

REGULAR PLANNING COMMISSION MEETING. TOWN OF PORTOLA VALLEY, NOVEMBER 15, 2006.
TOWN 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, McKittrick, Wengert and Zaffaroni, and Chairman McIntosh
Absent: None
Staff Present: George Mader, Town Planner
Leslie Lambert, Planning Manager
Maryann Derwin, Council Liaison

ORAL COMMUNICATIONS: None

REGULAR AGENDA

(1) Discussion on Riparian Corridors

Town Planner Mader reviewed the staff report of 10/20/06 and discussed: 1) the Creekside Corridor Committee; 2) protection from flooding and maintenance of creek channels; 3) protection of creek banks; 4) preservation of the environmental quality of creeks ; 5) possible next steps; 6) sources of information; 7) performance standards; 8) Commissioners' comments at the 7/19/06 meeting; 9) regulations of other communities; 10) recommendations in Cotton, Shires report of August 2001; 11) annual letter sent to residents about creeks; 12) PWA diagram for creekside property protection; and 13) Town versus private property owner actions.

Responding to Commissioner Wengert, Ms. Lambert described flooding and erosion/sediment problems that occurred during El Niño. During regular winters, she said there was quite a bit of erosion of the creek banks. Currently, there were three projects for creek bank protection. Commissioner Zaffaroni said almost everyone on Georgia Lane had done something due to creek bank failure.

Bob Bond, Mapache, said he had been through three floods since 1988. During the El Niño event, the house next to his was flooded with over 3' of mud in every room except for one. His home and the one next door were the most exposed because they were the lowest and had homes located closer to the creek. During El Niño, the creek crested around midnight with very high flow rate. A significant amount of creek bank upstream--mainly in Woodside—gave way and created a lot of muck. At the same time, trees came down and formed dams. The flood previous to El Niño was worse and caused flooding of his house with huge amounts of mud. During the major storms last January, the creek came up but did not cause any damage.

Commissioner Elkind added that the soils and geologic deposit through which Corte Madera Creek flowed were described as highly erodable. As soon as sediment was dumped into the creek system, it increased the erosive force of the water itself. Town Planner Mader said Corte Madera was a youthful creek in a V-shaped canyon, which was eroding further up all the time.

Referring to the list of private property owner interests in the staff report (pp. 6-7), Commissioner Zaffaroni suggested modifying item #2 to read: "I do not want my neighbors or other property owners along the creek to install poorly designed creek bank protection measures that alter water flow...." She also thought the following should be added to the list: "I do not want property owners along the creek installing improvements such as decks or buildings that are at risk of creek bank failure or collapsing into the creek during flooding and putting other properties at risk." She said one of the biggest fears that everyone along the creek had was that something would come along and lodge at your property line and create a dam.

Responding to Commissioner Elkind, Mr. Bond said his neighbor's building/structure was probably about 100' from the top of the creek. The problem with that parcel was that it was low. If anything happened

slightly downstream, it quickly formed a lake. The developer who bought the property put in a very large, concrete retaining wall around three sides of the property and a series of massive drains/pumps to get the water out of the lake that formed. That now blocked the natural flow of the groundwater. If the creek breached at the upper end of his property and flowed across his property, he would probably be under 6' of water. Responding to Town Planner Mader, he said he did not think his property and that part of the creek was shown in a flood zone on the federal flood insurance maps. Town Planner Mader noted that if it was shown in the flood plain, the neighbor's walls would not have been allowed. He said the Town could supercede the federal maps if it had more information and could be more restrictive. Responding to Commissioner Elkind, Mr. Bond said a lot of the downed trees came from the eroded creek bank. He had several large trees along the bank and erosion was a concern. The previous owner put in a riprap arrangement, which had held up quite well; it had been repaired a few times. He said it was a daunting task just to figure out how to get a permit to work in the creek. Town Planner Mader said he felt the Town could play a role in helping property owners figure out what they needed to do, noting that the PWA diagram was helpful. Responding to Chairman McIntosh, Ms. Lambert said the process could take a year, and you couldn't work in the creek between October and April.

Chairman McIntosh referred to the list of actions in the staff report the Town could undertake to protect from flooding and maintain the creek channel (p. 2). He noted that flooding didn't always occur during working hours. Ms. Lambert said if there was an emergency, the Public Works Director and Town Geologist would assess the situation. Temporary emergency work had been done on occasion until permits could be obtained. Responding to Commissioner McKitterick, Town Planner Mader said if someone did something that was more permanent in nature that was not done right, they might have to rip it out.

Responding to Commissioner McKitterick, Town Planner Mader said maintenance districts was one option, but the Town Attorney was not too favorable towards them. The burden of handling that fell on the Town. One question was how to assess people for that district. There were people along the creek who would benefit by things being done for protection, but they might not be the ones doing the work. You had to look at the mechanism for financing and the ability to get approvals. These were really Town-wide issues and not just along the creek. Commissioner McKitterick said he thought maintenance districts might be possible for creekside property owners just for maintenance-type work. If everyone kicked in a few hundred dollars a year, it would add up and some very valuable maintenance could be done. When larger projects came along, the maintenance district might be an easier way to fund the project. There could be an organized approval process rather than individual property owners trying to go through the process.

Ms. Lambert noted that there were different opinions about what the appropriate fix was. It was obvious from the PWA study that there was not mutual agreement on what was appropriate. Commissioner Zaffaroni agreed noting that people had different approaches based on environmental sensitivities, etc. Town Planner Mader said it might be possible to set up something for maintenance. Commissioner Zaffaroni questioned whether maintenance was an issue. When there was a tree in the creek, it was usually due to an unanticipated failure of the creek bank. Otherwise, people who were adjacent to the creek were required to keep it clear. She did not think maintenance was an issue.

Chairman McIntosh felt annual inspections of the creeks were key. You could see which trees were about to go. Responding to Commissioner Zaffaroni, Town Planner Mader confirmed that the Town Geologist had walked the creek and done a report. He did not think that property owners would object to inspections or having someone indicate things that they might want to consider if there were impending problems. You would, however, have to be careful not to propose a solution. Commissioner Zaffaroni felt most people would not want inspectors on their property. People may have done things on their own that they preferred not be discovered.

Commissioner Elkind said there were certain areas of the creeks with high risk. It could be a huge benefit to everyone along the creek if there were positive steps taken in advance of the problem. She suggested asking the property owners what the Town could do that would be helpful. But, she felt "annual inspection" was not the right term. Town Planner Mader agreed.

Chairman McIntosh suggested using the same process that the Town had used in the Santa Maria area for Resolution 500. Annual inspections could be discussed with the creekside owners as one of the key components of an ongoing, long-term plan. Commissioners and staff discussed: a) potential problems if a neighbor was injured after an owner had been notified there was an impending problem; and b) disclosure requirements if the property was sold. Responding to Commissioner McKitterick, Town Planner Mader confirmed that the Town needed permission to go on private property unless there was an emergency.

Marge DeStaebler, Santa Maria, said she had attended 2-3 PWA presentations. People asked for competent people to walk the creek. There were people at the meetings who had never been in the creek bed that they owned. There were pictures in the report of bad fixes, and it was public information. Ms. Lambert added that an interactive questionnaire had been put together. Some people had been thrilled to learn so much about the creek. An annual questionnaire had been discussed that would ask people what changes had occurred along the creek, etc.

Chairman McIntosh felt 95% of the people would want to know if there was something upstream or on their property that they should address. He felt a few thousand dollars/year was money well spent to have a professional walk the creek.

Commissioner McKitterick reiterated his support for getting the neighbors organized into a maintenance district. That was one way to get a few homeowners who were really interested to do the communications and the work. Commissioner Elkind suggested bringing it up with the property owners. Responding to Commissioner McKitterick, Ms. Lambert described the district formed for the Adobe Creek project. Another option would be for the residents to agree on a plan for a reach. PWA already did the work of figuring out 5-6 priorities that needed work.

Commissioner Zaffaroni said in the Georgia Lane area, some of the corrective action would cost \$100,000+. Most of the homeowners had already invested money, and some had invested money and lost it. Responding to Chairman McIntosh, Ms. Lambert said there were a number of sources for grants. Town Planner Mader noted that it would be up to the Council to decide whether staff time should be devoted to that effort.

Commissioner Wengert said one of the most vexing parts was getting your arms around all of the issues in a very cogent fashion. One way to start would be to look at specific issues such as: 1) what are the roles of the Town, property owners and property owners along the creek; 2) what are the problems; and 3) what are the priorities. The priorities would come from the magnitude of the problems. It was a huge and multifaceted problem. To engage the most number of people, it needed to be brought to a series of digestible and clearly stated objectives. The specifics could be dealt with much later. The role that the Town would play would be based on budget and staff limitations. The public needed to be asked what they wanted and what they viewed to be the biggest set of problems. It was the Town's job to synthesize that down and come up with an approach that would hopefully address all of those issues. To get the maximum number of people involved was necessary to understand all the issues, priorities and problems. From that, a clear idea of how to focus the efforts would emerge. Giving people information was another big part of it. She was not clear about the homeowners' priorities in solving these problems. If the priority was not spending any more money, that would establish a clear direction. If people said they were willing to work with others and viewed this as a creek-wide or neighborhood problem, that would offer another direction. An ordinance that specified setbacks from creeks, etc., was a separate issue. What homeowners wanted needed to be determined. The next level was what the Town needed to do to protect the Town, environment, and adjacent property owners.

Commissioner Zaffaroni said the Town started out from the perspective of passing an ordinance with some reasonable provisions such as setbacks. The goal was to figure out what could be done that would apply equally to all property owners similarly situated that could: a) remedy some issues like structures that could collapse into the creek; b) allow for native vegetation that would help stabilize banks; c) allow for some

meandering, etc. She did not think there had been an upswell of desire from creekside property owners for the Town to get involved in this. This was not a Resolution 500 issue where people really wanted some liberalization of an existing policy that already was imposed on them. They wanted relief and to engage the Town and were very willing to interact with the Town. In this case, most property owners would prefer the status quo where the Town did not reach out. The Town had taken the initiative to become involved because it was felt to be a wise, land use planning decision—not because it was asked. Before the Town developed an ordinance, there was a long period of outreach. The Creekside Corridor Committee met for over a year but nothing productive happened in terms of adopting regulations.

Mr. Bond said the impetus for the Creekside Corridor Committee came out of the El Niño event. People were very concerned about how to prevent that sort of damage from happening in the future. They were also concerned about benign neglect of the creeks and environmental issues. There had been some very good discussions. The very successful program for San Francisquito Creek had also been discussed. For that project, they determined for various sections 2-3 recommended solutions. They got the permits pre-approved. A homeowner who wanted to make the investment could choose one of three solutions. If they did one of those, they did not have to do battle with Fish and Game, etc. One of the reasons why people took things into their own hands was because the process was daunting. The downside was that there were a lot of people who took your money and put in improvements that didn't last. He discussed gabion blankets that had been thought to be the solution which had turned out to be particularly short-termed solutions. His personal frustration with the Town's earlier efforts on this issue had been the transition from an approach of looking at issues to a set of very onerous proposed regulations. The grandfathering issue needed to be looked at very carefully. In his case, 25% of his house was within a 50' setback. If that part of the house was destroyed by fire, there was no guarantee that he could get a building permit to repair it. His homeowners insurance was not interested in setbacks. They were interested in reimbursing him for the damage done. The house would be a total loss because there was no other place to put the kitchen. When these regulations were developed, he asked that all of the ramifications be thought through. He was not against reasonable constraints, but many people were stuck with what they had.

Town Planner Mader said grandfathering depended on how the ordinance was written. You could say that grandfathering meant you could rebuild where something that was destroyed was. He felt there was an analogy to resolution 500, which was a liberalization. The regulations put forth were stringent and theoretically very good. But, property owners were affected differently. The Town should try to prevent new problems but also allow people who had investments to realize those. He felt that could be done. Responding to Commissioner Wengert, he said the residents thought the Town was going to address flooding, creek bank erosion, etc. What resulted were regulations along the creek about where people could put things. The 10/20/06 staff report used the approach of talking about where the responsibilities lay, what could the Town and property owners do, etc. That was important. If things needed to be done relative to the flooding issue, then the Town needed to address those. In terms of problems and priorities, he said planners thought in terms of objectives. A number of things were listed in the staff report. For example, what common concerns/objectives did people share, what did they want to do, and how could the Town protect and help assure that. It should be a win-win situation rather than punitive. That meant liberalizing what had been done before, and that could be done. It should be understood that the creek would not be restored to a nice natural environmental corridor throughout with no buildings and riparian vegetation. But, a number of positive things could be done. The thing was to have property owners buy into that for their own interests. That was why he had listed things that property owners valued and wanted to see preserved. It had been thought of from the Town's point of view, and it needed to be thought of from the residents' point of view. Their concerns needed to be addressed with the overall objective of preserving the riparian corridors as much as possible as a beneficial thing in the Town.

Commissioner Elkind said it was important to get a broad response from a lot of people to the list of questions. That would provide a lot of information and show that there was a very tight connection between providing some stability to prevent damage within the corridor.

Mr. Bond said there were a number of things that came out of the Creekside Corridor Committee. First, the

annual creek walk was quite useful to identify where there were significant trees, landfall, debris, etc., in the creek. The Town used to do that on a regular basis. Secondly, you needed to try to identify where there were likely to be creek bank failures. The PWA study did a good job of that. Once those sections of the creek were identified, there needed to be some way the Town could help a property owner weave their way through the labyrinth of permitting. He was not asking the Town to protect his property; he was willing to make that investment. But, it was challenging just to figure out who to contact and how to get this process done. If those things were done, it was not unreasonable to modify the building/permitting criteria and put in some constraints to protect the corridor. But, it had to be taken into account that people had the things that they had. He would like to have his house further up the hill, but that could not be done. In summary, the Town should: 1) walk the creek and identify existing things in the fall that came down all year so that those could be removed; 2) look at sections of the creek that were prone to failure and expedite the permitting process; and 3) protect the riparian corridor while giving consideration to practicalities. Responding to Commissioner Wengert, he said he didn't know if creekside property owners would be willing to enter into an assessment district. On Corte Madera Creek, it formed the border between Portola Valley and Woodside. His sense was that some people would be open to an assessment district just because they were grappling with the problem of not knowing what to do.

Responding to Chairman McIntosh, Ms. DeStaebler said one of the goals of the San Francisquito Creek JPA was to have an umbrella permitting process; she was unsure whether that had happened. The JPA had two paid employees, and there was just so much that they could do. She noted that the Corte Madera Creek study was based on the San Francisquito Creek project. Responding to Ms. DeStaebler, Town Planner Mader said any work in the creek required a permit. He said Howard Young was trying to simplify things and get approval ahead of time in order to do maintenance on the fields adjacent to the creek. He felt the Town could adopt recommended stabilization methods that would be pre-approved.

Responding to Commissioner Elkind, Ms. DeStaebler said the staff report focused on where the emphasis needed to be. The creek homeowners were the ones who were impacted. The creek was an amenity for the Town. Just as there was an ordinance about what trees could be removed, the proximity of where the home was in relation to the top of the bank fit in the same environment. It was your property, but the Town had decided that tree canopy and creeks were important. Having some kind of setback was reasonable just as fence setbacks were reasonable. You needed to start with the property owners and what they felt would help them. After that, they would be supportive of the kinds of situations that would make future building or teardowns/restarts better. As much as possible should be done to maintain the creeks, which were assets, but also assist people to safely stabilize their bank.

Commissioner McKitterick suggested taking a straw poll to put to rest the idea that the Town would not allow rebuilding or reconstructing current legal dwellings.

Chairman McIntosh asked if any of the Commissioners would be interested in taking on the job similar to what Commissioners McKitterick and Wengert did for Wayside and interface with Ms. Lambert to work on one reach at a time. The Planning Commission could agree on the criteria that would be discussed. It needed to be a much more gentle approach and include the property owners' suggestions. Those discussions should include feedback on having PWA come up with a plan for that section of the creek. The Town would assist in getting approval so that individual property owners didn't have to face the daunting task of getting approvals. Creek inspections, grandfathering, and a simple approach to setbacks like Woodside's could all be incorporated in the discussions.

Commissioner Wengert said objectives were important and multi-faceted. In talking to whatever group, it would be a combination of what they felt their priorities and needs were. Then, the issue of protecting these creeks as great resources needed to be introduced.

Commissioner Elkind said the process suggested by Chairman McIntosh had a very positive potential. Because the issue was so complex, it could get too disjointed. She preferred to start with a study session, so that the group could decide what to work on. Chairman McIntosh said if everyone was notified of a study

session, there would be a big turnout. That would allow the Commission to go into the smaller meetings more focused. Commissioner Zaffaroni suggested the Commission have a study session by itself; two Commissioners had not been involved in the earlier process. Commissioner Elkind volunteered to be the liaison for the smaller group meetings.

Town Planner Mader said before the general meeting, the Commission needed to decide what would be discussed. He also felt there should be an attempt to go through the regulations that had been drafted and think about some simplification. Commissioner Wengert said comments made during this meeting should also be discussed. She felt the two-pronged approach made sense to help simplify it and start the process.

Before the next discussion, Chairman McIntosh suggested Commissioners go over all the material. Town Planner Mader said it would be helpful to look at the list of property owner interests in the staff report (pp. 6-7) and comment by e-mail for discussion at the next meeting. He said he would also prepare some ideas for simplifying the regulations. He noted that the intent of the list was to come up with some commonality of what the regulations should address. If people felt something was important, they would be more likely to buy into that. He said he had tried to think of all the things he might be concerned with.

Ms. DeStaebler discussed work done in Santa Clara County in the past few years. She discussed: 1) the Santa Clara Valley Water District; 2) formation of a resource protection collaboration involving all of the public works directors of each of the agencies in Santa Clara County; 3) goals and guidelines published in August 2004; 4) the Santa Clara Basin Watershed Management Initiative put together in July 2005; 5) permitting in Santa Clara County; 6) ordinances put together by jurisdictions/agencies based on the guidelines and standards; 7) definition of top of bank, etc. She said all of these documents were available.

Town Planner Mader said there was a horrendous amount of material out there. The Town had tried to deal with those things that were the most critical for the Town. There might be more things in the documents that the Town needed to address. He had some of the publications and would see if there were some things that should be added to what had already been prepared.

After discussion, Commissioners agreed to hold its study session on January 3, 2007.

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

(a) Climate Protection Task Force

Ms. Lambert said the task force was moving right along and Planning Commissioners were invited to join. At the next meeting on December 5 at 7:30 p.m., the metrics subcommittee, building/energy subcommittee, and education subcommittee would report back to the full group on what steps they would be taking. It was a year-long commitment and should be very exciting to see what the Town could accomplish.

(b) Ethics Training

Ms. Lambert reminded Commissioners of the deadline for ethics training.

(c) Biological Maps

Town Planner Mader discussed the proposal submitted in 1998 by Thomas Reed Associates for preparation of a sensitive biological resources map for \$15,528. He said there was a lot more information available now (e.g., new aerial photos and topo information). Their new proposal was for a vegetation map with biological resources keyed into the vegetation groupings down to considerable detail. They had some very good techniques for mapping, and it could be a very useful tool if someone wanted to develop. They could also do a slope map which would provide information to a fire hazard expert who could analyze the fire hazard. The new proposal was \$21,458 and the slope map was an additional \$2,500. These played into the work on riparian corridors and also the Safety Element which addressed the fire hazard. He felt these would be very

useful resources.

(d) Stanford C1 Trail

Responding to Commissioner Elkind, Town Planner Mader said the design and location of the trail was still under discussion. Commissioners and staff discussed agencies involved with the trail.

APPROVAL OF MINUTES

Commissioner Wengert submitted a change to the minutes of the 10/18/06 meeting. By motion and second, the minutes were approved as amended by a vote of 5-0.

ADJOURNMENT: 10:15 p.m.

Chip McIntosh, Chairman
Planning Commission

Leslie Lambert
Planning Manager