

**Minutes  
City of Clayton Planning Commission  
Regular Meeting  
Tuesday, November 22, 2022**

**1. CALL TO ORDER**

Vice Chair Richard Enea called the meeting to order at 7:00 p.m.

**2. PLEDGE OF ALLEGIANCE**

Vice Chair Enea led the Pledge of Allegiance.

**3. ROLL CALL**

Present: Vice Chair Richard Enea  
Commissioner Justin Cesarin  
Commissioner Maria Shulman  
Commissioner Ed Miller

Excused: Chair Daniel Richardson

Planning Commission Secretary/Community Development Director Dana Ayers and Assistant Planner Milan Sikela were present from City staff.

**4. PRESENTATIONS**

There were no presentations.

**5. ACCEPTANCE OF THE AGENDA**

There were no changes to the agenda as submitted.

**6. PUBLIC COMMENT**

There were no public comments.

**7. CONSENT CALENDAR**

**A. Minutes of Planning Commission Meeting of September 13, 2022.**

There being no member of the public attending in person or virtually who wished to comment on the Consent Calendar, Vice Chair Enea invited a motion.

Commissioner Miller moved to adopt the Consent Calendar with Meeting Minutes of the September 13, 2022 meeting, as submitted. Commissioner Cesarin seconded the motion. The motion passed by vote of 4 to 0.

## **8. COMMENT SESSION**

### **A. Study Session on the City of Clayton Draft Housing Element Update for the 6<sup>th</sup> Cycle (2023-2031).**

This is a study session for the purposes of reviewing comments received from the California Department of Housing and Community Development (HCD) on the HCD Review Draft Housing Element for the 6<sup>th</sup> Cycle (2023-2031), and to discuss the revisions to policies, programs and the housing sites inventory that have been made to the draft Housing Element in response to HCD's review. No recommendation from the Planning Commission to the City Council to adopt the Housing Element is requested at this meeting.

Director Ayers presented the item and shared a slide deck summarizing the comment letter received from HCD and the changes made to the draft Housing Element in response to HCD comments. Director Ayers also introduced Laura Stetson of the consulting firm MIG, who has been working with City staff to prepare the update of the Housing Element.

In response to Commissioner Miller, Director Ayers explained that the sites inventory in the current draft Housing Element was a fusion of the decreased unit count of Alternative 2 (Reduced Residential Development Capacity at Site M and Town Center Sites), and the increased unit count of Alternative 3 (Reduced Residential Development at Site M and Town Center and Addition of Sites T, U and V to the Housing Site Inventory) of the environmental impact report (EIR) prepared for the project.

Commissioner Shulman asked if the City was in danger of not meeting the deadline for completing the Housing Element. She expressed concern about the "Builder's Remedy" that would allow developers to build any size of project in any community that did not have a Housing Element adopted by the deadline.

Director Ayers advised that the City must adopt a Housing Element for the 6<sup>th</sup> housing cycle by January 31, 2023. With a public hearing scheduled before the Commission on December 13, 2022, and a City Council public hearing scheduled for January, the City was on track to meet that deadline. She explained that application of the Builder's Remedy would limit the City's options for denying a proposed housing development; however, developments must still comply with density standards in the City's General Plan and Zoning Ordinance. Ms. Stetson added that developers pursuing entitlements using the Builder's Remedy would need to set aside least 20 percent of the units in the development for low-income households. With

high construction costs, and with densities in Clayton being relatively low compared to some other jurisdictions, she thought the affordability requirement might discourage some developers from using the Builder's Remedy in Clayton.

Commissioner Shulman asked if the zoning regulations had standards for building heights, and if the building height standards were acceptable or not. Director Ayers advised that the regulations of the Zoning Ordinance did include maximum building height standards. She explained that density bonus provisions could allow developers to obtain waiver of those maximum standards, but she was not sure that land values in the City would facilitate building of a structure higher than what the Zoning Ordinance allows. Speaking specifically to The Olivia on Marsh Creek project, Commissioner Shulman asked if the increased height for that project was a result of its density bonus request. Assistant Planner Sikela and Director Ayers clarified that the maximum building height allowed for structures in the Town Center was 40 feet, and the structures approved to be built in The Olivia on Marsh Creek project were within that maximum allowed building height.

There were no further questions from Commissioners. Vice Chair Enea confirmed with staff that no audience member in attendance online or in the room had requested to speak on this item. Vice Chair Enea invited comments from Commissioners.

Referencing page 5-5 of the draft Housing Element, Commissioner Cesarin asked how assumptions of income levels for accessory dwelling units (ADUs) were determined. He also asked if any of the pre-approved ADU plans that the City was developing were compliant with the Americans with Disabilities Act. Director Ayers advised that the allocation of ADUs across the income levels was based on methodology recommended by staff of the Association of Bay Area Governments (ABAG). That methodology based the projected number of ADUs to be built during the housing cycle on the number of ADUs that had been built in the jurisdiction from 2019 forward. The methodology also distributed income allocations for ADUs, assuming that 10 percent of ADUs would be affordable for above-moderate income households, and the remaining 90 percent would be equally divided among very low-, low- and moderate-income households. She believed that ABAG staff had vetted their methodology with HCD staff since ABAG was recommending their formula be used to all of the jurisdictions in the nine-county Bay Area region. Director Ayers further stated that the pre-approved ADU plans being developed were all single-story and were visitable, and that they could be adapted for residents with physical limitations. She said that the City could consider developing an alternative for one of the six plans that has additional features for persons with physical limitations, and that there would be additional cost for that work.

Referencing text in the HCD letter, Commissioner Cesarin asked if housing on sites that were in the inventory and that were in nonresidential zones—particularly sites in the Town Center—could not be used to count toward the City’s housing allocation. He believed that the comment meant that sites zoned for mixed or nonresidential use could not be counted toward the City’s housing allocation, and he asked if the City could still meet its housing allocation without those sites. Ms. Stetson said that the comment referenced is a form comment that has been in every letter that her team has seen from HCD. She clarified that the HCD comment is intended to confirm whether the jurisdiction has analyzed and accounted for the presence of inventory sites that may allow for 100 percent nonresidential development. She advised that the draft Housing Element did indeed account for this possibility. She acknowledged that mixed use development was encouraged in the Town Center, but that 100 percent commercial development could also be built there. She advised that the selection of Town Center sites was judicious and did not include all of the properties in the Town Center, while considerations in site selection were made based on City ownership, prior development entitlements, or good potential for mixed use projects. She understood that it was not HCD’s intent to direct that mixed use or nonresidentially-zoned sites be taken out of the inventory, nor did she think that the City needed to remove the sites from the inventory, though she suggested that the City would clarify its sites selection process in the response back to HCD.

Commissioner Cesarin said that he had anecdotally heard concern about adding sites in the Town Center to the housing inventory. Referencing the summary of the Balancing Act housing simulation, he suggested that the simulation was not a statistically-sound or reliable data source and could not be used as a guide for what the City wants. With 44 responses submitted in the simulation, he expressed concern that HCD staff would consider that as inadequate community involvement.

Vice Chair Enea stated that the Town Center was not very big and sites were limited. In Crescent City, where he had previously lived and served as a Planning Commissioner, residential uses were allowed on upper floors above businesses. He suggested that same could be done in Clayton.

Commissioner Miller said he initially read the language in the HCD letter with regard to nonresidential sites with the same interpretation as Commissioner Cesarin. However, upon hearing Ms. Stetson’s explanation, he now understood the comment to direct the jurisdiction to consider the probability and likelihood—whether very likely or not very likely—of a site being developed exclusively with nonresidential uses, and that that accounting is incorporated in the jurisdiction’s calculation of projected housing unit count.

Commissioner Cesarin said that, with 450 respondents, he believed that the Maptionnaire survey was statistically valid with a lower margin of error than the Balancing Act simulation, though he also acknowledged that location of residence and number of questions answered was not provided for that survey. Referencing the responses to that survey, he stated that the majority of residents were concerned about housing in the City and objected to housing on City-owned sites in the Town Center. He did not think that the Town Center sites could be included in the sites inventory. He believed a combination of mixed use, service, entertainment and other Town Center attractions was more consistent with preferences he saw in the Maptionnaire survey and had heard from people around town.

Director Ayers reiterated Ms. Stetson's comments regarding the selection of sites in the Town Center, and that the process did not include every property in downtown, but rather only those for which there was a reasonable likelihood of mixed-use development. Director Ayers also did not believe it was the intent of HCD to mandate that commercial and mixed-use sites be excluded from housing inventories, as doing so would conflict with other State legislation, such as recent Senate Bill 6 and Assembly Bill 2011, that supported residential development on commercially-zoned sites. Speaking to Commissioner Cesarin's comments regarding the surveys, Director Ayers said that the Maptionnaire and Balancing Act community engagement tools were voluntary surveys and not scientific surveys. She noted that the Balancing Act survey had over 380 hits to its site, though only 44 respondents successfully completed a housing plan with at least 570 housing units distributed among the various sites provided in the simulation. She believed that the difference between the number of site hits and the number of completed plans spoke to the challenge of mapping all of the required housing. She added that she wanted to be cognizant of and not dismiss the comments and time and effort that those 44 respondents spent to meet the challenge of developing a housing plan, particularly when the survey was voluntary to begin with.

Commissioner Cesarin did not think the City could use the results of the Balancing Act simulation as basis for any decisions because it was not a scientific survey. If he were to choose one of the two community engagement tools, he suggested that the Maptionnaire survey had validity that the Balancing Act survey did not. While he did not suggest dismissing the qualitative comments from the Balancing Act simulation, he would not use it as an argument in favor or against anything and would dismiss any data derived from it as invalid. He believed that HCD would not allow the City to use certain quantitative data from an unreliable source to inform its Housing Element.

Commissioner Shulman said that she had spoken to the staff member at HCD who had reviewed Clayton's draft Housing Element. Commissioner Shulman said that, even though the surveys were not scientific, HCD staff

considered them to be relevant because they represented the views of some of the people, and that HCD wanted to see those comments. She said it is important that the information from the surveys is included in the record, and that HCD was asking for that information from all of the jurisdictions. She said HCD was not asking for reliability of data; rather, she understood that HCD would want to see the process of what was done, what the outcomes were, and how the City got there.

Ms. Stetson said that the surveys that the City had conducted were for the Planning Commission and City Council to consider in the process of developing and deciding on the Housing Element. She said that HCD was not going to look at the level of detail in the surveys nor to critique the surveys' statistical validity. Rather, HCD wanted to know that the City had done a good job of engaging the public, that the City was showing adequate sites to meet its regional housing needs allocation, and that those sites could be justified as housing opportunities based on trends and other criteria that did not necessarily include public sentiment.

Vice Chair Enea asked if ADUs could be built for family members without complying with income restrictions. Director Ayers said yes, they could. Some ADUs that had been recently approved in the City were proposed by developers to meet their projects' inclusionary requirements, but some ADUs that the City had permitted were built by homeowners for family members or for supplemental rental income. The City would not require that those units built by homeowners be deed-restricted for income, though those units could be affordable-by-design due to their small size or because they were provided as living space for extended family.

Commissioner Miller suggested that HCD's direction to reduce the assumed number of ADUs had a minor impact to the City's housing projection but was in conflict with recent State laws in support of ADUs, as well as with the City's current effort to develop a pre-approved ADU plan program. Commissioner Cesarin added that the surveys indicated strong community support for ADUs.

Commissioner Miller asked staff if the City should consider minimum residential densities to ensure projected housing targets are met. Director Ayers advised that yes, the zoning regulations could have minimum density requirements. Speaking to the question of ADUs, Director Ayes advised that the draft Housing Element's projection of three ADUs per year was less than the four per year that was included in the HCD Review Draft Housing Element, but staff believed it to be a reasonable balance between the cost to build an ADU, the City's efforts to foster ADU construction, the recent pace of ADU construction in the City and the upward trend in ADU permits.

Referencing the letter from the Greenbelt Alliance, Commissioner Cesarin asked if resident opposition was considered to be added as a constraint to

housing. He also asked if the City was planning a comprehensive outreach program to educate the public on the benefits of housing, the benefits of affordable housing, and the benefits to residents of the revised zoning regulations. Director Ayers said that an educational program not been proposed as a program in the Housing Element, though the Commission could take that on as a goal for itself. Speaking to resident opposition, she did not recall that being identified in the draft Housing Element as a constraint, though the City's historically and predominantly single-family residential development pattern was discussed in the draft Housing Element chapter regarding affirmatively furthering fair housing.

Commissioner Cesarin asked if the Clayton Community Church property could be redesignated for Institutional Density and included as a potential housing site. Director Ayers said that, at the time that the City was developing the sites inventory, the Clayton Community Church site had been recently entitled, so the site's development for housing was not considered to be reasonable. Though the site was not included in the draft Housing Element inventory nor analyzed in the draft EIR for the Housing Element update, if the Church's plans changed, the Church could initiate a rezoning on their own behalf to allow residential use on all or part of their property.

## **9. PUBLIC HEARINGS**

### **A. Request for Extension of Land Use Approvals for the Clayton Community Church Project Use Permit (UP-05-16), Site Plan Review Permit (SPR-06-16) and Tree Removal Permit (TRP-38-16).**

This is a request by the Clayton Community Church (Applicant) for a one-year extension to exercise the development approvals granted by the Clayton Planning Commission on April 27, 2021 for the Clayton Community Church Project. The Project encompasses removal of existing trees, installation of new landscaping and surface parking facilities, and construction of a new, approximately 13,998 square foot Church building for religious assembly purposes on 4.4 acres located at 1027 Pine Hollow Court, Clayton (Assessor's Parcel Number 119-050-036). At the meeting of April 27, 2021, the Planning Commission adopted the Clayton Community Church Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program in accordance with the requirements of the California Environmental Quality Act (CEQA), and no additional findings are necessary for CEQA compliance for the current request for extension of entitlements of the approved Project.

Director Ayers introduced the item and summarized the staff report. There were no questions from Commissioners. Vice Chair Enea opened the public hearing on the item.

Pastor Shawn Robinson came forward to speak on behalf of the Applicant. He explained that the COVID-19 pandemic had caused a doubling in the cost of the project, and the Church was considering other options to reduce costs, including returning to the Planning Commission with a decreased footprint for the building. The Church was not ready to give up on the project yet, but they needed more time to plan their next steps.

In response to Commissioner Cesarin, Pastor Robinson said that the Church had not given up on raising the funds for their initially-approved project, though the cost of the project had increased from \$5 million to almost \$9 million, so the Church was considering reducing the size of the project to make it more affordable. The Church had also been considering, but had not confirmed, alternative locations that did not require the road widening and utility installations that were necessary for the approved project site. He anticipated having a firm plan and direction by Spring 2023. Responding to Commissioner Cesarin's question during the earlier item, Pastor Robinson said that if another site became available, the Church would consider making the approved project site available for housing.

In response to Commissioner Miller, Pastor Robinson confirmed that the Church would like to preserve their option to do what was originally approved to see if there was a way it could happen.

Commissioner Shulman wished the Church the best in raising the funds, as it was clear to her that the Church wanted to preserve what they had entitled.

There being no other meeting attendees wishing to speak on the item, the public hearing was closed. Vice Chair Enea invited a motion on the item.

In response to Commissioner Miller, Director Ayers advised that the Clayton Municipal Code authorized the Planning Commission to extend the duration of approved entitlements, upon showing of good cause. Staff believed that good cause had been shown, and staff's recommendation had been explained in the staff report and draft findings in the proposed Resolution attached to the staff report. If the Commission concurred with the recommendation of staff, the Commission could adopt the proposed resolution and its draft findings as the basis for their decision. The Commission could expand upon those findings but, if they did not support the extension request, they would need to make the finding explaining why good cause had not been shown.

Commissioner Shulman moved to adopt the proposed Resolution approving the extension request for the entitlements for the Clayton Community Church, as requested. Commissioner Miller seconded the motion. The motion passed by vote of 4 to 0.



**10. COMMUNICATIONS**

There were no communications.

**11. ADJOURNMENT**

The meeting was adjourned at 8:17 p.m. to the next regular meeting of the Planning Commission on December 13, 2022.

Respectfully submitted:

  
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Dana Ayers, AICP, Secretary

Approved by the Clayton Planning Commission:

  
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Daniel Richardson, Chair