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Historical Designation in Moraga Will Not Require Owner's Consent

By Sophie Braccini

To the dismay of several large property owners, the Moraga Town Council adopted the first reading of the historic preservation ordinance Jan. 15 that will allow the town to declare a building or natural feature of historic significance, even if its owner does not agree.

Dave Bowie, the attorney for New Rheem Theatre owner Mahesh Puri, made the case to leave the ultimate decision to the owner. "We understand the need for a historic preservation ordinance, but we think it is critical that there be a condition requiring the owner's consent," he said. He noted that the Planning Commission had been sensitive to the owner's concerns and had asked in their recommendation to the council that the owner's approval be required. He argued that the requirement of the owner's consent will ensure a collegial and harmonious process.

David and Joan Bruzzone who own properties in Moraga such as Moraga Ranch, one of several buildings the Planning Commission cited as historically significant, voiced their opposition to a text that would not require a property owner's consent. Saint Mary's College Director of Community and Government Relations Tim Farley voiced opposition as well.

Councilmember Dave Trotter led the argument to remove all reference to owner's consent. "It is appropriate to give the town that tool," he said. "Whether we choose to exercise that power in the future depends on how the future plays out. But I'd rather have that tool in the town tool kit than not have it." Trotter added that if the property owner has veto power, there would not be any dialogue within the community about the best way to protect historical character.

Councilmember Phillip Arth opposed this idea. "If the town designates a property a historical landmark, (the property owner) loses some of his rights," he said. Arth also mentioned the potential economic risks included in a historic designation. "You should not try to force a designation down the throat of anybody, because if the project is not viable as a historic asset, it's not going to be maintained," Bowie said. Arth added that the advantages that come with the historic designation, such as Mills Act property tax relief or flexibility in Americans with Disabilities Act requirements, should be offered to owners, not forced on them.

Per the new ordinance, a town councilmember, the Planning Commission, the Design Review Board, the Moraga Historical Society or the property owner can nominate a building or feature for consideration of historical status. Considerations for a proposed historical landmark include: the structure must be over 50 years old; it must have characteristics that are linked to the heritage or cultural characteristic of the town; it is in an area, place or site of historical significance; or it is identified to be the work of a master architect or builder. After nomination, all applications will be referred to the Moraga Historical Society for comment. Then the council will conduct a public hearing and provide a reasonable opportunity for all interested parties to be heard before making a final decision.

Orinda's historic preservation code requires that the city solicit the cooperation and participation of the property owner in the designation process - the owner's approval is not required. In Lafayette, the nomination can be made by either the owner or by the historical society, especially when there is community interest in acquiring the property or otherwise arranging for its permanent preservation - in that case, the owner's consent is not required.

Mayor Roger Wykle supported Trotter's position, as well as Councilmember Teresa Onoda who asked that pear orchards be added to the list of natural features that could be designated as historic. In the absence of Vice-Mayor Mike Metcalf, the motion passed 3 to 1.

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