



Published July 11th , 2018

Council prepares for legal battle over hillside and ridgeline development

By *Sophie Braccini*

During the June 27 Moraga Town Council meeting \$250,000 from the Palos Colorados developer's fund was transferred to the general fund for litigation purposes. After the meeting, members moved into a closed session with legal counsel to discuss the situation further. The subject of the legal proceeding is related to the hillside and ridgeline regulations that the town adopted last April.

The plaintiffs who filed a lawsuit against Moraga, David and Joan Bruzzone, base their petition on allegations that the town should have conducted an Environmental Impact Report before adopting the modifications to the town's planning rules. When the town adopted the changes that make it more difficult to build on hillsides and ridgelines in Moraga, it made a declaration indicating that it did not need to conduct an EIR. The plaintiffs contend that the modifications are extensive and that the town violated the California Environmental Quality Act by not conducting the study.

Town Manager Cynthia Battenberg explained that the Negative Declaration concluded that there would be less than significant impacts associated with adoption of the regulations, based on the fact the regulations would more stringently regulate the amount, scope and type of new development in hillside and ridgeline areas, and thus be more protective of them and any sensitive resources affected by such development. In addition, the CEQA analysis notes that the regulations do not, in and of themselves, propose or entitle new development. Such development proposals would be subject to their own CEQA review for site and project specific environmental impacts.

Conversely, the document filed by the plaintiffs states that since the new rules extensively changed the town's general plan, zoning ordinance, the Moraga Open Space Ordinance and design guidelines it should have conducted an EIR as prescribed by the CEQA.

The document lists several aspects that, in the opinion of the plaintiffs, will have significant impacts. The first one indicates that the new rules will limit the production of new and needed housing into town. In particular the plaintiffs note a requirement that would now limit the height of new buildings if they are visible in the backdrop of distant hills, which "flies in the face of the Bay Area's and Moraga's identified need for more housing." The document claims that the new rules would displace 836 housing units, including 229 designated as affordable.

All these affordable units however are planned in the Moraga Center Specific Plan area. This part of town is mostly owned by the Bruzzone family and has been excluded from the new hillside and ridgeline regulations. Instead, a committee has been designated to finalize the zoning of this central piece of the town.

The plaintiffs' document acknowledges that the MCSP is excluded from the new rules, but speculates that the committee will enact a reduction of the building's height that will result in loss of potential new homes. Another significant consequence of the new rules that will, according to the Bruzzones, adversely change the existing physical conditions in town is the prohibition of grading, including for landslide remediation, in high-risk areas. The modified rules do not prohibit remediation to mitigate landslides, but they do not grant developers an increase in the number of homes allowed to be developed if they do so. The plaintiffs explain that the modified rules remove the economic basis for funding landslide remediation.

To decide whether or not high-risk areas, once remediated, should be treated as non-high-risk areas and allowed more development was discussed at length by the planning commission and the council. In the end, it was decided that once a property is recognized as high risk, it would stay that way from an allowed density perspective in perpetuity, whether it was remediated or not.

This is not the first time the Bruzzone family has sued the town; the first time was in 1986 when the town adopted the Moraga Open Space Ordinance. Mayor Dave Trotter agreed that this was a lot of money for the town to spend at this time, but that some things were worth fighting for.

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