

REGULAR PLANNING COMMISSION MEETING, TOWN OF PORTOLA VALLEY, DECEMBER 6, 2006,  
CENTER, HISTORIC SCHOOLHOUSE, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

Chairman McIntosh called the meeting to order at 8:04 p.m. Ms. Lambert called the roll:

Present: Commissioners Elkind, Wengert and Zaffaroni, and Chairman McIntosh  
Absent: Commissioner McKitterick  
Staff Present: George Mader, Town Planner  
Leslie Lambert, Planning Manager  
Maryann Derwin, Council Liaison

ORAL COMMUNICATIONS: None

REGULAR AGENDA

(1) Discussion of Revision of Noise Element of the General Plan

Town Planner Mader reviewed the staff report of 11/30/06 on the revision process for the Noise Element. He discussed: 1) what the revised element would need to include, including noise measurements and mapping; and 2) the Noise Element revision process. He reviewed the notes from the 11/8/06 Noise Ordinance Committee meeting set forth in the staff report of 11/8/06.

Commissioner Zaffaroni said the 11/8/06 Noise Ordinance Committee meeting had been a brainstorming session, and some of the comments shown in the notes were not fully formed thoughts. The suggestion to use bus service instead of having parents drive children to/from school came from Carter Warr who was working with the Woodside School District on the remodeling plan. During and after remodeling, there was a shortage of available parking, and one of the solutions was bus service. Mr. Warr was quite knowledgeable about the implications of driving to/from schools and the impacts that had in terms of pollution and noise. He thought the Town might consider doing something equivalent in conjunction with the work being done by the Climate Protection Task Force. With respect to the Council's attitude about noise control shown in the notes (p. 1), she said she did not think the current Council felt that the Town should regulate only those sources of noise that were easy to control. Town Planner Mader pointed out that the comment had been made by Councilmember Merk.

Commissioner Zaffaroni said the Noise Ordinance Committee had also discussed noise issues with respect to The Sequoias. She said Ms. Lambert indicated that there was currently no ongoing problem. But, there was a very large addition that was going to go on line, and the Town had heard very specific complaints about it. Laura Chase indicated that the chiller units currently used were audible from Stonegate Rd. There had been a lot of discussion about how to buffer that. She felt the mechanical equipment would be an issue. Ms. Lambert said she was working with The Sequoias on noise and odors apparently coming from flues; there would be another one of these stacks on the new buildings. Responding to Commissioner Zaffaroni, she said The Sequoias had not yet retained a noise consultant for this problem. She said she just received another complaint from a neighbor on Willowbrook about noise generated when Sequoias employees changed shifts; there were problems with mufflers, boom boxes, etc. That would increase when the new facility opened. She said The Sequoias would be asked to speak with their employees.

Michael and Sharon Reich discussed the on-going noise that could be heard on their property. Ms. Lambert reviewed the consultant's conclusions about the noise heard at the Reichs, their neighbors and other sites in Town. She said measurements taken had been inconclusive in terms of what the noise was. Some mechanical equipment at The Sequoias had not been operating properly, and it was repaired; some of the noise went away, and some did not. The Council decided not to spend more money on noise studies because it was coming from different places. Responding to Chairman McIntosh, she felt noise in Town was occasionally a problem and not a significant issue.

In terms of noise measurements, Commissioner Elkind said people who lived on the top of hills experienced a lot of noise. She discussed noise she could hear and asked where measurements would be taken. Town Planner Mader said that would be discussed with the noise consultant and tied in with those things that would reduce/control noise. Chairman McIntosh said the institutional facilities in Town produced noise. Commissioner Zaffaroni agreed, noting that foreseeable noise problems should be anticipated and addressed now. Commissioner Elkind said the two worst pieces of equipment in terms of noise were leaf blowers and chippers. Ms. Lambert noted that wood could be hauled away and chipped elsewhere or recycled. Responding to Commissioner Elkind, Town Planner Mader said the Town could go quite far in deciding what to regulate. Commissioner Elkind said the limits on construction on weekends by homeowners needed to be reaffirmed. Commissioner Wengert said the number of small aircraft and private helicopters continued to increase. Mr. Reich suggested contacting the local flying clubs, who were very sensitive to complaints and would respond. He noted that the area was sometimes designated as a practice area.

Responding to Commissioner Wengert, Town Planner Mader said the process for revising the Noise Element set forth in the staff report was not completely sequential; the noise consultant would be contacted early to see what he could do for the Town and answer a lot of questions. Commissioner Wengert said it would be helpful to be able to tell the residents at the public hearing where the noise was coming from and what type of noise it was. That would give people a sense of the magnitude of the problem. She felt noise from traffic would be particularly prevalent. She would like to see a gradation of where the primary sources of the noise were coming from. That could be refined by area. Town Planner Mader felt getting public input first would highlight concerns. Chairman McIntosh agreed. The fact that the Noise Element was being discussed should be publicized and comments invited. Responding to Commissioner Wengert, Town Planner Mader said the noise consultant would first look generally at the whole Town; measurements along major roads would be taken, etc. What was learned would be the basis for the next step.

Responding to Chairman McIntosh, Town Planner Mader said the Noise Ordinance Committee would be holding another meeting and moving forward in a more organized fashion.

Responding to Commissioner Wengert, Town Planner Mader reviewed CNEL versus Ldn measurements. The LDN measurements were more sensitive and might be what the Town would use.

Chairman McIntosh discussed noise from the vehicle that delivered his newspaper. There were different types of noise: noise that occurred one or two times/year, reoccurring noise, etc. That should be part of the study. Town Planner Mader said he would speak with a noise consultant about the issues discussed.

Sharon Reich said the two big projects in Town were The Sequoias and the Priory. They should be aware of the new Noise Ordinance and concerns expressed by people so that they didn't have to retrofit problems, which was much more expensive. In the case of the Priory, Chairman McIntosh said a lot of concerns had been expressed during their approval process. He felt they had been very sensitive in addressing concerns. Mr. Reich said it had been agreed that there would be a meeting on noise, but it had never happened. He had no concept of what the noise impacts would be from what had already been approved. Sharon and Michael Reich discussed the on-going noise they heard from The Sequoias. When the consultants came out, the systems were shut down for almost two weeks. A week later, they came back on and the noise continued ever since. It was a serious problem, and the process of using the consultants had not been effective. The Sequoias' new facility was not in operation yet, and they (the Reichs) were seriously concerned.

## (2) Discussion of Nonconforming Provisions of the Zoning Ordinance

Town Planner Mader reviewed the staff report of 11/30/06 on the revisions to the nonconforming provisions of the Zoning Ordinance. Referring to old Section 18.04.258 (p. 444-1), (Nonconforming Use), he confirmed for Commissioner Elkind that "coverage" meant building coverage--not impervious surface. Responding to Commissioner Zaffaroni, he said with a two-story building, each floor counted in terms of floor area. Building

coverage was the land that was actually covered by the structure.

Referring to new Section 18.46.020 (p. 525), (Repairs to Nonconforming Structure) Town Planner Mader confirmed for Commissioner Elkind that the provision had never been construed to relate to ancillary infrastructure. It related to repairs and maintenance work required to keep a nonconforming structure or a structure occupied by a nonconforming use in sound condition. It related just to the building itself. Commissioner Elkind questioned whether the Town should allow repairs if the infrastructure was inadequate. Town Planner Mader said if the septic was questionable, the health department would look at it as well and see whether something was needed; that was required as a part of the building permit process. It did not need to be added to this provision. Responding to Commissioner Zaffaroni, Ms. Lambert confirmed that the County Health Dept. was required to sign off on the permit if someone was on a septic system.

Referring to new Section 18.46.050 (p. 526), (Replacement of Buildings in Earthquake Fault Setbacks) Commissioner Elkind said there was nothing about landslides or other earth movement. Town Planner Mader said that was covered under Resolution 500. Responding to Chairman McIntosh, he said the wording of the first sentence could be change to "earthquake fault setback lines." He noted that there were different categories of special building setback lines in the zoning ordinance, and one was for earthquake faults. He said he would check the wording elsewhere for consistency.

Referring to new Section 18.46.030 (p. 525) (Replacement of Involuntarily Damaged or Destroyed Nonconforming Structure), Commissioner Zaffaroni said the section had been changed and she wanted to know what the intent was. Town Planner Mader read old Section 18.46.080A (p. 528), noting that this section indicated that if a nonconforming building was damaged more than 50%, it could not be restored or reconstructed. He said the new language came about in the context of ASCC reviews. The feeling was that it was reasonable to allow people to rebuild a nonconforming structure, even if it was damaged more than 50%. People had a vested interest. But, language had been added to indicate that if there was a superior location on the property, it should be so located provided the location and design were approved by the ASCC. Commissioner Zaffaroni said allowing rebuilding if the damage was more than 50% was a major change in policy. The idea of a nonconforming use ordinance was that over time, those nonconforming structures would be taken out of the picture. The 50% rule was the trigger point. Now, there was no difference between damage less than 50% and damage more than 50%. The only difference was that the ASCC would take a look at it. Town Planner Mader referred to old Section 18.46.080.B, (p. 529), which defined nonconforming buildings and also indicated that if damage was beyond 50% and it was legally constructed, you could restore or reconstruct it to dimensions which existed prior to the damage. There had been some question about the meaning of "dimensions which existed." The interpretation was the location on the property (i.e., setbacks). If a structure was involuntarily destroyed, you could rebuild the building to the prior size, but the location might need to be changed. For example, if it was too close to a property line, they would have to shift the structure on the property.

Commissioner Zaffaroni said she understood the original language only applied to buildings that didn't comply with floor area or height, as indicated in old Section 18.46.080.B.1. Town Planner Mader said when the regulations for floor area were tightened, people were concerned that they couldn't rebuild if their house burned down; the exception for noncompliance with floor areas or height was included. Commissioner Zaffaroni said in the new section, there was no longer the requirement that "all other provisions of the zoning regulations are complied with." Town Planner Mader said that had not been included because it was not needed. It went without saying that anything you did had to comply with the provisions of the regulations. It could be added, but he felt it was nonessential. Referring to the new Section 18.46.030, Commissioner Zaffaroni asked what "special building setbacks" meant. Town Planner Mader said "special building setbacks" related to setbacks along scenic roads and earthquake faults. Commissioner Zaffaroni said the new section indicated that a structure damaged more than 50% could be "...rebuilt to height, floor area, coverage, yard, special building setbacks and associated impervious surfaces that existed prior to the structure being damaged." That meant that the structure would not have

to conform. She questioned whether that was a policy that the Commission felt was reasonable.

Chairman McIntosh said it was subject to ASCC review, and he found it acceptable. If it was possible to relocate the structure in a way that conformed to setbacks, that would be done. Commissioner Zaffaroni said the provision did not require that. Some of the things that the ASCC approved, she would not have approved. Under new construction situations, a variance would be required which was approved by the Planning Commission. Town Planner Mader pointed out that this was a grandfathering provision. If the structure was heavily damaged, it was more likely that it could be relocated on the property. He said language could be added to indicate that "The ASCC shall seek to ensure conformance with required yards in making that decision."

Commissioner Zaffaroni reiterated that the new provision was a change from current policy. What was currently required was that "all other provisions of the zoning regulations are complied with...except for floor areas or height limitations." Yards, etc., were not excepted. This was a change in policy.

Referring to old section 18.46.080.B (p. 529), Town Planner Mader said the chapters referred to related to floor area, height, yards, special building setback lines, etc., which made it a nonconforming building. However, if it conformed to the regulations in effect when it was constructed or was legalized, it could be restored to dimensions that existed prior to the building being damaged provided all other provisions of the zoning regulations were complied with. Yards were included in the chapters cited and "all other provisions" included yards.

Commissioner Zaffaroni said she interpreted it to mean that if a nonconforming building was damaged, it could be rebuilt, provided that the provisions of the zoning ordinance were complied with except for floor area and height. Town Planner Mader reiterated that the chapters cited included yards. "All other provisions" were beyond those enumerated. It was a catchall, and he did not think it was essential. It was also vague. Obviously, anything you did had to comply with the ordinance. The current policy was to allow reconstruction to dimensions that existed. The real problem had been the location on the property.

Commissioner Zaffaroni said the original language was very poorly written. She found the Town's interpretation of the provision difficult to read from the language. Town Planner Mader said it was a liberal approach for people who had a home that was destroyed. Commissioner Zaffaroni said it was so liberal that she wondered what the purpose of the nonconforming use ordinance was. There was no difference between the structure being damaged more or less than 50%. The only difference was the ASCC review. While it was not a big issue for her, some people might be waiting for a nonconforming structure to fall down and not be rebuilt. Town Planner Mader reiterated that this provision had been put in to give people some assurance when the floor area ratios were changed. Commissioner Zaffaroni questioned whether the new ordinance language was a necessary compromise. If it was going to be changed, it should be changed now. Town Planner Mader said the redrafted language represented the way the provision had been administered.

On whether to add "provided all other provisions of the zoning regulations are complied with," Town Planner Mader said he did not feel it had any effect or was necessary. That could be stated in many places in an ordinance. Commissioner Zaffaroni said that particular language was not of significance to her. But, she questioned what other provisions there were that were significant. Town Planner Mader said flood plain was another provision of the ordinance. Responding to Commissioner Zaffaroni, he said building in the flood plain was controlled by the ordinance in terms of what you could do. Those restrictions would all be in effect without the overarching language. Fault setbacks was another provision. Responding to Commissioner Zaffaroni, he said construction based on slope was not precluded, but floor area was controlled based on slope.

Responding to Commissioner Zaffaroni, Town Planner Mader confirmed that the Town allowed people to rebuild back into a setback area if that was the only choice. This was an attempt to come closer to the

regulations/yard requirements, but in some cases, you would not be able to do it. The Town didn't deny people the right to rebuild. Responding to Commissioner Zaffaroni, he said there were other parts of the ordinance that effected nonconforming structures. These structures didn't comply with ordinances and you had to address them. If structures didn't comply, this ordinance told people what they could do. If you were silent on the issue of nonconforming structures, there were no guidelines. He added that this was not a huge problem in Town; in some communities it could be. The intent was that if it was completely destroyed, it might be rebuilt in a better location. Even if rebuilt in the same location, there might be improvements to the design, exterior, etc.

After discussion, Town Planner Mader suggested reinserting "provided all other provisions of the zoning regulations are complied with."

Referring to new Section 18.46.080.D (p. 530), Commissioner Zaffaroni questioned why a nonconforming use could be extended throughout those parts of a building designed for such nonconforming use. Town Planner Mader said it was prior language and standard in some ordinances. There were very few nonconforming uses in Town. This provision could be implemented but had never been. Commissioner Zaffaroni questioned whether a noxious nonconforming use should be allowed to expand. She felt there was the potential for an increase in serious impacts. Chairman McIntosh noted that there could be a nonconforming use that was welcomed in the community that you might want to have the option to expand. Town Planner Mader pointed out that the expansion had to be authorized by the Commission.

Town Planner Mader said he would review the suggested changes with Ms. Sloan who would put this in the form of an ordinance for public hearing before the Commission.

### (3) Discussion of Variance Provisions of the Zoning Ordinance

Town Planner Mader reviewed the staff report of 11/30/06 on revisions to the findings for variances. Responding to Chairman McIntosh, he said "zone regulation" was the State law language. Responding to Chairman McIntosh, he confirmed that he felt it superfluous to say that the granting of the variance had to be consistent with the General Plan.

Commissioner Wengert supported the changes which she found very clear.

Commissioner Zaffaroni said she liked the idea of incorporating more of the State language. Referring to finding #1, she said the Town had a clause that the special circumstances applicable to the property "did not apply generally to other properties in the same district." She preferred that language remain. It was relative to properties in the vicinity and identical zoning. Finding #2 included the clause but that finding pertained to privileges. Finding #1 addressed special circumstances, and she thought that clause was helpful to orient people. Commissioners agreed.

Town Planner Mader said he had always struggled with the term "unnecessary hardship." Commissioner Zaffaroni thought people would struggle with "special privilege." Town Planner Mader agreed that could be difficult.

With Commissioner Zaffaroni's addition, Commissioners agreed the revisions were helpful. Town Planner Mader said it would be put in the form of an ordinance for public hearing before the Commission.

### APPROVAL OF MINUTES

Commissioners Elkind and Zaffaroni submitted changes to the minutes of the 11/15/06 meeting. By motion and second, the minutes were approved as amended by a vote of 4-0.

### COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

Ms. Lambert noted that there was no meeting on 12/20/06.

ADJOURNMENT: 10:08 p.m.

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Chip McIntosh, Chairman  
Planning Commission

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Leslie Lambert  
Planning Manager