

PLANNING COMMISSION MEETING. TOWN OF PORTOLA VALLEY, NOVEMBER 5, 2008.
COMMUNITY HALL, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

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

Present: Commissioners Gilbert, McIntosh and Von Feldt
Absent: Chair McKitterick and Zaffaroni
Staff Present: George Mader, Town Planner
Tom Vlastic, Dep. Town Planner
Richard Merk, Town Council Liaison
Leslie Lambert, Planning Manager

ORAL COMMUNICATIONS: None

REGULAR AGENDA

- (1) Public Hearing: Continued Consideration of Conditional Use Permit X7D-55, 888 Portola Road, Douglas

Ms. Lambert reviewed the staff report of 10/30/08 on the actions taken by the applicant subsequent to the public hearing on 10/1/08 on compliance with CUP X7D-55 condition #11 and sewer hook up. She noted that Chair McKitterick provided a memo to the Commission dated 11/3/08 that included his observations with respect to this matter. Chris Buja and Bonnie Crater submitted: a) a letter dated 11/4/08 outlining some of their concerns; and b) a timeline of events.

Responding to Commissioner Gilbert, Mike Sposito, contractor for the Douglasses, confirmed that there were originally two septic systems on the property--one of which failed and was upgraded. Now, both the commercial building and the residence were hooked into one system, which met the County's standards. Responding to Commissioner Gilbert, he said the art gallery was a very low use. If a restaurant was put in, the system would have to be upgraded. Responding to Commissioner Gilbert, Ms. Lambert said she did not know the limits on the septic system. The County Health Department had approved the upgrade for the new building and determined it could accommodate both the commercial and residential use. If a more intense use such as a restaurant was desired, they would have to amend the CUP and obtain a zoning permit.

Commissioner McIntosh noted that he was not present for the previous hearing on this matter but had reviewed all the material and minutes from the meeting. He opened the public hearing.

Chris Buja, 172 Wayside Rd., reviewed the time line he submitted of events from September 1999 through July 2007. He said the timeline showed when commitments had been made and how residents had taken action based on those commitments.

Ms. Lambert confirmed for Commissioner Gilbert that the Planning Commission granted the Douglasses a one-year extension in October 2006.

Mr. Sposito said he built the building for the Douglasses. He said Mr. Buja's timeline was off in terms of when the building was completed. The building was completed before they came down the street with the sewer.

Mr. Sposito said he had had quite a few conversations with Mr. Buja about costs. He also had meetings with Ms. Lambert and Mr. Mader about costs. At one point, the Town was going to hook up. That was a consideration because the costs would have come down. Mr. Buja was counting on that as well as the neighbors. There was a lot of dialogue during those months. There had also been meetings with the civil engineer, Rich Laureta, who designed the system. There were a lot of numbers that were moving around back and forth prior to anyone agreeing on what the final number was. The Douglasses completed their project and Mr. Buja completed his. All of a sudden, no one hooked up, and there was this astronomical cost to the Douglasses. That was totally unfair. Additionally, when the Douglasses started to remodel the

building, the Building Inspector came in and said there were many hazards and that the building needed to be torn down. If the Douglasses had known what they were getting into, they wouldn't have gone this route. They built a new building for the community and for themselves. But, if someone had really talked to them about the sewer issue, they would have never gone the route that they did. They could have left one wall and built a whole new building around it. That would have curtailed all of this. It should be looked at objectively. When the Douglasses assumed they would be hooking up to the sewer, they assumed the cost would be around \$50,000-\$60,000—not this astronomical cost where no one else hooked up. The Town never committed, but they were going to at one point. He had been there from the beginning and saw the whole thing unfold. If there was a fair price, the Douglasses would have hooked up along with a lot of other people. It was a mess, and he was sorry that everyone was in this. It should be looked at very objectively.

Ms. Lambert clarified that the building permit for the reconstruction of the commercial building was issued in August 2003. A final inspection took place in August 2005. At the time the building permit was issued, sanitary sewers were not available, and the applicant received approval from San Mateo County Health Department for the septic tank and drainfields to accommodate both the commercial building and the apartment. At that time, the County Health Department required that the existing septic system be upgraded to meet the standards. The commercial building and apartment were connected to the upgraded septic system in July 2004. The Village Square pump station was accepted by West Bay Sanitary and went on line in May 2005. The commercial building was occupied in October 2005.

Jon Silver, Portola Rd., said there should be an updated inspection by the County Health Inspector to be sure there was adequate information on how the system was functioning. Additionally, he did not sympathize with Mr. Sposito's statement that if all the facts were known years ago, something different would have been done. If something wasn't researched well enough—too bad. It was not the government's responsibility to bail you out unless you were too big to fail. That was not the case here. He was not sure what all the issues were related to fairness. But, it was not unusual to have a requirement that property owners pay their share of the fee and share the initial burden. He would not support any leniency based on people saying they could have found a way around this had they known five years ago what would take place. *[Inaudible]*

Fred Krefetz said he was one of the partners involved with the Sausal project for twenty years, and he was involved with the group that financed the sewer project. From the very beginning, Mr. Douglas's name was involved, and he was fully aware of what was involved in putting this project in. With that understanding and other understandings, the developers felt that it was best for the Town to go ahead and put this project together. The group invested in it as did the Bujas and others with the understanding of who was involved and what the risks were in terms of future people getting involved. It was pretty clear from the record that the system was being gamed. It needed to stop tonight. The requirements were not optional, and those were the understandings. Mr. Douglas was not ignorant of development and was involved in a lot of projects. The issues should be dealt with tonight.

Lawrence Marks, Wayside Rd., said the cost for new people to get into the sewer connection was increased by the Douglasses' actions. It also created additional hesitation to join into the system if there was a concern that violations could be overlooked in this way.

Luis Mejia, Wayside Rd., said when you entered into an agreement, there were typically benefits and burdens to that agreement. If you decided later on that you didn't like some of the burdens—while you were already enjoying some of the benefits—it didn't work. You couldn't just say you didn't want to meet your obligations to fulfill the burdens but were happy with the benefits of living in Portola Valley and having a business on Portola Road. The Planning Commission had been extremely generous in terms of giving the applicants a lot of opportunity and flexibility in trying to accommodate the situation. He and his wife built a house in Portola Valley on a piece of property that was undeveloped. As a condition to build on the property, he had to spend tens of thousands of dollars to build a storm drain system that wasn't on his property—just for the benefit of being able to build the house in Portola Valley. That had been done with the

realization that there was a benefit to living in Portola Valley and being part of the community. There were some burdens in some cases to living here. With respect to fairness, the Town government had to show fairness to everybody. If it looked like some people weren't required to meet their obligations, that was not fair to the rest of the community who was trying to abide by the rules and regulations of the Town. The taxpayers of the Town had paid a lot of money to the Town staff to deal with this issue when it appeared that the applicants were trying to prolong it and squirm out of their obligations. That was not fair to the taxpayers.

Bradley Kass, Douglasses' counsel, said the comments assumed that there was a violation, which there wasn't. You had to read this condition to see that what the Town was trying to do was to bootstrap more meaning into it than what it said on its face. There was nothing in the provision that said when the sewer became available, the Douglasses had to pay to build this so called available sewer. If that was what it was supposed to mean, it should have said that. The Douglasses were being asked to not only tie into this, but buy it. It did not say that in the words in the condition. It did not even remotely infer it. This condition in 2001 was prior to any of the sewer being built and all this other stuff occurring. That was the biggest problem he had with this whole issue. Everybody was assuming there was a violation and that the Douglasses were trying to squirm out of their obligation. Any outsider reading this provision would say it meant you had to pay to connect to the sewer when the Town provided one. That did not mean that you had to buy the sewer, which was what the Douglasses were being asked to do. If that was what the Town wanted in 2001, that plain language was required to be in this provision. You couldn't just infer that. There was no violation, and the Douglasses were willing to connect. But, the problem was that they were being asked to buy this sewer line for \$220,000 or whatever it was. The reimbursement agreement with West Bay was entered into without any notice to the Douglasses; there should have been public notice. It was a secret agreement affecting the Douglasses' rights without even telling them about it before it was executed. The end result was that there was no violation, which was why the Douglasses had applied for an amendment to have the Town look into it. There was no need right now to tie into this private pipe because the sewer system they had right now was working fine with septic tanks. There was no problem with it. It was ecologically unsound to start tearing up the ground just for the sake of doing it. He understood the individuals that had signed onto this agreement—of course they wanted the Douglasses on because they wanted the Town to help them get paid for their private pipe. That was not the prerogative of the Town. The Town was not supposed to be involved in financial issues between private citizens. Nobody that spoke tonight made much of an issue of the fact that the Town itself said it would tie up and then decided it was not in their best interest and declined. There was a lot of that in the minutes from October 1, 2008, which was part of the staff report. That was a big thing, but everyone just wanted to say that the Douglasses were trying to get out of their obligations. He urged the Town to do the right thing, which was to thoroughly read this provision. Also, the Town had an obligation to thoroughly investigate the application to amend the CUP and delete it because there was no need—all there was was speculation. It would be a serious problem to enforce something for the sake of enforcing it. From his perspective, there was no pipe that had been supplied by the Town. The plain language of that would have been written differently in 2001 if it was supposed to say that down the road, you would have to pay \$200,000, \$300,000 or \$400,000 for the pipe. If the Town wanted to go forward with the agenda item of revocation, it should be continued along with the application. Financial needs were not in the Town's purview to try to help certain residents recoup private money; that was not part of what the Town was supposed to be doing.

Responding to Commissioner McIntosh, Mr. Buja [*inaudible*] said the initial environmental impact study was done in 1999-2000. Bids went out in 2002 and went back to the bidders to try to bring the costs down. Once the costs were established in May 2003, it was split into two phases. The costs were conveyed to the Douglasses, the Sausal people, the Mejias and the Bujas. After the sewer was done and tested, it was accepted by West Bay in May 2005, and all the costs were documented. That was when the reimbursement agreement was crafted, which was a standard approach for public sewers. This was a public system that residents tied into as was the case with West Bay and sewers in this area. There was no misstatement in the CUP of 2001: you paid the fees to tie in. The agreement was done with West Bay with everything documented. As people tied in, they became a part of the reimbursement agreement. It was a matter of public record and well communicated. The Douglasses tried to bring the fees down in 2006; there was full

knowledge of what was going on. Responding to Commissioner McIntosh, he confirmed that the information on costs was available to the four participants in 2003. Responding to Commissioner McIntosh, Ms. Lambert confirmed that the Douglasses signed a letter in May 2004 reaffirming that they would connect to the sewer.

Mr. Silver read condition 11 as set forth in the staff report of 7/30/08. He said there was absolutely no need to reference the cost in the condition. By paying a public fee, you were in no way taking an ownership interest in a public facility. It was silly to make such an argument. If all the conditions that required an applicant to go to some expense had to reference cost, all the permits on file would become unenforceable.

Mr. Kass said the 2004 letter did not say that the project would cost the Douglasses money. All it did was acknowledge that the Douglasses had that condition in the CUP. Mr. Douglas was not aware of what the cost would be. The critical date was 2001. You couldn't after-the-fact change everything and say, "Oh, by the way, you owe all this money" five years after the condition was given by the Town. It was what the condition was at the time it was put in the CUP. That was all that mattered. That was 2001. Nothing happened until 2003 and then 2006. It would have been impossible for the Douglasses in 2001 to have known what was coming down the path and been able to object to it. In a courtroom, they would say, "Why doesn't it say there will be a cost to the applicant at some point when and if a sewer becomes available?" It might not have the amount, but it would have to say that there would be a substantial cost.

Mr. Silver said the idea that anyone signing such a document would think there was no cost to connect to a public sewer was not rational. The cost of connecting to the sewer was whatever it was.

Mr. Sposito said he was involved in part of this. It was a moving target the whole time. It was one number and then another number. There were a lot of numbers thrown around by Mr. Buja because he really wasn't certain how many people were going to hook up. One moment it was \$370,000 then it was \$168,000, etc. It moved all across the board. If the Town was going to hook up, it would have been this cost. If the other developers hooked up, it would have been a different cost. It was never really clear exactly what the number would be during the course of construction. There were many conversations between the Douglasses, Mr. Buja, Mr. Laureta, himself, etc. There was a lot of conversation, but they didn't know who was really going to hook up. In 2001, no one knew what the number would be.

Commissioner McIntosh said there were two costs involved. One was the cost of the original project that was supposed to be shared by these four. The other was the net cost to the participants when reimbursement took place. That could be 2 years, 8 years, etc. The net cost was estimated to be around \$77,000. That was after the reimbursements took place and as other users signed up. It was important to clarify the gross costs and net costs. The four parties had been asked to carry this burden until the reimbursements took place, which they would. It was not the Town's burden to say what the costs would be or to be involved from that standpoint. It was the Town's purview to, when possible, have new projects participate in the cost of the sewer. That was exactly what happened here with all the participants.

Town Planner Mader noted that Mr. Kass referred to the notion that the city put a sewer in. Portola Valley did not build any sewers. All of the sewers were built by the sanitary district, and it was always on a reimbursement basis. There were a number of areas where extensions had been made, and the property owners had paid for the extensions.

Mr. Kass said the condition should have indicated that the city would not be putting in a sewer, that it would be a private pipe down the road, and that you had to contribute financially to it.

Bonnie Crater, Wayside Rd., reviewed the letter dated 11/4/08 that she and Mr. Buja submitted. She said: a) she and Mr. Buja had made a personal, substantial investment in the sewer based on the decisions made by the Town with the understanding that the CUP was in place; 2) the owners of 888 Portola Road agreed to hook up to the sewer on three separate occasions--when the CUP was issued, when they took out the building permit, and when they signed the letter acknowledging condition #11; 3) there was a clear history

that the owners had flouted the rules by continuously requesting extensions with no indication of a serious attempt to comply with the conditions; 4) the property was partially commercial real estate, and the owners should be held to the same or higher standards as the rest of the residents; 5) funding was not an issue since the Douglasses bought more commercial property at 808 Portola Road; 6) the applicant had been informed at multiple steps before during and after completion of this sewer project; 7) the staff report indicated that the current septic system was not adequate; and 8) there was a sound basis for revoking the permit.

Commissioner Gilbert said she spent some time reading the CUP. Given that this was a fairly small property at .26 acres for both the residential and commercial use, a lot of leniency had been given to allow that usage on the acreage—including a number of variances that had been granted. As part of that and in exchange for the leniency, a condition had been included to hook into the sewer. The sewer hook up was an integral part of the CUP. The request to amend the CUP to remove that condition called into question the entire CUP. You couldn't pull out that section because it was tied to all the other conditions. The second issue had to do with policy about hooking up to sewer versus septic. The State Uniform Building Code for residential and commercial (Section 713.1 and 713.4) stated that every building in which plumbing fixtures are installed and every premise having drainage piping thereupon, shall have connection to a public or private sewer as long as it is accessible, which meant the sewer must be within 200' from the proposed building or exterior drainage facility. In this case, she understood that it was within 200 feet. The Town's General Plan (Section 6333, Town Center Area Plan) stated: "Many of the nonresidential uses in the planning area are served by septic tanks and drainfields. As further development takes place, these facilities should be abandoned and connections should be made to the sanitary sewer." Lastly, the Subdivision Ordinance (Section 17.48.02, Sewage Disposal) said "Sewage disposal shall be by means of a public sanitary sewer unless the Planning Commission determines that such method of disposal is not reasonably feasible and finds alternative onsite sewage disposal by septic tanks and drainfields will not create the risk or be inconsistent or contrary to the policy standards and public interest and welfare enumerated below. In determining reasonable feasibility, the Planning Commission shall obtain and consider a report from the Health Officer and other guidance and information as it deems proper but shall not consider the cost of such public sanitary sewer system." Looking at those three, her conclusion was that this particular property would be required to be hooked up to the sewer today. When the CUP was put in place in 2001, that was long before the commercial building was remodeled or there was any knowledge that it would have to be completely rebuilt. That decision had nothing to do with the status of that building and the rebuilding. Her conclusion was that there was no alternative but the CUP needed to be enforced to require hook up to the sewer.

Commissioner Von Feldt said there was a long history regarding this project. She regretted that the Town might have changed its mind regarding hook up. It was her understanding that since the Town Center was such a larger area, having a septic tank was a different issue from the Douglasses' property with its small size and proximity to the creek. She agreed that the financial considerations should not be part of the argument. The Planning Commission needed to consider land use and what made sense for this piece of land. She had considered the request for an amendment but believed the conditions should remain because of the size of the property, its location relative to the creek, and its commercial use. A coffee shop, bike store, etc., that could go into that building would require access to the sewer. Based on the history, she did not think condition #11 should be relaxed. And, based on the actions of the applicant, she did not think they would pursue the sewer hook up. She supported revocation at this point, and option #2 in the staff report that allowed the use of the septic for only the residence and not the commercial building. She supported revoking the CUP for the commercial building. She did not think this was a good solution because of the delay of payment to the other people in Town and the fact that it could leave the building vacant. She felt the condition was sound and that the applicant had not made any movement towards compliance.

Commissioner McIntosh said this community had a history of trying to work with people, trying to ameliorate situations where there were differences and conflicts, and made every effort to resolve matters. This was the tenth meeting on this particular issue and an example of the flexibility and effort on the part of the Town to try to work with people. It was in the best interest of the Town and all the people involved to have the Douglasses go forward and do their part. They should be encouraged to do that. He did not agree with

bifurcation and felt the permit dealt with the whole property. He suggested that the Commission revoke the entire permit as of 1/30/2009 unless three conditions were met by the Douglases: a) the required map and legal description were filed with LAFCo; b) the annexation through West Bay was completed and the appropriate reimbursement and District fees paid; and c) an application for an encroachment permit and building permit for the sewer connection was made to the Town. He also thought the conditions should be monitored by staff and reported to the Town Attorney. If they were not complied with in full by 1/30/2009, the CUP would be automatically revoked in a letter from the Town Attorney.

Responding to Commissioner Gilbert, Ms. Lambert said that would be enough time to complete the LAFCo process, but she did not know about West Bay's schedule. Commissioner McIntosh said he felt that if it was planned properly, the Douglases could meet the January 30, 2009, deadline.

Commissioner Gilbert moved to automatically revoke the CUP for the property at 888 Portola Road if the three conditions cited above were not met by 1/30/09. Commissioner Von Feldt seconded, and the motion carried 3-0.

(2) Preliminary Review: Variance Request X7E-132, Electrical Transformers for The Sequoias, 501 Portola Road

Mr. Vlasic reviewed the staff report of 10/30/08 on the request to install two electrical transformers and enclosures within the required 20' rear yard setback. He noted that correspondence had been received from Sally Phillips, Bill Kaspari, and Clair Jernick expressing concerns about noise from The Sequoias. Those communications had been shared with Yumiko Westland of The Sequoias. She responded in a letter dated 11/3/08 indicating that an acoustical consultant would be retained to review the various noise concerns and come up with solutions. Staff recommended that there be sessions with the neighbors to make sure everything of concern had been articulated. The variance for the transformers need not necessarily be used as leverage to address noise concerns. The applicants were committed to pursue the noise issues as part of the normal review of the use permit. Using the plans, he described the proposed locations of the transformer enclosures. Ms. Westland described the dimensions of the pads and height of the enclosures.

Responding to Commissioner Gilbert, Mr. Vlasic said there was no sound control wall on the west side of enclosure A because there was an existing retaining wall that was 7-8 feet high with dirt on the other side. The amount of mass on that side was significant. The only real issue was the texture on the wall and the reflection back. The acoustical consultant would be asked to comment on that. Responding to Commissioner McIntosh, he said staff was concerned about noise spill towards the residents of The Sequoias.

Responding to Commissioner Von Feldt, Mr. Vlasic said he did not think that the noise from these transformers would mix with the noise on the other side that were directed toward the Portola Road side. It would be looked at before it came back before the Commission. He was not concerned about cumulative impacts here because it was so buried against the back of the property, and the distance was significant from the other sources. Responding to Commissioner Von Feldt, Ms. Westland said the transformers would always be on.

Responding to Commissioner McIntosh, Ms. Westland said the existing system was 50 years old. The electric transformers that were internal to the campus were below grade and got flooded. The conduits were buried and were very corroded. The lines in the conduits had fused together, and it was just a matter of time until the residents started getting brownouts or were without electricity. This project should have been done earlier because of the aging infrastructure. The intent was to bring in the new service around the perimeter of the campus. These transformers would backfeed the existing apartments, and the load would be taken off the current transformers below grade. Responding to Commissioner McIntosh, she said the existing transformers would eventually be removed. The plan was to have the power there and have the major branches going into the buildings. The Health Services project was just completed and had new power

coming in. The four transformers that were proposed were independent of the buildings just built. She noted that Bill Strong was the contractor and was very familiar with the existing campus.

Responding to Commissioner Gilbert, Mr. Strong said some of the below grade transformers had been replaced in the past, which was how it was determined that they had water intrusion issues. The plan was to eventually pull the last group of transformers off and not use them. Using the plans, he discussed where the most problematic transformers were and problems with water. When this was designed, he said power usage was very different. All of the residents now had computer equipment, hair dryers, etc., and the load was much greater. The idea was to have two groupings of two transformers each, which would distribute to four new main panels. Those main panels would be set up to receive photovoltaic power in the future, which was being studied now. Responding to Commissioner McIntosh, he said this was essentially a one-time event. Responding to Commissioner Von Feldt, he said these transformers would support the entire campus. A lot would depend on which lines were still adequate and could still be used. The transformers that were underground right now appeared in various spots throughout the campus. The ones in the main building were in the basement of the building and were relatively sound. There were no plans to add more than these four transformers, which had been sized for the full campus. The old transformers spread around the campus now were smaller with less capacity. The conductors within the failing conduits were also smaller. Responding to Commissioner McIntosh, he said transformers that were above ground were in acoustic boxes. You could hear noise when you walked up to them. The noise dissipated quickly as you walked away—especially those having an acoustic barrier around them. He did not think you would be able to hear them from the trail.

Responding to Commissioner Gilbert, Mr. Vlastic said it was not likely that the Noise Element would be adopted and the noise ordinance in place before the end of the year. If there was a third party review in addition to the Planning Commission, standards could be developed that were better than what was in the appendix to the General Plan. Responding to Commissioner Von Feldt, he said the acceptable decibel levels in the report was based on the new Noise Element. The standards being discussed were acceptable for quiet environments and had not been articulated based on a noisy environment. Responding to Commissioner Gilbert, he said the existing enclosures had been developed based on the noise provisions that were in the appendix in the current General Plan. It had been ratcheted up a little as part of the review process, but there had been nothing like the proposed standards to work from at that point. New measurements would be made to see impacts of the combination of sounds. Responding to Commissioner Gilbert, he said the proposed noise ordinance had some provisions that were more restrictive for cumulative noise impacts. The consultant that worked with the Town and The Sequoias consultant would be asked to get a good handle on this. Town Planner Mader added that the noise standards for residential uses had been decreased in Town because the ambient noise level was lower. The consultant had been asked to do that and agreed there was a basis for it. The Noise Element was pretty conservative.

Responding to Laura Chase, Stonegate Rd., Ms. Westland said providing additional cooling for some of the apartments was being looked at. But, it was not known what that would be or where it would be. Responding to Commissioner McIntosh, she said several residents had installed their own air conditioning units. Mr. Vlastic noted that air conditioning units had been discussed during discussions of the remodeling. There were concerns about off-site impacts, but there were also complaints from within The Sequoias about noise. That was something the Town also wanted to be on top of. Responding to Ms. Chase, Mr. Strong confirmed that the transformers had been sized adequately to address all current and future needs—including the potential for future air conditioning. Air conditioning was the only future need being considered at this time.

Ms. Chase said she lived directly across Portola Road from The Sequoias. She had been strongly impacted by the installation of the new mechanical equipment that was associated with the memory center. She was familiar with the review process when this project was approved several years ago. She recused herself from the ASCC and commented as a concerned neighbor. The acoustic study that was done assured the neighbors that the sound walls and enclosure itself would be adequate to mitigate the noise impacts associated with this equipment. Now that it was all finished, her experience was that this was not nearly

adequate. In the summer, she could barely have a conversation when sitting out in her backyard because the noise from the equipment was so loud. The air conditioning units ran all the time. Because of this, she had no faith that the sound mitigation measures proposed for these four transformers would be in any way adequate. She was also concerned that these new transformers would add to the ambient noise levels in the area as well as impact the peace and quiet of the surrounding trails and open space. She was concerned about the cumulative effect of adding these four transformers to the property. She felt strongly that no new noise generating transformers should be considered for The Sequoias until they dealt with mitigating the existing noise impacts of the equipment that was already there.

Jon Silver endorsed Ms. Chase's comments. In looking at this, he questioned whether the variance procedure was correct. It was a mistake to guide an applicant into a process where findings could not be made. He did not think five of the six findings could be made. He read each of the findings and offered comments about why they could not be made. He said: 1) this was a large property and nothing forced 4 transformers sized for greater future use into the rear yard setback; 2) there was nothing odd about the shape of this property; 3) there were no other properties in Portola Valley that felt they had a right to four large transformers in the setback; 4) four large transformers was a special privilege inconsistent with other properties in the vicinity; 5) there was an indication that the sound that would escape would detract from the quality of the experience in the open space/trail; 6) the General Plan had a lot of language about preserving the natural setting, etc. Allowing a 60 cycles per second hum close to Sausal Pond was not consistent with the goals of the General Plan. The applicant should be encouraged to build a basement that was waterproof. It might be more expensive and more trouble, but it could be done without a variance. One vault could provide for the needs of the whole campus. He also thought this was part of a larger long-term view. These transformers were large enough for any conceivable future needs such as noisy air conditioning. There should be an overall vision of what was entailed before approving this variance.

Sharon Reich, Georgia Lane, said in September 2005, she and her husband started hearing noise coming from The Sequoias. She and others contacted Ms. Lambert. Her husband followed the noise, which was coming from the boiler room underneath the dining hall of The Sequoias. E-mails went on for a couple of years from Steve Dunne, Annaloy Nickum, Danna Breen, and others who heard this noise. The Town allocated \$2,000 to have a consultant come out and get a tonal noise signature. They were supposed to come to her house at 11:00 p.m. The noise was not on at the time. There was a cat and mouse game that was going on with the noise coming from the boiler room. More than once, her husband had called over there and talked to the night person. They just switched it off. The findings were that it wasn't coming from The Sequoias and that was because the noise wasn't on at the time. She had very little confidence that any headway would be made unless there was some kind of admittance that there was noise coming from the boiler room at The Sequoias. She knew that when they were building, huge copper pipes were installed. Steve Dunne tracked the whole thing using a Google map to show where the sound waves came down. That noise was in the loading dock and had a whole building around it; residents still heard it. From 2005 this had been a problem. There was a serious disease called vibro acoustic disease. Whether they were high or low pitched noises or it was an accumulation of noise, it was very bad and a very serious issue. Additionally, she had great concern about pushing this on the back part of the property, which was near a pristine pond and quiet area. It also sounded like this was part of a bigger plan. She wanted to see the full plan before any decisions were made.

Bill Kaspari, Willowbrook, said his driveway was directly across the street from The Sequoias driveway. He had been here 39 years. This almost seemed like insignificant noise compared to all the noise that went on all the time with deliveries at 3, 3:30, 4:30 and the constant back-up beeping. That had been slowed down a lot. The traffic in and out of there was humongous. There were three employee shifts that started at 6 a.m. There were all sorts of delivery and gardening trucks, etc. There was a lot of noise in general associated with The Sequoias. It also seemed that in the past 38 years, the population there had probably doubled. A lot of units had been added. His concern was whether there was any limit to how much more was going to go on there. It seemed like there was something more behind this than just replacing some obsolete equipment. He was concerned that there would be additional noise-generating equipment that would add to the noise that already went on all day. There should be some way to keep this equipment underground.

One of the reasons that the delivery trucks sounded like they were outside his bedroom window was reflection. That loading dock was a great big woofer, and the sound came blasting out of there. His windows rattled. This was the same kind of thing and would reflect off that wall. He urged that the Commission take a closer look and find a better solution.

Responding to Commissioner McIntosh, Mr. Vlastic said The Sequoias had been asked to explain how the spots had been selected and whether there were options that would not require a variance. Staff felt that the places that met the setbacks on the north and northeast side were much closer in terms of residences and exposure of sound reflecting off the hillsides. The Sequoias came up with a site that minimized internal impacts as well as minimized impacts on off-site residences. The alternatives would be looked at further, but there were constraints in terms of the overall use of the site; that had clearly impacted the placement of other facilities. There were fault and slope constraints, and staff would continue to look at it in terms of the findings. Responding to Commissioner Von Feldt, he said the fault and slope constraints limited the location for human occupancy uses; service facilities were located around the edge of the campus. They might be able to bury the equipment someplace within the site, but it would need to be looked at in terms of the rest of the structures on the property.

Responding to Commissioner McIntosh, Mr. Strong said burying the equipment in the location proposed would impact heritage trees. When the main lines were run, they were run in large curves with the buildings built right over them. That would not be done today. Responding to Town Planner Mader, he said each one of the existing vaults had a ventilation shaft. You could not hear noise from that.

Mr. Silver said the applicants should look into the underground option. It might not be the first choice, but there should be a way to do properly designed, water-tight vaults to put these things underground where noise wouldn't be an issue. It was better to spend the money that way than go through the variance procedure with the Town.

Responding to Commissioner McIntosh, Mr. Strong said exploration of what was there indicated there was extensive damage. Responding to Commissioner McIntosh, Mr. Vlastic said at a minimum, some additional exploration of alternatives needed to be done before it was referred to the ASCC. The noise issue with the existing equipment was something that would be pursued no matter what as part of the CUP review.

Mr. Strong said he had been working with the facility for ten years and carrying out various projects. This campus was unique in its constraints and uses. It was a Rubik's cube. The faults, landslides, water issues, where you could and couldn't build, how the infrastructure could be made efficient, etc., were all factors. Many alternatives had been considered and found not to work.

Commissioner Von Feldt said she would like to know what these transformers would be used for and whether new services would be added. Responding, Ms. Westland said as part of the commitment to the Town, The Sequoias would be addressing the resident density issue. The number of residents on the campus would be addressed by combining the apartments. The market was for larger apartments, and that would be another project. But, there was no additional square footage anticipated, and all the construction would be within the existing exterior walls of the apartments. Doing something for the main building was being looked at which was where the dining room and the common areas were. A tremendous addition to that building was not anticipated, partly because of seismic constraints; a maximum of 10% could be added, and there were existing constraints. Nothing else was being considered for this campus. Responding to Mr. Kaspari, Mr. Strong said the new transformers would increase existing capacity slightly more than double.

Barbara Hood, CEO of NCPHS, said this campus was almost 50 years old. It was not an issue of doubling the capacity. The current residents had to get the power that they needed. There was no master plan to add things. As of last Friday, there were 309 residents. The CUP was for 334. The population would probably stay around 320. There were three meals a day, so meals were not cooked in units. The kitchens were used very infrequently. But, they should be able to have a microwave, computers, curling iron, etc. It would be irresponsible for The Sequoias not to have a plan. The Sequoias wanted to be good neighbors,

and a lot of effort would be put into getting these issues addressed. This project was a fundamental thing that should have been done 5 years ago. This needed to be done. She reiterated that the population was not growing and if anything was decreasing.

Town Planner Mader said some Commissioners were not on the Commission when the Town went through the agony of establishing the resident numbers years ago. It was very difficult to establish a maximum number of residents and had not been done lightly. There were hearings, and it was almost engraved in stone. Ms. Hood added that the people who lived at The Sequoias were neighbors. The quality of their life was very important.

(3) Public Hearing: Continued Discussion and Update from Town Council Meeting on Proposed Sustainability Element

Town Planner Mader reviewed the staff report of 10/22/08 on the Town Council's comments on the draft Sustainability Element. He noted that a public hearing on the element could be set for 12/17/08.

Responding to Commissioner Von Feldt, Town Planner noted that the suggestion from George Comstock to add windmills to the appendix as a technology to be explored had been broadened to "consider harnessing wind power." Responding to Commissioner Von Feldt, Councilmember Merk said he had suggested a survey of well use be included under the Water Resources goal. More and more people were drilling wells. The Town didn't know how many wells there were or how much water was being pumped out of them because it was controlled by the County Health Department. Town Planner Mader added that some people had probably drilled wells without permits. The issue was trying to maintain the water table, and he agreed some monitoring was a wise thing to do. The first thing to do was to find out if it was an issue. It hadn't been looked into but probably should be.

Commissioner Gilbert said she had some wordsmithing suggestions that she would submit to the Town Planner. She suggested contacting Commissioner Zaffaroni for additional wordsmithing. Town Planner Mader said minor changes could be made even after it was set for public hearing. Commissioners agreed to set the element for hearing on December 17.

(4) Discussion of Proposed Green Building Point Rating System for New Construction and Remodels

Mr. Vlastic reviewed the staff report of 10/30/08 on: a) the recommendations from the sub-group for a Green Building point rating system for the Town; and b) comments by the ASCC. Responding to Commissioner McIntosh, he said the cost for achieving a BIG certification for a new custom home was estimated at \$1,500-\$2,000. For someone doing a remodel, it would be in the \$500-\$600 range. There was also the option of providing a self verification that all of these things were completed; the metrics could be checked at the staff level rather than getting a BIG certification. Whether it was done in house by staff or by a third party, you still had to plan check upfront, inspection during the course of construction, and then a sign off at the end that everything had been done. The Building Inspector might be involved in some of the aspects of it that were related to Title 24. But, things like certifying energy efficient appliances at the end and a variety of other things would have to be done by someone. There needed to be a verification process. It could be a BIG-issued certification with the associated costs; or the Town could certify a staff member who would verify the plans up front, do the inspections at the mid point and end, and then complete the paper work. That did not need to be decided at this point. Options for certification were being explored. A group of communities might hire a consultant that could serve that function. The metrics would have to be generated in order to answer the State's questions relative to AB 32.

Responding to Commissioner McIntosh, Mr. Vlastic said a number of communities were doing Green Building point rating on a voluntary basis like the Town had been doing with the County checklist. Whether it was mandated did not seem to be an issue in other jurisdictions. At a meeting in Sacramento for a review of BIG, most of the builders and contractors present were arguing that the point system needed to be upgraded and modified to give people credit for more things—not whether they should be doing it or not. Things would

probably be added to the checklist as this went on. Comments indicated that most of the clients were anticipating more energy efficient homes.

Mr. Vlasic said the main thing at this point was for the Town to ensure there was a good outreach effort. Workshops had been discussed, and the sub-group would probably meet in December or January to set a framework for those meetings. It would be advantageous to have some architects go through a couple of projects and look at the point totals. People needed to understand that this would not delay the process, that there were strong benefits for doing this, and that there were options for controlling the cost of a rating. Commissioner McIntosh agreed that people needed to clearly see the cost benefit.

Town Planner Mader noted that the Planning Commission wouldn't be holding hearings on this but that the Commission's input would be helpful.

Mr. Vlasic said other people were doing this, and the Town had been doing it in an ad hoc way that people had responded to. It was another step in the leadership that the Town had taken, which was consistent with everything it had done since incorporation. Given where things were today, it was a relatively minor burden that would be put on projects. Most everyone was already doing or thinking about it.

Commissioner Von Feldt said she agreed it was better to start off with a lower threshold. Mr. Vlasic said the burden would be the certification process and having it be part of the plans. If the point total was too high as well as having to go through this process, there could be pushback. It should be put in place and then looked at in a year. The bar could be raised. BIG would also be updating their system periodically. The voluntary standards in the updated building code would be mandatory next summer. Title 24 requirements would be 15% more than they were today. BIG was being cautious in keeping that 15% in their checklist because it could be a more difficult burden for people to manage.

Commissioner Von Feldt supported a minimum of 70 points. She also thought the cost benefit analysis would be very helpful in the workshops and would make it more palatable. Hopefully, they could show how 100 points actually saved you more money. She felt some of the items were vague, such as using fire safe landscape techniques. Responding, Mr. Vlasic said there was a handbook that went with the checklist. Responding to Commissioner Von Feldt, he said the handbook/guidelines would explain what "Community Design Measures and Local Priorities" meant on the checklist. He assumed it meant there would be some flexibility for local priorities as a way of gaining additional points.

Commissioner Gilbert said there were some inconsistencies for the definition of new house and major and minor remodels. Palo Alto used square footage for everything, while the County used the value test for new homes. Additionally, minor and major remodels were referred to slightly differently in several places. In one place it talked about impacting 25% of the house, and in another place it said 25% of the floor area. Mr. Vlasic said the Building Official would review everything for consistency.

Responding to Commissioner McIntosh, Mr. Vlasic said the Town's SuRE Coordinator was looking at ways to encourage green-ups. That would probably be distributed as handouts when someone came in with a minor change to their house. BIG also had developed handouts for green-ups that didn't involve getting a permit. Commissioner McIntosh said the most valuable thing in the green-up concept would be a simple process for an assessment/audit. He understood that PG&E was doing that now. Mr. Vlasic said some Town residents had done audits. That was a private effort and an attempt to get an audit program going that could be subsidized within the community. A group of neighbors might come together and get a special deal for an audit. Town Planner Mader said the Town could also provide information to people in terms of what an audit consisted of and where you get them.

Commissioners agreed the program looked very good.

(5) Discussion of Planned Community Meeting on the Housing Element

Town Planner Mader reviewed his memo of 10/23/08 on the meeting on the Housing Element set for 11/19/2008. He noted that the State required that all communities in preparing their Housing Elements have at least one community meeting at which people could come and talk about housing needs and their concerns. He discussed: 1) housing numbers the Town had to meet for the period 2007 and 2014 for certain income levels; 2) second units; and 3) options for encouraging second units. Responding to Commissioner McIntosh, he confirmed that there was no provision in the State law for communities that were basically built out. The Town was doing a detailed analysis of all the vacant parcels in Town. A large percentage had significant constraints on what you could do. Responding to Commissioner Von Feldt, he said there were consequences if a town/city didn't achieve the numbers that the State issued. Someone could say that your General Plan was invalid and you couldn't issue building permits. It was good to try to meet the numbers. On the other hand, there was a statement in the State law that said if it was not possible within the context of your community to achieve these objectives for good reasons, you were not bound to do it. The Town had argued all along about the constraints that existed. There were also exceptions for parcels without sewers, etc. He discussed regional approaches to providing housing that were now being looked at due to greenhouse gas emissions and the need to cluster development along transportation corridors. He noted that the second unit issue was being looked at by representatives from Woodside, Hillsborough, Atherton, Portola Valley, the County and State. A position paper had been prepared indicating that second units should be counted and considered, if available, to meet the numbers; rental rates could be based on advertisements, etc. The Town was waiting to see whether the State would allow this more liberal interpretation.

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

APPROVAL OF MINUTES: October 1, 2008 approved as amended
 October 15, 2008 approved as submitted

ADJOURNMENT: 11:30 p.m.

Chip McIntosh, Acting Chair
Planning Commission

Leslie Lambert
Planning Manager