

**Minutes  
City of Clayton Planning Commission  
Regular Meeting  
Tuesday, March 8, 2022**

**1. CALL TO ORDER**

Chair Denslow called the meeting to order at 7:00 p.m.

**2. PLEDGE OF ALLEGIANCE**

Vice Chair Miller led the Pledge of Allegiance.

**3. ROLL CALL**

Present: Chair Terri Denslow  
Vice Chair Ed Miller  
Commissioner Justin Cesarin  
Commissioner Amy Hines-Shaikh

Excused: Commissioner Frank Gavidia

**4. PRESENTATIONS AND ANNOUNCEMENTS**

There were no presentations or announcements.

**5. ACCEPTANCE OF THE AGENDA**

There were no changes to the agenda as submitted.

**6. PUBLIC COMMENT**

There were no public comments on non-agendized matters.

**7. CONSENT CALENDAR**

**A. Minutes of Planning Commission Meeting of February 22, 2022.**

Commissioner Hines-Shaikh clarified for the record that she had intended to inquire about the “acutely low-income” category at the February 22 meeting when she had mistakenly stated “extremely low-income” in her question to staff. She otherwise had no corrections to the minutes as submitted.

**Commissioner Hines Shaikh moved to approve the minutes as submitted. Vice Chair Miller seconded the motion. The motion passed by vote of 4-0.**

## **8. SCOPING SESSION**

### **A. CEQA Scoping Session for the Environmental Impact Report for the City of Clayton 6<sup>th</sup> Cycle (2023-2031) Housing Element Update and Associated Land Use Element and Zoning Code Amendments.**

This is a scoping session, held pursuant to the California Environmental Quality Act (CEQA), for the purpose of soliciting spoken comments from interested parties, individuals and other public agencies as to the scope and content of the environmental impact report (EIR) that will analyze the potential environmental effects of adoption and implementation of the City of Clayton 6<sup>th</sup> Cycle (2023-2031) Housing Element Update and Associated Land Use Element and Zoning Code Amendments (“project”).

Community Development Director Dana Ayers introduced the item and the consultant, Cameron Hile from MIG, Inc., who was managing preparation of the EIR for the Housing Element Update. Mr. Hile presented a brief overview of CEQA and the purpose of tonight’s public scoping session.

Speaking to greenhouse gas (GHG) emissions, Commissioner Hines-Shaikh asked if the EIR would only evaluate a scenario wherein GHG emissions would increase because of new development, or if consideration could be provided in the EIR regarding the consequences of building locations, and more specifically, the relationship between shortened distances from residences to jobs and reduction in GHG emissions from shorter vehicle commutes.

Mr. Hile explained that emissions from the project would be calculated and compared against a threshold to determine whether a significant impact might occur. He described that the model for evaluating GHG emissions was not so granular as to evaluate specific sites, though it could account for particular GHG reduction measures that could be applied to future development. Vehicle trip generation and vehicle miles traveled projected to be generated from all of the housing units in the plan would be used as inputs into the GHG model, which would estimate GHG emissions. Thresholds for certain air pollutants have been set by regional air quality agencies for the Bay Area basin, and if the air modeling showed that the project would result in exceedance of those thresholds, then mitigation should be introduced into the project. No mitigation would be required if projected emissions fell below the threshold.

Commissioner Hines-Shaikh said she understood that potential mitigation measures for GHG would be tangible things such as building materials. She

asked if human behavior was accounted for in the modeling; for example, if the construction of homes in certain areas closer to job centers would result in the model showing the residents in those areas driving shorter distances to work. Mr. Hile was not sure if that was accounted for in the air quality model but could follow up with his colleagues performing that modeling.

Chair Denslow understood the project area to be the city of Clayton. With that understanding, she asked if impacts would be evaluated within that project boundary and if impacts outside of that line, for example, within another city, would be outside the scope of the EIR. Director Ayers confirmed that the project area was the municipal boundary, but that environmental impacts would be evaluated based on their particular context and setting. For example, air emissions and vehicle trips are regional and/or global phenomena that necessitate regional or global evaluation of environmental impacts. Recreational or aesthetics impacts, by contrast, might be more local and limited to the use of city parks or impacts to views of and from properties within the city.

Chair Denslow then asked staff to clarify, if a job center was located in another city, would the environmental impacts of the Housing Element be greater because trips to that job center would be longer. Director Ayers advised that modeling was based on some level of assumptions about human behavior. If a census tract had housing, a school, a shopping center and an office building, the model would assume some level of interplay of trips between those uses within that census tract; for example, a parent driving to school to drop off a child and then driving to work in an office building. Mr. Hile explained that the modeling of vehicle trips and vehicle miles traveled would be conducted within the transportation model that would inform the GHG and air emissions model. He also explained that air quality and transportation modeling are performed on a regional basis.

Commissioner Cesarin asked if the EIR would include recommendations, such as adding a bus route, to County or State entities regarding transportation and GHGs based on housing siting assumptions. Mr. Hile explained that the EIR process did not include recommendations to agencies other than the City. Mitigation measures would be recommended to the City if they were necessary to reduce environmental impacts, but he was not sure at this time if any mitigation was necessary. Commissioner Cesarin then asked if other agencies had opportunity to comment on, appeal, or challenge the Housing Element or its EIR. Director Ayers and Mr. Hile advised that the City of Concord, Contra Costa County, and the City of Walnut Creek, the two former of which were jurisdictions that adjoined Clayton's municipal boundary, were sent copies of the Notice of Preparation (NOP) and invited to give feedback on the scope of the EIR. The NOP was also noticed to State agencies with jurisdiction in the area. Commissioner Cesarin also asked whether the EIR would address and

mitigate effects to wildlife, to which Mr. Hile advised that that analysis would be conducted under the Biological Resources section of the EIR.

Chair Denslow requested clarification on timing of the EIR. Understanding that the Housing Element had needed to be complete by January 2023, she asked if the schedule would accommodate multiple iterations of the analysis in the EIR, if necessary. Director Ayers confirmed the schedule and said that the timeline was tight, but that she had seen EIRs written in this amount of time, and the project was currently on track with the timeline in the scope of work that the City Council approved in May 2021.

Chair Denslow confirmed with Director Ayers that the “project” on which the EIR analysis would be based assumed a high intensity scenario wherein the majority of the sites in the draft Housing Element site inventory were rezoned to allow up to 30 units per acre. Chair Denslow then asked about a hypothetical scenario wherein some of the sites were rezoned to allow more than 30 units per acre, and if in that scenario, the EIR would have to be recirculated. Mr. Hile advised that a limited focus addendum to the EIR could possibly be prepared in that instance. That was a shorter process than preparation of an EIR; if no new impacts or mitigation measures were identified in the addendum and the conclusions of the EIR remained valid for the hypothetical higher-intensity project, then the EIR would not have to be recirculated as a subsequent EIR.

Chair Denslow asked if there was any reason why the analysis in the EIR could not start with the highest densities, if directed by decision-making bodies and to reduce the potential need for recirculation. Director Ayers advised that the adopted Housing Element might include some sites with more than 30 unit per acre densities, and some might have fewer than 30 unit per acre densities, such that the total averaged unit count might be consistent with the project unit count as described in the NOP. Director Ayers also suggested that, in addition to mitigation measures, comments on the scope could include comments about potential alternatives, and a more intense scenario could be suggested during the NOP process as an alternative to be considered in the EIR. Mr. Hile advised that, in evaluating that scenario as an alternative, that scenario’s impacts would be compared against the impacts of the project, and it would also be evaluated on how well it would meet the objectives of the Housing Element Update. Chair Denslow said that some comments made at previous Planning Commission and City Council meetings were in support of higher densities in certain locations, and she did not want to see time lost in recirculation if the EIR did not adequately consider that scenario.

Chair Denslow confirmed with staff that the scope of the Housing Element Update that was described in the NOP should not be perceived to be locked and not subject to future changes or input.

Chair Denslow asked Mr. Hile to clarify the analysis that will be in the Wildfire section of the EIR. Mr. Hile explained that Wildfire section was a new addition to the CEQA Checklist following recent years' increases in major incidents of wildfires and related impacts such as mudslides and loss of life. He explained that the EIR will need to evaluate whether the project would impair emergency response and evacuation plans; whether construction near slopes could weaken the slope or place structures in areas where they could cause fires; and whether development of infrastructure to support the project would exacerbate fire risk or if it would need to be put into place to mitigate fire risk. Flooding, landslides, increases in runoff, and soil instability post-fire would also need to be assessed. Mr. Hile noted that most of the sites suggested for rezoning would be in developed areas outside of high fire severity zones, but that the EIR might have to look at sites that are further from developed areas and assess wildfire threat to those sites. In response to Chair Denslow, Mr. Hile clarified that his mention of "infrastructure" was in reference to facilities such as fire truck access roads, fuel breaks, emergency water sources and power lines; fire response service would be discussed in the Public Services section of the EIR.

In response to Chair Denslow, Mr. Hile explained that coordination with the City was important to keep the EIR on schedule. His team had worked on several Housing Element environmental documents recently and had an efficient process for their preparation.

Chair Denslow invited attendees to speak on the item.

Max Davis shared his observations that CEQA seemed dated in its focus on localized impacts. He referenced studies out of the University of California, Berkeley, and stated that there are regional and global environmental benefits of density with respect to increasing housing affordability and reducing vehicle miles and air emissions from vehicles. He suggested that providing affordability and protecting property values can be perceived to be at odds with each other. He encouraged facilitating development of more units than cities' regional housing needs allocations as a means to get out of the housing and climate crisis.

Nathan Burkhardt confirmed with Mr. Hile that the EIR will include analysis of potential housing impacts on schools. Mr. Burkhardt referenced page 61 of the Mt. Diablo Unified School District report on student demographics, 10-year projections, prepared by Davis Demographics, where it was noted that Clayton's elementary school was projected to reach capacity based on historic development data. He noted that only past development data through 2014 was factored into that report.

Vice Chair Miller shared that he was anecdotally aware of the school capacity comment Mr. Burkhardt referenced, stating that his new neighbors had been told there was not a guarantee that their children could enroll in Mt. Diablo Elementary School because it was impacted. He was interested in seeing whether the data was consistent with those observations.

There was no one else present who wished to speak on this item. Chair Denslow confirmed with staff that the Commission did not need to take any action at this time.

## **9. PUBLIC HEARING**

### **A. Flourishing Learners, UP-01-2022.**

Stephanie Jones, the applicant, requests approval of a Use Permit (UP-01-2022) to allow the operation of a business providing tutoring services (personal improvement service) in an existing ground-floor tenant space located in the Town Center. The tutoring services are proposed to be located at 6160 Center Street, Suite D (Assessor's Parcel No. 119-018-006) and would be conducted daily from 8:00 a.m. to 7:00 p.m. This project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 – Existing Facilities.

Assistant Planner Milan Sikela presented the item and explained that staff recommended approval of the use permit request.

Commissioner Hines-Shaikh complimented the thoroughness of staff's analysis. She asked if the tutoring facility would be subject to the additional safety, exiting and seismic requirements that would be expected of a school. Assistant Planner Sikela said that had spoken about the project with representatives of the Contra Costa Fire Protection District and Contra Costa County Building Department. He said that staff likened the proposed tutoring business to a one-one-one personal service such as music instruction that was differentiated from a classroom-type group setting. Director Ayers added that the conversations held with Fire and Building representatives were in response to staff's concerns about occupancy ratings of the tenant space and the ability for students to exit the building in the event of an emergency. She also explained that public and compulsory education schools fall under the regulatory authority of the State Architect for compliance with standards for exiting, ventilation and recreational space. Because the proposed tutoring center was a private business and not a public compulsory education program, it did not need to abide by the regulations of the State Architect, though it still needed to comply with Building Code.

Commissioner Cesarin asked how long the tenant space had been vacant. Assistant Planner Sikela suggested that the applicant might be able to provide a response. Director Ayers said that she did not know precisely how long the tenant space had been vacant but that the applicant had made inquiries to the City about occupying the space for her business since late last year. Neither Director Ayers nor Assistant Planner Sikela had received any other inquiries from potential tenants of the space, with exception of a single inquiry to use the space to temporarily store supplies for the upcoming Art and Wine Festival in April 2022.

Vice Chair Miller said he previously volunteered as an elementary school math tutor and said he was curious about whether the tenant space would have student cubicles, walls or other mechanisms to reduce sound between student work spaces.

Chair Denslow asked if the applicant had already leased the space and was now asking the Planning Commission for approval of her business. Director Ayers said that staff would not require an applicant to have a signed lease before bringing a use permit application forward to the Planning Commission, as long as there was assurance that the property's owner was aware of the filing of the use permit request. She said she has seen applicants choose to wait to sign a lease until after a decision has been made on the use permit, or to sign a lease with an exit clause that could be enacted if the use permit was denied. She was not sure if either of those situations applied to this applicant. In response to Chair Denslow, Director Ayers also advised that entitlements for the approved residential development on the opposite side of High Street remained valid. Chair Denslow suggested that that development might add activity to the High Street/Marsh Creek Road intersection. Director Ayers agreed that that was a possibility, but she added that staff's recommendation for approval of the use permit was also based on the tenant space's lack of storefront glass and the large setback of the tenant space from High Street due to the on-site parking lot, two elements that would make successful retail challenging.

Chair Denslow opened the public hearing.

The applicant, Stephanie Jones, was invited to speak to the Commission. Ms. Jones stated that she has owned Flourishing Learners for two years. She currently tutored children in 21 Clayton families and three non-Clayton families, and most of her students were elementary-aged, though she did tutor a few middle schoolers. Addressing Vice Chair Miller's question about noise, she said that the space would most often be occupied by one student with one tutor; other tutors that worked with her would continue to make house calls, and she would continue to make house calls on occasion, as well. She said that many parents enjoy the luxury of tutors coming to their homes to tutor, but that the commercial tenant space would give some

families the opportunity to study in a more structured educational setting outside of the home and with fewer distractions.

Chair Denslow asked why the applicant did not opt to locate in Flora Square, as that commercial building was closer to the elementary school. The applicant said that she and her agent had observed that a lot of students frequently walk through Town Center and The Grove. The tenant space she was requesting to use was a convenient distance from the school and from The Grove, was in a central Town Center location for Clayton families, and did not have a lot of foot traffic from passersby that could pose a distraction to students.

In response to an earlier question posed by Commissioner Cesarin, Ms. Jones said that she believed that the tenant space had been vacant for about a year. Responding to an earlier question from Chair Denslow, Ms. Jones also reported that she had negotiated a lease that allowed her not to make lease payments until the City approved the use permit for her business.

Commissioner Cesarin asked Ms. Jones if she planned to incorporate a retail component into her business. Ms. Jones advised that she intended to offer classes in elective topics such as cooking or origami, to small classes of four to five students. She did not intend to sell computer software, though she did intend to sell merchandise, such as shirt-decorating activity kits with her business' bunny logo. Commissioner Cesarin inquired of staff whether adding a retail component to the business in the future would trigger another review of the use permit application. Director Ayers advised that addition of a retail component to the tutoring business would be ancillary to the tutoring business and would not effectively change how the tutoring business would operate, as students and tutors would still be coming to and going from the space for personal instruction as the primary use. Director Ayers added that the request for a use permit was triggered by the proposal to use the space for a non-retail use; otherwise, retail uses were permitted by right in the Town Center.

There was no one else present who wished to speak on this item. Chair Denslow closed the public hearing.

Commissioner Hines-Shaikh moved to approve Use Permit UP-01-2022 allowing the operation of a business providing tutoring services in the existing ground-floor tenant space located at 6160 Center Street, Suite D, in the Town Center. Commissioner Cesarin seconded the motion. The motion passed 4-0.



**10. ACTION ITEMS**

There were no action items.

**11. COMMUNICATIONS**

Commissioner Hines-Shaikh said it was wonderful to be a part of the volunteer effort to conduct outreach for the Housing Element Update and Balancing Act through the distribution of doorhangers to Clayton residences. She expressed gratitude to the City Council for coordinating the effort.

Chair Denslow shared Commissioner Hines-Shaikh's sentiments and said it was great to see Commissioner Cesarin, Commissioner Hines-Shaikh, Vice Chair Miller, as well as City Councilmember Wolfe, Vice Mayor Tillman and Mayor Cloven participating in the effort. Chair Denslow also wished everyone a happy International Women's Day.

**11. ADJOURNMENT**

The meeting was adjourned at 8:50 p.m. to the next regular meeting of the Planning Commission on March 22, 2022.

Respectfully submitted:



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Dana Ayers, AICP, Secretary

Approved by the Clayton Planning Commission:



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Terri Denslow, Chair