENCES ON APPROXIMATELY 9.03-ACRES LOCATED ON THE NORTH SIDE OF MARSH CREEK ROAD AT THE INTERSECTION WITH DIABLO PARKWAY, APN 119-070-008 BECAUSE THE PROPOSED PROJECT DOES NOT CONFORM WITH THE MARSH CREEK ROAD SPECIFIC PLAN.

WHEREAS, applications were received from the applicant, West Coast Home Builders, for the subdivision and development of six single-family residences on approximately 9.03 acres, which includes an Initial Study/Mitigated Negative Declaration (ENV-02-16), Vesting Tentative Subdivision Map (MAP-01-16), General Plan Map Amendment (GPA-02-18), Specific Plan Map Amendment (SPA-01-18), Zoning Map Amendment (ZOA-02-18), Development Plan Permit (DP-01-19), and Tree Removal Permit (TRP- 31-19) (“Project”). The Project is located on the north side of Marsh Creek Road at the intersection with Diablo Parkway APN 119-070-008; and

WHEREAS, on October 27, 2020, the Clayton Planning Commission opened a duly-noticed public hearing, received testimony and evidence, both oral and documentary, and continued the public hearing; and

WHEREAS, on November 10, 2020, the Clayton Planning Commission, at the request of the applicant, continued without consideration the public hearing; and

WHEREAS, on November 24, 2020, the Clayton Planning Commission, at the request of the applicant, continued without consideration the public hearing; and

WHEREAS, on December 8, 2020, the Clayton Planning Commission, at the request of the applicant, continued without consideration the public hearing; and

WHEREAS, on February 23, 2021, the Clayton Planning Commission continued the duly-noticed public hearing, received and considered the testimony and evidence, both oral and documentary and requested a resolution be brought back to deny the Project as inconsistent with the Marsh Creek Road Specific Plan (“Specific Plan”).

NOW, THEREFORE, BE IT RESOLVED, that the Clayton Planning Commission hereby finds the following:

1. The foregoing recitals are true and correct.
2. The Clayton Planning Commission hereby finds, on the basis of the whole record before it:
 - a. In order to make fully informed decisions, the Planning Commission and Staff requested on numerous occasions that all of the documents be updated to allow the Planning Commission to appropriately analyze the Project to make the appropriate findings for consistency. The applicant has not provided accurate site plans, drawings and maps as requested on numerous occasions by staff and the Planning Commission that demonstrate consistency with the Specific Plan, including but not limited to:
 - i. The road section design for a collector road per Figure 11 of the Specific Plan.
 - ii. The right of way dimensions are not accurately reflected within the drawings; and
 - iii. There is a lack of routing details as required per the Specific Plan.

The difference between the site plan and drawings in the packet and the project revisions that are necessary to accommodate 48' ROW (more than double the one shown in the plans) are significant.

Once the 48' ROW is incorporated, it could result in completely different lot configurations and lot sizes than what is shown on the tentative map and landscaping and tree planting plans will not match what has been shown. Given these constraints, the Commission cannot determine compliance with required setbacks, such as 20' front setback requirement, also given that some of the proposed buildings are less than 40' from the currently-drawn, much narrower road and further given that road design is going to be governed in part by the topography.

- b. The proposed 56-foot right-of-way and no pavement does not conform with the Specific Plan policies, specifically:
 - i. Chapter VIII – Circulation Element, A. Roadways, Policy CI-1
“Roadways serving development areas shall generally conform to the pattern shown in Figure 10. Where Figure 10 shows that a roadway is required to serve development on several different parcels, roadway planning and construction for each parcel shall include provisions for access to adjacent parcels.”

Figure 10 shows the roadway as a Collector Street with a 48-foot right-of-way and 32 feet of pavement.

- ii. Chapter VIII – Circulation Element, A. Roadways, 1. Roadway Types, Policy CI-2b.

“Collector roadways. Four collector roads connecting to Marsh Creek Road will serve the residential developments in the study area. These roads will include the following:

The access road to the Heartland, Moita and Morgan sites, which is referred to as Oak Creek Canyon Drive in this Plan.

Pine Lane from Marsh Creek Road to the Oakwood subdivision.

Russellmann Road from Marsh Creek Road to subdivision streets.

The loop road through the Development Area B, connecting to Marsh Creek Road on the James/Iverson and Rodenburg properties.

The collector roadways will have pavement widths of 32 feet within a 48-foot right-of-way. The streets will have two 11-foot travel lanes and one ten-foot parking and bike lane. On one side of the road there will be a 6-foot planter strip, while a 6-foot planter strip and a 4-foot decomposed granite, quarter-by-dust or asphalt sidewalk on the other side of the road will complete the right-of-way.”

- c. The proposed roadway landscape does not conform with the Marsh Creek Road Specific Plan policies because the proposed landscape in the 56-foot right-of-way does not account for the future build out and removal of landscape material without any room for a landscape buffer between the future expanded roadway and homes and overall site in keeping with the rural atmosphere, specifically:

- i. Chapter III – Plan Goals and Objectives, D. Community Design Objectives, 4. Maintain landscape and natural vegetation as a means to provide greenery, open space, development buffer and rural atmosphere.

- d. The Project does not comply with the LU-5b of the Specific Plan, which requires that the City to make findings to approve development with building footprints on slopes between 26 and 40 percent, which includes the Project. Specifically, the Project is not in substantial conformity with the Specific Plan as noted in this Resolution.

- e. The Applicant has not demonstrated that the proposed sound wall is

consistent with Section DD-13c of the Specific Plan because what is proposed is concrete masonry and DD-13c states:

“Sound walls. No concrete or masonry sound walls should be constructed for noise mitigation in the study area. All exterior noise mitigation should occur through site design, berms or wooden fences built within building envelopes.”

f. The Project lacks routing details as required per CI-4 of the Specific Plan.

3. Based upon the findings set forth in this Resolution, the Planning Commission recommends that the City Council deny the Project without prejudice.

4 Pursuant to Public Resources Code section 21080(b)(5) and CEQA Guidelines section 15270(a), no CEQA review is required for the denial of projects and the Planning Commission is recommending that the City Council deny the Project.

PASSED AND ADOPTED by the Planning Commission of the City of Clayton at a regular meeting on the 9th day of March, 2021.

APPROVED:

A. J. Chippero, Chair

ATTEST:

Matthew Feske
Community Development Director