

REGULAR PLANNING COMMISSION MEETING, TOWN OF PORTOLA VALLEY, MAY 3, 2006, TOWN CENTER, HISTORIC SCHOOLHOUSE, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

Vice Chair Zaffaroni called the meeting to order at 8:04 p.m. Ms. Lambert called the roll:

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

ORAL COMMUNICATIONS: None.

REGULAR AGENDA

- (1) Request from Conservation Committee to Consider Amendment to Site Development Ordinance Regarding Significant Trees

Ms. Lambert reviewed her memo of 4/27/06 on the request to review the significant tree section of the Site Development Ordinance and the recommendations to: 1) list blue oaks with a circumference of 16" or diameter of 5" (instead of 24" or 7.6" diameter) as significant trees; and 2) add language to the Design Guidelines describing the unique and attractive character that blue oaks provided. Commissioner Elkind said she supported the recommendations. All across California, blue oaks were failing to thrive.

Paul Heiple, Chair-Conservation Committee, said blue oaks were a species that grew in the ring around the central valley, usually in the hottest and driest places which tended to be grasslands. Grasslands included savannas, which was where the cattle were. The cattle had greatly decreased the reproduction of oaks. On the Stanford range land, there were only mature old oaks. In the Paso Robles area along 101, there were plenty of oaks but none in the pastures. Blue oaks were especially vulnerable because their only habitat was grasslands and savannas—not woodlands. They were an endemic species, found only in California, and grew fairly slowly. In the Ranch, there was a whole grove of spindly oaks that were probably very ancient. Blue oaks were one of the least common because they only grew on the tops of the hills where the drainage was very good; they did not like water and preferred dry heat. Deer were also a problem for the seedlings. Responding to Commissioner Wengert, he said blue oaks were fairly rare in Portola Valley. Responding to Commissioner McKitterick, he said if the ordinance was changed, homeowners would need a permit to remove blue oaks with a circumference of 16 inches, and members of the Conservation Committee would take a look. Normally, people wanted to remove trees because of building or the tree was sick and dying. The hope was to preserve more blue oaks because they were uncommon. This fall, the Committee would be urging people to plant more oaks to replace those they were taking out.

Vice Chair Zaffaroni said the Committee's memo indicated that it often took 80-100 years to reach a circumference of 15 inches. She asked if the recommended change was liberal enough. Mr. Heiple said it was a question what the criteria should be based on; it could be the age of the oaks. The Committee wanted to use circumference and an even number, which was why 16" had been chosen. A 16" circumference would protect a lot more small oaks. That was quite a big reduction from the current regulations. Ms. Lambert noted that the ASCC was very careful when they reviewed tree removal for development and were very sensitive to blue oaks. The Conservation Committee also looked at the plans before the project went for architectural review.

Vice Chair Zaffaroni said it would be very beneficial to educate the community about blue oaks. A lot of people would be interested to know that these trees were very ancient and a special species. Responding to Commissioner Wengert, Mr. Heiple said some of the trees could be 400-500 years old.

Commissioners concurred with the recommendations and directed staff to draft an ordinance amendment

and amended language for the Design Guidelines.

(2) Discussion (Continued) of Resolution 500-1974

Town Planner Mader reviewed the staff report of 4/27/06 on the revised version of the draft (dated 4/26/06) of Resolution 500 and amendments.

Referring to the modified recitals section, Vice Chair Zaffaroni said Resolution 500 had been in effect since the early 1970s. It was a critical and fundamental policy for the Town and had shaped the character of the Town a great deal in terms of development. Many people had purchased property in the intervening years. It was important that the revisions related back to the original resolution. Responding to Vice Chair Zaffaroni, Town Planner Mader said when the Planning Commission finished its deliberations, it would be sent to the Town Attorney as well as the Geologic Safety Committee. Vice Chair Zaffaroni said it would be good to have legal input because of the significance of this ordinance to the Town. She said the Geologic Safety Committee would be reviewing the more technical issues.

Commissioner Wengert said she thought the language that had been added in the introductory section was clear in terms of the chronology of the resolution amendments, etc. She thought it did exactly what Vice Chair Zaffaroni intended. Vice Chair Zaffaroni reiterated that she wanted the Town Attorney to look at it.

Commissioner Elkind said the Commission's intent was to clarify Resolution 500 so that it would be more understandable. Some of the changes that had been made were very pronounced with shifts in policy that could be applied elsewhere in Town. While a lot of language had been added to make it clear that it applied specifically to parcels in Town with existing residences, she did not know if that was tight enough to serve her intention that it was restricted to people who had already bought a house that existed before codes and maps. She did not want the Town to stumble into something unexpected. In terms of process, she would like to have the Town Attorney do an analysis of where this could unintentionally lead the Town.

Commissioner McKitterick said he had tried to figure out ways to eliminate loopholes that would allow people to develop undeveloped lands, etc. Overall, he thought the revision was more defensible than the current situation. But, Ms. Sloan was the expert and might have some suggestions to make it more evident and stronger.

Commissioner Wengert said she thought the revised version was a better document but would always defer to the Town Attorney relative to very clear prohibitions of development on undeveloped properties. There should be no loopholes in terms of unstable undeveloped land.

Commissioner Elkind referred to her memo of 4/29/06 and her comments about the Intent section. She said she had spoken with Town Planner Mader and understood the significance/history of the first sentence of the second paragraph; she was now comfortable leaving the sentence in. She suggested the Town Attorney look at that paragraph to see if the wording could be improved. She also suggested adding geologic maps to the last sentence in the paragraph. Commissioner McKitterick suggested adding town decisions.

Referring to the Objectives section, item #4 (p. 2), Commissioner Elkind said the Town should not "encourage" additions, and she wanted to delete "encourage." It was the role of the Town to encourage the improvement of overall safety to existing buildings—not encourage additions. Commissioner McKitterick suggested "To allow and encourage ~~Repairs, Reconstructions, and Additions that will improve the~~ improvement of overall safety of currently existing buildings."

Referring to the Definitions section, Commissioner McKitterick questioned why "additions" had been defined. Later in the document, "expansions" were discussed. Vice Chair Zaffaroni noted that "addition" was used in deviation A.4. Responding to Commissioner Wengert, Town Planner Mader said an addition included additional floor area. Expansion had not been defined. Vice Chair Zaffaroni said deviation A.4 was a

special situation where you had stable land adjacent to unstable land. An expansion normally was on stable land. Commissioner Wengert thought “expansion” should be defined and used more frequently than “addition,” which applied to the special A.4 situation.

Referring to the definition of “addition” (p. 6), Commissioner McKitterick questioned why there was a limitation in terms of cost of construction. If someone was going to build on stable land and make improvements to their current property while doing that, he questioned why they could not exceed 50% of the appraised value of the structure. Commissioner Wengert said that had been included for the special situation where there was unstable land but someone wanted to add on to an adjacent piece of stable land; that was an addition. Commissioner McKitterick felt it could be called an expansion. Vice Chair Zaffaroni said an expansion didn’t apply to an engineered solution and section C. Deviation A.4 could have both an addition and an expansion.

After discussion, Town Planner Mader noted that the term “addition” was typically used in building parlance. Commissioners agreed to use “addition” instead of “expansion.”

Commissioner Wengert said Deviation sections A and B were very clear. She thought section C could be moved up in the document after the Land Use Policies – Potentially Active Faults section and labeled Land Use Policies -- Buildings Employing Engineered Solutions. It was an overarching principle that applied to sections A and B. Section C should be right before the Deviations section, which was the heart of the document.

With respect to deviation A.4, Vice Chair Zaffaroni suggested using a separate word for additions on unstable land to differentiate that from additions on stable land. Commissioner Wengert suggested the language in the Expansion section (p. 9) be changed to reflect the difference.

Responding to Commissioner McKitterick, Commissioner Wengert said the definition of addition should be changed to indicate “An Addition to a building expands the footprint of the building and/or the height, and provides for additional floor area to tie in with the language in the Expansion section (p. 9). She agreed that the cost of construction limitation should be omitted. Vice Chair Zaffaroni suggested Town Planner Mader and Ms. Sloan discuss the language.

Referring to the Definitions section (p. 6), Commissioner Elkind felt the second sentence in the definition of “reconstruction” was awkward. It only mentioned height--not basements, etc. Commissioner McKitterick suggested “Modifications to ~~the footprint of the building including height~~ may take place if in conformance with the provisions of this Resolution and the Zoning Ordinance.” Responding to Commissioner Elkind, Vice Chair Zaffaroni said the existing policy allowed reconstruction but it required that it conform to the existing footprint. That was a liberalization of the current policy. Responding to Commissioner Elkind, Commissioner Wengert said there had been quite a bit of Planning Commission discussion on safety improvements now being afforded by technical/engineered solutions. The intention was to try to encourage some improvement with a higher safety level of any allowable modification, reconstruction or addition. Town Planner Mader noted that the limitations for reconstructions under A.2 and A.3 (pp. 7-8) limited it to the footprint and stated that the floor area may not be increased. Commissioner Wengert said that would still allow it to be reconfigured.

Referring to the Deviations from Table 1 section (p. 7), Commissioner Elkind wanted to omit the last sentence of the second paragraph. The statement had to be included in some form, but she did not like the word “expectation.” It was not the Town’s responsibility to support people’s expectations. She suggested that Town Planner Mader and Ms. Sloan craft some language that recognized that the purpose here was to allow a property owner who had invested in an existing building to preserve, enhance and replace the building as long as the criteria for deviations were met. Commissioner Wengert suggested replacing “expectations” with “opportunity.” Commissioner McKitterick said he preferred “expectation.” Through its ordinances, the Town tried to encourage the reasonable expectations of the citizenry. He noted that the sentence also referred to the criteria for Deviations. It also set apart current, occupied dwellings from

undeveloped land. It was important to make that distinction. Vice Chair Zaffaroni said people with a current dwelling had different expectations than those with undeveloped land. Commissioner Wengert said "expectation" was a very nuanced word. Responding to Commissioner Wengert, Town Planner Mader said the last sentence in the paragraph had been suggested by Ms. Sloan. Vice Chair Zaffaroni said she wanted Ms. Sloan to look at the language.

Referring to the Deviations for Buildings section (p. 7), Commissioner Elkind said she had trouble with the last sentence in the first paragraph. The potential for converting stables or other structures was an important point. She preferred Town Planner Mader's suggestion to change it to "No Deviations will be granted that involve conversion of a non-dwelling to a dwelling ~~unless such conversion is approved as an Engineered Solution~~. Commissioners agreed. Referring to the prior sentence, Vice Chair Zaffaroni suggested "Deviations requested that involve a dwelling will only be granted for buildings that were constructed as dwelling units." She did not think occupancy should be a requirement. A house could sit and not be occupied/rented for some time. Commissioner McKitterick said the intent was to address old buildings (e.g., sheds and barns) that might have been occupied at one time. He did not want someone to claim that a structure had been lived in in 1910 in order to take advantage of these liberalizations. Commissioner Wengert suggested that it only apply to buildings that were occupied as of the date this takes effect. Vice Chair Zaffaroni suggested "used as a dwelling" or "constructed as a dwelling." Responding to Vice Chair Zaffaroni, Commissioner Wengert agreed that occupancy was not the test. Commissioner McKitterick suggested "actively used as a dwelling." Responding to Town Planner Mader, Commissioner Wengert said the structure had to have been used at any time as a legal dwelling. Commissioner McKitterick felt a date was needed. There were buildings on some of these properties that were not occupied now but might have been at one time. They were not in the Town's records and weren't legal or illegal. Responding to Town Planner Mader, he said he had picked January 1, 1976, because that was when Resolution 500 started; it was adopted in 1975. You could pick the current date, but the issue was the structure had to have been used as a legal dwelling. The intent was to help people who were actually living in these buildings. Commissioner Wengert suggested "legally permitted dwelling." Town Planner Mader pointed out that the Resolution was adopted in 1974.

After discussion, Vice Chair Zaffaroni asked Town Planner Mader to work on the language. She felt it was difficult to try to articulate every situation that might arise. Commissioner McKitterick's point was an important one. She wanted to find a simpler way to address it that was inclusive without being too specific. She thought Ms. Sloan could assist.

Referring to deviation A.4 (p. 8), Town Planner Mader confirmed for Commissioner McKitterick that the provision required reasonable improvements to the existing foundation be made. Commissioner McKitterick suggested "if necessary." He questioned whether a part of a building on unstable land was enough to make A.4 apply to the whole building. Town Planner Mader said the Town Geologist would conduct a review. That was currently done in areas of unstable ground. The Town Geologist normally worked with the applicant/engineer to come up with what they agreed was a reasonable solution. He did not think that could be stipulated much more than that. The safety standard of 1.5 had also been added. He thought it should be left to professional judgment. Commissioner McKitterick noted that it would also require Planning Commission approval, which he felt was appropriate.

Referring to the Deviations section, item B.2, Commissioner Elkind said the provision emphasized safety. She was concerned that in some instances the only engineered solution might be huge retaining walls or removal and replacement of on-site soil and vegetation that negatively impacted neighbors and off-site views. Likewise in section C, paragraph 1 (p. 8), it implied that any engineered solution that could achieve the FAR allowed under the Zoning Ordinance could be approved. She suggested prohibiting compacted fill. In the Expansions section (p. 9), she suggested adding language indicating that "if the expansion increased the site disturbance by removing more than 25% of existing vegetation, the expansion may be constrained by a decision of the Planning Commission." The criteria as written did not have much standing to disallow destructive expansion. The Town had policies that indicated impacts on vegetation should be minimized. But, if there was some threshold which the Town defined as going beyond what was reasonable, the Town

could ask that the house size or impervious surface be reduced. There was no right to build to the absolute maximum on any given property. She put the 25% number out to start the discussion. She felt some threshold should be defined.

For item B.2, Town Planner Mader said some wording could be added after the first sentence to indicate "Particular attention shall be given to minimizing impacts on terrain, vegetation and off-site views." Vice Chair Zaffaroni said those kinds of criteria should be put in an overarching statement. Town Planner Mader said they were basically there already. He was primarily concerned about the engineered solution that required a lot of ground disturbance. In the Criteria for Approval of Deviations section, he suggested adding finding #10 to read: "Limitation of disturbance of a site caused by engineered solutions to no more than the footprint of the house (i.e., to put foundations in) plus 10% of the area of the parcel unless it is determined that the final project as conditioned will still retain the essential characteristics of the site." The point was to set a threshold for people who wanted to grade half of the lot in order to stabilize it.

Commissioner McKitterick said the Town had very specific rules about the amount of grading you could do. The Planning Commission had a threshold for review—regardless of Resolution 500. Under Resolution 500, the Commission would be reviewing any grading that was done. There were also guidelines about vegetation disturbance. He did not think it was fair or appropriate to try to change Town policy in this circumstance. He also preferred a simpler resolution. It was difficult enough to hammer out the criteria for approval of deviations.

Commissioner Wengert concurred. While it was an enviable goal, she questioned whether Resolution 500 was the best place to address it since it applied to every house in Town. All of the efforts of Resolution 500 were aimed toward a different goal. Town Planner Mader noted that the Criteria for Approval of Deviations section contained a general statement, which had been put there intentionally. Commissioner McKitterick added that there was also language in section C about engineered solutions. As a Planning Commissioner, he would feel very comfortable disapproving an engineered solution that was too much under this Resolution or the Town's ordinance for grading.

Commissioner Elkind said she sat on the Commission for 10 years. The Commission and ASCC had never said "don't build that big retaining wall," in spite of all the language available. Ultimately, "minimize" was a throwaway word unless you quantified it. She agreed with the concern about injecting it here when it applied town wide. But, she didn't know how to proceed. In Woodside Highlands and in areas of Town where houses didn't have the same kinds of setbacks that existed elsewhere, the potential impact on neighbors and neighborhoods without some kind of protective language could be huge. She did not think there was enough language in the resolution for protection. The Planning Commission needed some standards to go by. Commissioner Wengert said there would always be a certain amount of interpretation because each property was different. She did not think it made sense to try to inject it here. She felt it was a much bigger discussion and one worth having. Commissioner Elkind said the big change being made here was the engineered solutions. Engineered solutions came with the potential for enormous site disturbance. If engineered solutions were used to expand a house, something had to be done to protect the neighbor from what might become lost screening, a view into a retaining wall, etc. This could potentially create tremendous neighborhood tensions. It was the engineered solutions that created the problem. People were being given an opportunity to use something they hadn't in the past, and that came with some problems that the Town needed to recognize. She was not ready to move forward with the document, as is, until that was dealt with.

Responding to Vice Chair Zaffaroni, Town Planner Mader said his suggested language for criterion #10 restricted site disturbance to the footprint plus 10% of the parcel area. You could only go 10% of the parcel area for an engineered solution beyond the footprint if you were putting down piers/grading. That was an attempt to set some guide if someone came in and said they wanted to grade half of the lot, etc. He added that he would not want something like this set in an ordinance because it might not be appropriate. Vice Chair Zaffaroni said someone might not rebuild on the existing footprint because they found a better site. Then, you would have the footprint plus the new footprint plus 10%. That would not work and you could end up with a lot that was pretty well denuded because you were clearing where the house was. Town Planner

Mader said you could presumably put in piers at the new site. On the other hand, if they built in a new location and there were two solutions available (i.e., piers and grading), the grading would come under the general guidelines and could be much more than 10%. Vice Chair Zaffaroni said that needed to be clarified. She didn't think the term "minimal disturbance" got to the issue of wanting to discourage the more radical grading as compared to a less destructive engineered solution. There needed to be something in the criteria that addressed that. Criteria #2 did not get to that.

Under the Buildings Employing Engineered Solutions section, Town Planner Mader noted that the relative merits of the solutions were mentioned. Vice Chair Zaffaroni said that should be moved to the criteria section. There were some guidelines that needed to be more overarching. When someone was trying to apply the policy that was articulated here, she said it would be helpful to have all of the relevant considerations. All these criteria were listed, but there were important criteria that were incorporated under some of the individual categories. Engineered solutions were talked about under A.4. It was also relevant under B.2, but it was discussed under C. Town Planner Mader said C was overarching. Vice Chair Zaffaroni said someone might not get to C.

Town Planner Mader said if there was some better way to word criterion #2, it should be done. This had been put in when the Commission was trying to develop the general criteria. None of them were highly defined other than #1, which was added because Vice Chair Zaffaroni wanted more specificity. As Commissioner McKitterick pointed out, there was also the Site Development Ordinance on grading, which was a discretionary permit. He asked if she wanted criteria distinguishing the two types of engineered solutions. Vice Chair Zaffaroni said she had proposed some of this language included under section C. It seemed relevant when one was trying to decide—apart from normal site disturbance under the Site Development Ordinance—if accessing the site for the purposes of implementing engineering solutions was going to be tremendously destructive. That was something you might want to consider. That didn't get into the criteria in terms of what really was acceptable in terms of overall disturbance to the site, the neighborhood, the roads, etc., in order to accomplish what the person wanted to do. That should be weighed in the balance and didn't seem to fall under "minimal disturbance." Additionally, when you relocated a home, the grading might end up having an impact on adjacent neighbors as well and should be considered. "Minimal disturbance" wasn't as broad as it should be in terms of some of these issues that went beyond surface disturbance. She confirmed for Town Planner Mader that she wanted to bring in some of the language from C. Town Planner Mader noted that he had tried not to overemphasize one criterion over the others if they were all quite important. He said he would try to add something that would satisfy everyone. He said there was always a question of quantification versus qualitative language. Commissioner Elkind said she would like to try to quantify it, but not if that was less effective than language that pointed to the potential destruction from engineered solutions.

Commissioner McKitterick described an engineered solution using piers for the reconstruction of a house right next door to his property. That part of the project had significant impacts; the retaining wall and foundation were not that bad. *[Missing dialogue due to tape change.]* The biggest impact was the length of construction.

Vice Chair Zaffaroni said the Lefteroff property was unstable and troubling because they had to build all those retaining walls for access. That kind of solution and what could be done to discourage it should be looked at. That project would be very tedious and lengthy. Commissioner McKitterick said he did not think Mr. Lefteroff had been encouraged by the Planning Commission. It was hard to quantify these things, and he had faith in this and future commissions that when an inappropriate project came forward, they would be pushed to do something that was more reasonable. While the Commission had never said "no," there were a lot of situations where people had gone back and significantly changed their plans because the Commission had been uncomfortable.

Commissioner Elkind suggested Town Planner Mader craft two alternatives: 1) general language that addressed the concerns about the impacts of an engineered solution that went beyond piers and caused

substantial site disturbance; and 2) a quantified alternative. Town Planner Mader said the way it was currently worded stated a policy of the Town—not just criteria—that the grading solution was discouraged. Some of that could be added elsewhere in the document. Additionally, he said the Leteroff project was largely a visual question. He noted that Commissioner Elkind wanted to add language indicating that “particular attention shall be given to minimizing impacts on terrain, vegetation and off-site visual impacts.” Commissioner McKitterick said that was a town wide issue. It was an issue on all applications that went before the ASCC. It was heightened here because of the potential damage that could occur with these drastic solutions. He preferred to keep the criteria separate from the policy. Commissioner Wengert said the policy issues here were more significant.

Town Planner Mader noted that adverse impacts of concern were set forth in the beginning (p. 2) and were essentially policy statements. That could be beefed up a bit. Something could also be added under Objectives and to the criteria. Vice Chair Zaffaroni said it was pretty rare that anybody ever went back and read the Intent or Objectives sections. She did, but most looked at the criteria to make a decision. Town Planner Mader noted that this was not an ordinance.

Town Planner Mader summarized what the Commissioners requested: 1) have the Town Attorney look at the security this gave that it would be restricted only to existing residences in the Town; 2) address “addition” versus “expansion” and clarify that; 3) clarify the date that dwellings would have to have been legally established. Vice Chair Zaffaroni questioned whether a date was necessary. Town Planner Mader continued: 4) relocate the expansion provision; and 5) elaborate on minimal disturbance questions. Vice Chair Zaffaroni said the Town Attorney also needed to look at the expectation question.

Commissioner Elkind said the best place for the first full paragraph on p. 9 needed to be determined. Vice Chair Zaffaroni said the “Expansions” section, which would possibly become “Additions,” should indicate that the overall limit, with respect to floor area, was limited by the Zoning Ordinance. Town Planner Mader said under no circumstance would Resolution 500 override that. Vice Chair Zaffaroni said it was added in some places and not in others. She would rather take it out of the document. Or, it could be put in as one statement. Town Planner Mader said it had been put in to address the concerns the residents expressed. Vice Chair Zaffaroni said this was all new and confusing and people would have a lot of questions. It was important to be careful how it was described. She was concerned that there was some language in some places and not in other places. Commissioner Elkind suggested Town Planner Mader and the Town Attorney look at that.

Responding to Commissioner McKitterick, Town Planner Mader said the findings with respect to each criterion for all deviations (p. 10) would need to be made for the record. Responding to Commissioner McKitterick, he said criterion #1 was from the Town Geologist; he recommended the Geologic Safety Committee respond.

Town Planner Mader said the next version should be ready for the second meeting in June.

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

Town Planner Mader distributed copies of the revised rationale for the control of basements and said any additional comments would be incorporated before it went to the ASCC. He noted that the ASCC had a full workload. He discussed possible timeframes.

Ms. Lambert said the post office at John’s market would be closing 6/12/06. An alternate location was under review.

APPROVAL OF MINUTES

Ms. Lambert and Commissioner Zaffaroni submitted changes to the minutes of the April 19, 2006, meeting. Commissioner Zaffaroni said there was nothing in the minutes about her desire to have the biological

resource map done. She said some things that were critical were being dropped from the minutes. Ms. Lambert said she would add something about the map and bring the minutes back for approval. *[Note: Discussion of biological resource map not taped. – LN]*

ADJOURNMENT: 10:02 p.m.

Chip McIntosh, Chair
Planning Commission

Leslie Lambert
Planning Manager