

PLANNING COMMISSION MEETING, TOWN OF PORTOLA VALLEY, OCTOBER 1, 2008, HISTORIC SCHOOLHOUSE, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

Chair McKitterick called the meeting to order at 8:00 p.m. Ms. Lambert called the roll:

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

ORAL COMMUNICATIONS

Mr. Vlastic welcomed Commissioner Von Feldt to the Planning Commission.

REGULAR AGENDA

- (1) Preliminary Review of Proposed Site Development Permit X9H-591, Request to Allow Construction of Horse Arena Located at 147 Goya Road, Petry

Mr. Vlastic reviewed the staff report of 9/25/08 on the request to construct a horse riding arena on the subject Westridge property. He used the plans to show the location of the arena, existing leachfield location, and proposed retaining walls. He discussed the redesign of the arena to address concerns about the original size. He noted that the Westridge Committee (WASC) supported the revised plan but wanted to know more details about the proposed retaining walls. As indicated in the staff report, the applicant had been asked to retain an arborist to address impacts of the retaining wall and fill on trees on the Goya side of the arena.

Responding to Commissioner Gilbert, Mr. Vlastic said the Town did not have standards for riding arenas that addressed minimum/maximum sizes, cross slopes, etc. There were a few riding rings in Town that were of similar size. For comparison, the surface area of a tennis court including boundaries was smaller but not a lot smaller. Tennis courts were about 7,200-7,500 sf and the proposed arena was about 2,000 sf larger. The grading required was not a lot different. Responding to Commissioner Gilbert, Meike Petry, applicant, said there would be four horses on the property for use by the owners.

Commissioner Zaffaroni said it sounded as if the area was not heavily vegetated at this time and that there would not be a lot of disruption of native plants. She supported the staff recommendation to do planting early on, if possible, to anticipate the potential loss of existing trees. She also supported the Town Geologist's recommendations set forth in his report of 9/18/08.

Responding to Chair McKitterick, Mr. Vlastic said the neighbors were noticed of the preliminary review meeting, and no comments had been received. The neighbor south of the project was on the Westridge Committee. He confirmed for Chair McKitterick, that the Westridge Committee had seen the latest plan with the slightly smaller ring. They wanted to see the materials for the retaining wall. The applicant would provide elevations and sample colors/materials for the retaining walls. Responding to Chair McKitterick, he reiterated that there was no standard size for riding rings. Those that were visible on Westridge were of similar size.

Chair McKitterick asked for public comments, and there were none.

Commissioner Gilbert said she was generally supportive of the project.

Commissioner Zaffaroni said she didn't have anything to add to her earlier comments. She was comfortable

with what was proposed.

Commissioner Von Feldt said she was comfortable with the size of the arena. She also understood that the volume of grading was due to the location of the septic field. She felt the success of this would depend on the health of those trees. Depending on what the arborist said, it might need to be pulled back a few feet. The nature of the wall and fence was an important part of having it blend naturally into the site. She encouraged using fill from local sources.

Chair McKitterick said the fence should have a traditional, rural look. In terms of the retaining wall, he felt 4 ½ feet was pretty large to be so close to the road. On the other hand, if the neighbors were okay with that, he would be supportive--providing it didn't stand out. He asked that staff include a general comparison in the staff report about this riding ring and others in Town.

Ms. Petry said the size of the ring depended on what kind of riding was done. In the dressage discipline, there were standard sizes. You needed to train on standard sizes for competitions. The width was important for certain figures. The length was usually longer than what was proposed, but the space was limited. Responding to Chair McKitterick, she said standards for dressage rings were available on line, and she would submit a printout to staff.

Steve Petry, applicant, said they moved to Portola Valley for the rural look. To concerns expressed about the style of fence and retaining wall, he said he was happy to work with the Westridge Committee to ensure that whatever was done would blend in with the local theme.

(2) Public Hearing: Consideration of Alpine Hills Tennis and Swim Club Conditional Use Permit X7D-13 Request for Final 50 Memberships and Annual Review, 4139 Alpine Road

Mr. Vlastic reviewed the staff report on the Club's request for authorization of final 50 memberships and the annual review. Responding to Commissioner Gilbert, he said the initial authorization was for 500 head-of-household family memberships and 150 couple and individual memberships resulting in 650. The first additional fifty memberships were in the category of family memberships. Responding to Commissioner Gilbert, he said 250 (people) maximum would be considered a "large event." That number was based on parking and use of the site. Staff felt that 250 was full capacity. He confirmed for Commissioner Gilbert that that did not mean there was space for 250 cars. Responding to Commissioner Gilbert, Pam Stroud (Club General Manager) said the Club had a Labor Day party with 500 attendance over a period from 1:30 to 7:00 p.m. Two cars parked at the Portola Valley Garage with the rest parked in the Club lots. People came and went, so there was never 500 at one time.

Responding to Commissioner Zaffaroni, Mr. Vlastic said an acoustical wall was part of the requirement for the stadium seating. The stadium seating was not pursued. There was some discussion between the Club and a neighbor on an acoustical fence, but it was not mandated by the Town. Commissioner Zaffaroni said her biggest concern had to do with the parking at Portola Valley Garage. It was wonderful that it was available to the Club, but that had not been discussed when the CUP was before the Planning Commission. She asked if crossing the street had been analyzed by the Town staff and Town Engineer in terms of safety. She understood that the swim meets were at night. There was a curve in the road there that obstructed vision—both for pedestrians who might be crossing as well as motorists who might be arriving. She understood that the Woodside Patrol had been hired. Additionally, the September 2008 report indicated that the Club also used the Portola Valley Garage lot for parking for social events. In another letter, the Club indicated the lot was only used for swim meets. She wanted to know how much the lot was used. She reiterated her concern about people/children crossing at night in an unlit crosswalk and wanted to know how much that had been looked at from a safety perspective.

Ms. Stroud said the swim meets were not in darkness. There were 2-3 swim meets in June and July with warm-ups starting at 3:45 p.m. They were finished before it got dark. Commissioner Zaffaroni said with the setting sun in that location, visibility was a potential issue. Responding to Commissioner Zaffaroni, Ms.

Stroud said the PV garage lot was used at any time the Club felt extra parking might be needed. It had been used for swim meets and the Labor Day party. Responding to Commissioner Zaffaroni, Mr. Vlastic said if the Portola Valley Garage lot was used on a regular basis, it needed to be covered by the permit. Commissioner Zaffaroni suggested the Club have some temporary signage or something to warn on-coming motorists.

Chair McKitterick said if that crosswalk was dangerous for people going to the preschool or Alpine Hills, it should be dealt with--regardless of the 2-3 swim meets/year. Commissioner Zaffaroni said it was not limited to 2-3 swim meets/year and had been used for social events. The Commission needed to know what the future plans were—especially since the request was to authorize the additional 50 memberships. The crosswalk on Portola Road was the main crosswalk for the schools. The Town lit that for safety purposes because there was so much usage.

Commissioner Gilbert noted that cars were notoriously bad at stopping at the crosswalk. When the swim club had their events, the Woodside Patrol stopped traffic before they let people go across. Chair McKitterick suggested it be looked at during the next review to see if they were using the crosswalk on a regular basis.

Mr. Vlastic said the Club had managed it for the few times it had been used. In terms of increasing the frequency, it was not what was anticipated with the permit. If the need for overflow parking was not handled at the site except for a few swim meets which were anticipated, then a permit amendment should be considered. Commissioner Zaffaroni said her basic concerns with increasing memberships all had to do with traffic and parking because of impacts on the rest of the Town.

Responding to Commissioner Von Feldt, Mr. Vlastic said the Club set the number/type of memberships. It was based on the average numbers that the Club experienced and on how many people met membership requirements. He did not think that the variations had been substantial in any way. Commissioner Zaffaroni said she had attended the meeting at the Club with Club members. Coming up with the categories of individuals and couples was a way to allow the Club to generate additional money to help fund some of the improvements that were anticipated. They needed to spread the cost among a greater pool of people but also had to ensure there was not too much use of the facilities. There was also recognition on the part of the Commission that individual an membership and couple memberships would each only require one car whereas a family would have two or more vehicles.

Mr. Vlastic noted that the Priory had a set number. They might start the year with a somewhat higher number and work their way down because of attrition. With the Club, the memberships stayed for a longer period of time. It was important that the family membership number stay as close to the maximum as possible. Some minor variation—depending on what the demand was—could be found in compliance. Responding to Commissioner Von Feldt, he said the Club had an overflow parking plan, which was along the trees in the back area. They had been using it for a number of years and seem to have protected the trees in the back part of the property. The only tree issue was the one tree with SOD. He did not recall ever seeing cars pushed up against the trees. Responding to Commissioner Von Feldt, he said the Club's landscape plan called for cleaning out and landscaping the drainage area on the back side of the property. When they decided to redo the location for the garbage, they cut back on the scope of the pedestrian bridge over from the back parking. Responding to Commissioner Von Feldt, he said the Club still had to complete the building lighting according to the approved plan. Responding to Commissioner Von Feldt, Ms. Stroud said caution tape in front of the eucalyptus trees was put up whenever there was an event--like a swim meet--so that cars didn't park there. If it was not taken down today, it would be taken down tomorrow. Responding to Commissioner Von Feldt, Mr. Vlastic said there had been some talk about removing the eucalyptus trees on Town property, but the Public Works Director did not want to spend the money at this time. Ms. Lambert said a phased approach to removing the trees had been discussed.

Responding to Chair McKitterick, Ms. Stroud said well over 50% of the current membership were Town residents. She said she would provide the exact number. Chair McKitterick noted that the wait list was less

than 50% Town residents.

Responding to Commissioner Zaffaroni, Mr. Vlasic reiterated that the 250 number was set as the maximum for a large event. When they hit that 250 target, that was a large event. It was based on the ability of the site to accommodate it. Exceeding 250 caused problems with parking, etc. If there were problems with lesser numbers in terms of the site accommodating the use, then the 250 number would need to be ratcheted back. Commissioner Zaffaroni said they were limited to 4/year. She questioned how the Club would know if they reached the maximum number. She suggested providing some sort of a range. Mr. Vlasic said you could define anything over 225 as a larger event. That would probably be consistent with parking.

Responding to Commissioner Von Feldt, Ms. Stroud said the 4 large events did not include the swim meets. The large events probably were about 150-200, excluding the Labor Day party.

Chair McKitterick opened the public hearing.

Pat Lee said she lived next to the swim club. The acoustic fence had not been pursued during construction of the pool because she wanted to see how it was after it was done. There were increased activities at the Club house, which was a little bit uncomfortable for her. She would like to open the discussion again at some time. She bought her house in 1988 and the same grape stake fence remained. Responding to Chair McKitterick, Mr. Vlasic said the fence was repaired but had been left in its current condition. The stadium seating was not pursued, and the matter of an acoustic fence was left as a matter of negotiation between Mrs. Lee and the Club. Mrs. Lee also had had some concerns about the trees along the property line. An alternative planting plan included taking out some of the trees and doing some additional planting. Responding to Chair McKitterick, Mrs. Lee said she wanted to wait and see what the activity was after the pool was done. She felt it had increased. Some trees were cut down during construction of the pool, and it was visually opened up. She would like more bushes/hedges to be planted. As far as a better fence, that was something she would like to talk to the Club about.

Commissioner Von Feldt noted that toyons had been planted, but it took time for them to grow. There were hedges, but they were only half way up the fence. Mr. Vlasic said there was more screening with the trees that were there before. During discussions with the Conservation Committee and ASCC, it was recognized that there would be some opening of views when those trees were removed and that it would take time for these other plants to grow. The Conservation Committee felt that these would be ultimately a better solution. The Club had been encouraged to work with Mrs. Lee on a fence solution. It was not mandated because the stadium seating had not been pursued. Ms. Lee added that there was more of an echo noise from the Club. The Club hadn't done anything to help with the increased noise and activity.

Responding to Chair McKitterick, Mr. Vlasic said he was not aware that there had been any change in the range of activities. There was more fitness center use because the facility was larger; that was an indoor use. The pool uses with lessons, early morning master program and swim team uses were pretty much the scale that was there before. It was spread out a little more because the pool facilities were better, but he did not think the numbers and level of activity had changed from what they were. The key changes were improvements to the facility to make it function better. The range of uses had been discussed, and the Commission had not wanted to set limits on the number of people in the masters program, etc. The issue was whether it was continuing to function as a Club that served its membership. If there was a dramatic change in the pattern of use, it was not something the Town had been made aware of over the last summer.

Chair McKitterick suggested the Club provide data on how the use compared with the use two years ago in the pool facility. He also felt that anything over 200 or 225 should be considered a large event from here on out. The Public Works Director could be asked to look at the crosswalk; if every event the Club had had to use the parking across the street, that would need an amendment to the permit. The Commission could authorize the last 50 memberships and ask that pattern of pool use be documented over a certain period of time. If the numbers were significantly higher than before, the Commission might indicate that it was time

the Club looked at an acoustic solution for the neighbor. Mr. Vlastic confirmed for Chair McKitterick that the expectation was that there would be some degree of increase because of the larger pool facility. Responding to Mrs. Lee, Chair McKitterick said if the data showed that the pool activities were much more than expected, the Town would take that up with the Club.

There were no additional comments, and the hearing was closed.

Commissioner Gilbert said if membership was increased, some increase in noise should be expected. She was a little nervous about approving the last 50 memberships before looking at information about what the increase in use of the pool was now. It might go from a moderate problem to a major problem. On parking, more information should be provided in the annual reports such as frequency of use of the Portola Valley Garage. Information could be accumulated through the years. Additionally, "larger event" could be defined in the amendment itself or have the Club be more specific in their reports in terms of number of events and participants. A range of 150 to 500 was a large range and didn't give enough information about what the events were, the number of them and the number of participants. Responding to Chair McKitterick, she said she would like to get the pool activity information before authorizing the 50 memberships.

Responding to Commissioner Zaffaroni, Mr. Vlastic said the Town had baseline data from the Club relative to how many people were at the various on-going activities. The Club could provide data on what changes had occurred during the first summer following the construction. He felt the information could be put together in a couple of weeks. Ms. Stroud said the Club could put something together by the end of the month.

Responding to Commissioner Gilbert, Mr. Vlastic said plant growth would occur in time. The neighbor had been concerned about the root impacts of the mayten trees along the property line; removing those trees had opened up the views. The planting put in was spaced appropriately so that over time, it would fill in. In terms of the fence, there were acoustic designs that would be more sound absorbing than just a board fence. That was something the Club could consider if the patterns of use had changed. Responding to Commissioner Von Feldt, he said there was an easement between the fence that was closer to the pool and the fence along the property boundary.

Responding to Commissioner Zaffaroni, Mr. Vlastic said acoustical consultants indicated that you needed to avoid any opening between any of the fence elements. Certain thicknesses and heights were also recommended. Responding to Commissioner Zaffaroni, he said the Club's fence was serviceable the last time it was discussed. It had been maintained and repaired. It had planting in front of it. Commissioner Zaffaroni read condition 12 of the CUP amendment. She said it was obviously based on the stadium seating. Ms. Lee might not understand that an acoustical wall was closely linked with the stadium seating. Responding to Commissioner Zaffaroni, Mr. Vlastic said it was the Town's understanding that the Club would work with Mrs. Lee. There were differences of opinion on whether it should be a wall or acoustical fence, whether there should be more acoustical analysis, etc. That was between the Club and the neighbor. Because the stadium seating did not move ahead, that condition was not triggered. It all related to the fact that the stadium seating would have put people higher up. Responding to Commissioner Zaffaroni, he said if the Commission felt there was a substantial change in the Club activities and an increase level of noise associated with that, the Commission could take that up. Chair McKitterick said the issue was whether there had been an increase beyond what was expected.

Commissioner Von Feldt said she thought the parking had been handled very well. She shared the concern that if the garage was being used on a regular basis, it should be analyzed whether it was safe for people to cross the street. She was comfortable with increasing the membership in terms of parking. In general, she supported the increase in membership. The Club served the community and kept people in Town rather than driving to other communities. It provided a common usage of a pool instead of everyone having individual pools that had to be heated. It incorporated a lot of the sustainable goals that the Town was trying to have as a community. She thought there would be increased noise, traffic, and parking, but it was worthwhile given that this was the Town's one, main social club. She was sympathetic with the neighbor's

concern about noise. The Club had increased its membership since the Lees bought the property in 1988. She knew that there had been a lot of discussion about this, and there were different views on what could solve the problem. She did not know what was expected by increasing the membership. A third party could be brought in to get some advice on ways to dissipate the sound such as walls or more trees.

Chair McKitterick said he was not terribly concerned about the safety issue with the parking. If there was a safety issue with that crosswalk, the Town should address that independently. Parking had been looked at very carefully when the permit was approved. The overflow parking across the street in addition to the overflow parking on the site was of concern if more large events were being held than anticipated. He liked the idea of getting data on the events that were held. The Commission might change the number or provide a range if necessary. More use of the Club had been anticipated, and the Commission had tempered that by restricting certain things that the Club asked for, the plantings, etc. He was comfortable with increased use, because that was expected. It would be helpful to see what was going on with the pool now compared to before the work was done. That would help him to decide if the acoustic issue should be revisited. He was undecided whether that information was required before approving the additional membership, or whether the Commission should approve the membership and ask for the information in the next report in a year.

Commissioner Zaffaroni said she did not know: 1) how often the Portola Valley Garage was used; and 2) with the increased membership, what was the intent to use it. That spoke to overall parking impacts. She would like to have that information before approving the additional memberships if it could be done quickly. She also wanted information on the intensity of use of the pool area. That spoke to the ongoing issue raised by the adjacent property owner and whether some mitigation should be done. The whole idea of having a phased membership was to make an assessment each time. She didn't think the Commission had all the data right now to make that assessment.

Responding to Commissioner Zaffaroni, Mr. Vlasic said the number of swim meets hadn't changed. Ms. Stroud added that she was not aware of any increase in the size of the meets. Mr. Vlasic said the key focus would be on the use of the pool on a day-in and day-out basis. Ms. Stroud said the usage during the day had not changed dramatically, and the number of participants and classes had not changed dramatically. Commissioner Von Feldt noted that it was more concentrated when the kids were out of school. There was a whole year and ½ when people didn't use the Club because of construction. This summer, there had been an onslaught. Now that school was back in session, it was somewhat deserted again.

Regarding the Portola Valley Garage, Ms. Stroud re-iterated that during the Labor Day event, only two cars parked there the whole time. Commissioner Gilbert said that was the type of information that was useful. Responding to Commissioner Zaffaroni, Ms. Stroud said with the additional 50 memberships, she did not anticipate that increasing. The Labor Day party was the Club's 50th anniversary and was way bigger than anything ever done. It went very smoothly.

Responding to Commissioner Zaffaroni, Mr. Vlasic said the only thing that was specified was that for the large swim meets, the Club had to ensure that there was no parking on Alpine Road and that they could accommodate parking. They had to make special arrangements for those meets, which they had done. The data indicated that they could accommodate parking for 250 participants on site.

Summarizing, Chair McKitterick said the Commission wanted to know: 1) how many people had been attending the large events; 2) when the garage parking was used and when the Club intended to use it in the future; and 3) how the use of the pool had increased. After discussion, Commissioners voted unanimously to continue the item to the October 15, 2008, meeting.

(3) PUBLIC HEARING: Consideration of Noticed Revocation of the Existing Conditional Use Permit X7D-55, 888 Portola Road, Douglas

Town Planner Mader reviewed the staff report of 9/25/08 on the noticed revocation of the Douglas CUP and

options the Commission could pursue.

Chair McKitterick said Bradley Kass called on 9/26/08 to discuss the issue. He informed Mr. Kass that revocation of the permit was a real possibility based on comments at prior meetings. Mr. Kass said he had spoken with some people at West Bay. Chair McKitterick said he told Mr. Kass that if the engineering was submitted to LAFCo and the Douglasses were on the agenda for the October 8 West Bay meeting, he would consider that as evidence that they were taking reasonable steps to comply.

Responding to Chair McKitterick, Town Planner Mader confirmed that the permit was not segregated into the commercial structure and residential structure for compliance with the requirement to hook up to the sewer. One option was to revoke the part of the permit that pertained to the new building and any site features attendant to that. He and Ms. Sloan felt that the residence there was occupied and that the septic tank was probably functioning adequately for that. Responding to Commissioner Gilbert, he said the commercial building was currently vacant.

Chair McKitterick opened the public hearing.

Bradley Kass, counsel for the Douglasses, said Bill Kitajima at West Bay finally returned his call today and said the Douglasses were on the calendar for 10/8/08 provided West Bay didn't have an internal problem. Chair McKitterick noted that at 9 p.m., staff was not able to confirm that.

Mr. Kass said Town Planner Mader indicated that his clients were clearly in violation. He took complete issue with that. The use permit said when sewers were available, you tied in. This was not a public sewer that was put in front of the street to tie into. It was a private sewer by private citizens who asked the Commission to force funds out of the Douglasses. That was not what the use permit said. The use permit was adopted in 2001--three years prior to any of this even occurring. A lay person reading the use permit would say, "When the Town put in a public pipe, I have to tie in within a year"---not, "When a pipe goes in, I have to tie in and write a check for \$220,000 extra just for the heck of it." No one would rationally say that that was the intent when that condition was imposed. The other problem was that this was being treated as a priority when in fact, the current condition was working perfectly. There was no urgency and no problems, and his clients' septic tank was completely approved by the County of San Mateo. At the last hearing, he had asked for 90 days, which would have been partially perfect. As far as West Bay, he had been diligent. On August 13, 2008, he had a lengthy conversation with Sharon Hogan. She said he needed to speak with John Simonetti and that she would leave a message for him to call. That call didn't come for a couple of weeks, so he had to write letter on August 29 and tell her he still hadn't heard from John Simonetti and needed to know what was going on. Mr. Simonetti called right away after the letter, but he [Kass] wasn't available. After some phone tag, Mr. Simonetti said he [Kass] should discuss this with the project manager and that this type of issue should go on the agenda. Bill Kitajima called right back, and a timeline was set up. The earliest it could go on the agenda was 10/8/08, and the request had to be in by 10/1/08. He got it in on 9/29/08. To try to expedite it, he called Mr. Kitajima yesterday morning to get the status for tonight's meeting. Unfortunately, they were very slow returning calls. He called again at 2:00 or 3:00 p.m. Mr. Kitajima indicated there was no reason the Douglasses weren't on the agenda except if there weren't enough things on the agenda and West Bay decided not to have a meeting until there were more things to do. They also discussed what Mr. Kitajima would put in his staff report.

Mr. Kass said the disheartening part was that he didn't see any real urgency here. What was being done was ecologically unsound, and the septic tank worked perfectly. Now, the ground would be torn up, artificial pipes would be put in, and the area would be harmed a little bit more for no reason except the Town said to do that. West Bay had the purview to deal with the issue and had the final say. The parties to the agreement had no say-so in all that. It was not that he and his clients were dragging their feet. Responding to Chair McKitterick, he said the engineering had not been submitted to LAFCo because he did not see any reason to record the map until West Bay was squared away. The rest would fall into place immediately.

Chair McKitterick said that was not what had been discussed at the last public hearing or when he spoke with Mr. Kass. Responding, Mr. Kass questioned why his clients had to invest in the LAFCo process; LAFCo's procedures allowed one year to do this. The real issue was West Bay. If that was resolved, he was pretty confident that something could be figured out. LAFCo was not a problem. West Bay was the real issue. It seemed like the Douglasses were on this tight line all the time. He had jumped on it right after the Planning Commission hearing. Everything had been done with due diligence. The Douglasses had funny feelings about their building because it seemed like they were running into roadblocks all the time. They now had attorney fees all of a sudden, and there were other issues the Douglasses were dealing with. If the Town called West Bay tomorrow, they would verify exactly what he had told the Commission about the conversation today. If he had known earlier, he would have tried to get a message to the Commissioners. Responding to Chair McKitterick, he said he had asked West Bay to confirm in writing that the Douglasses were on the agenda. In closing, he said the Douglasses wanted to be in harmony with the Town, and he had been retained to try to overcome this hurdle. While Mr. Mader felt this was a condition that had been dragging on, he [Kass] did not feel there was anything urgent about it. If anything, the land would be torn up, which was not good. They were still going along with the plan. But, they did not necessarily see eye-to-eye on what those words meant in the use permit.

Chair McKitterick said the Douglasses had legal representation and appeared before the Commission at least once with Nicholas Jellins as their lawyer. They had had numerous discussions, both directly and through their lawyer, with this Commission last year about the dispute and whether the Douglasses had an obligation to hook up to the sewer as was required by the permit. At some point, he understood that the Douglasses agreed to do that; they agreed to do what they agreed to do back in 2001. At the last hearing, Mr. Kass led the Commission to believe that connecting to the sewer was moving forward—not that the Douglasses had a merits argument about doing it. He asked if the Douglasses were now claiming that they didn't have an obligation to hook up to the sewer and if they were going to West Bay to try to get West Bay to change that. Responding, Mr. Kass said they were still in the process of connecting. That did not mean that there weren't issues. There were some monetary issues that didn't have to go through the Commission. West Bay and he would deal with that issue. The purpose of the meeting on 10/8/08 was not to tell West Bay that the Douglasses didn't want to connect. The purpose was to resolve the monetary issue in some alternative fashion that he had already talked to them about. They would connect right now, but there were conditions with West Bay. There were additional things that had come up that were not anticipated or envisioned in 2001.

Chair McKitterick said there were multiple hearings about this in 2007 and 2008. He wanted a definitive position from the Douglasses that they would not try to put up a road block to hooking up. Mr. Kass said there was no issue with West Bay's normal charges. Chair McKitterick encouraged the Douglasses to work with staff on uses of the commercial building. The Commission did not want to revoke the permit or disapprove a use that would be appropriate for the Town. Tonight, the Commission was being dealt a difficult hand by not having information in an appropriate and timely manner. Additionally, things had not been done that the Commission indicated needed to be done.

Town Planner Mader suggested the Commission review the letter sent by Mr. Kass to West Bay on September 29 to see the nature of the request. There was also the letter of August 29 to West Bay confirming that West Bay had not called.

Bonnie Crater, Wayside Road, said she and Chris Buja had been involved in the sewer project for quite some time. On good faith, based on conversations with the Douglasses, she and her husband financed a portion of the Douglasses fee for the sewer project. A letter was submitted to the Town a year ago. Every month, \$1,100 was paid in interest on a construction loan. This was an issue of fairness, and she asked the Commission to take appropriate action to encourage completion of the project. There was apparently an intention to complete the condition of the use permit, but that intention was never fulfilled by the Douglasses. If there were steps the Commission could take to provide encouragement to complete the project, that was an important course of action. There had been a bond on her project to complete the reconstruction of her

home, and that might be a method of encouragement to complete the project. Responding to Commissioner Von Feldt, she said there had been many conversations between her husband and Mr. Douglas on the topic. One conversation was, "Yes we will," and another conversation was, "No, we don't plan to contribute at this time." The reason they went ahead was because the Douglasses had a CUP with a condition that they needed to hook up to the sewer. Last year, she learned that in addition to the CUP, the Douglasses signed an agreement acknowledging the condition. This had been going on for a very long time. The important thing was to get the project completed as intended and agreed to. Responding to Commissioner Von Feldt, she said they would not get any payment until the Douglasses connected to the sewer and paid their dues.

Responding to Commissioner Gilbert, Ms. Lambert said the engineering needed to be submitted to LAFCo first. After LAFCo recorded the documents, West Bay could act on the annexation into the district.

Referring to Mr. Kass's letter, Commissioner Gilbert said it appeared that what would be on West Bay's agenda was a discussion of the fees. At the last meeting, the Commission wanted the material submitted to LAFCo and recorded and the issue agendaized on West Bay's calendar for the final decision.

Town Planner Mader said revoking the permit would not help the Bujas to get recompensed. On the other hand, it was a question of what leverage the Planning Commission had. If the permit was revoked, the Douglasses would have to spend more time and money in order to be able to use that building.

Mr. Douglas [*largely inaudible*] asked to make a couple comments. He held the town planner and city and the city council responsible. According to Ms. Crater, she acted in good faith. He disagreed. He did not have a failed septic tank/leachfield on his property. The Bujas had a failed system, and they had no choice because they were not qualified to put in a new septic tank or leachfield. He said he was surprised when the city had changed its mind about connecting to the sewer. That caused the Douglasses to have a problem, and he felt he was set up. He always acted in good faith with the city, but the city dragged him into the position he was in today. That was unfair, biased and prejudiced. Now, he was willing to do what he had to do because he didn't like the position he was put in by the city. He felt that the commission and town planner have been giving him dirty looks, especially from the town planner, and was told me he couldn't remodel the existing building and had to put up a new building, why did you put me in this position, you didn't ask me about my money. What was the purpose to put my family and me into this position. The Commissioners had almost destroyed him. He was a good citizen and had done beautiful things for the city including putting up a beautiful building and eliminated the drugs and alcohol and drug addicts in the old restaurant. He was very, very unhappy. He was not a criminal, he is a community man. He didn't appreciate being sold out down the river, he will get to the bottom of this matter. He didn't appreciate the fact that the commission point their finger at his attorney and you try to make a liar out of him, he doesn't appreciate dirty looks as if I am a criminal, the commission put me in this position, you dragged me around step by step. He was very surprised by each one of the Commissioners. George Mader and the city were responsible for putting him in this position. He would make sure that someone paid the damages because he is not going to be taken advantage of or have any harm come to his family. The city had forced him into a commitment for close to \$600,000. The city should put its hands in its own pocket and not his pocket because he had not done anything wrong. And now you are going to slap and kick me, he didn't appreciate the position he has been put in and is a very strong and very proud family man, and if anyone does harm to my family I promise you one thing...I find this very biased. Thank you.

Lisa Douglas said they had always acted in good faith with the Town. They had complied with everything except this, which was being shoved down their throats. They had worked with the Town on many different levels on many different issues. They had compromised to the benefit of the Town and the detriment of their pocket book many times to have a better product for the Town. It was always an understanding that the Town was going to hook onto the sewer. That was how it was presented, which was the whole reason they entertained the conversation. The Town would be taking 3-4 hook ups, and that was the basis of the communication with the Town and Mr. Buja on this. The Town decided at a later date to back out because it wanted its green certification. At first, it wasn't about the green certification—it was always about money.

She had been told by the Town Planner that the Town wouldn't be doing it because the expense was too big to justify. If it was too big for the Town, she questioned why it wasn't too big for the rest of the people. When the Town backed out, it made it nearly impossible for them. They put a new building in, which they hadn't planned on. The plan was just to remodel. The Town Planner came and looked at it and said a new building was needed. They went to the bank and tried to convince them. They also took the numbers to the bank for the sewer, and they laughed at them. When the city backed out of it, the numbers were exorbitant. There was no way they could afford it. They had also brought the Town a use which was minimal and didn't need the sewer. If the use was large like a restaurant, there was no question that it would justify a large expense. The use was not large. The County Health Department signed off on it. The whole time, their understanding was that the Town was putting it in and that it was not a private sewer system. They never knew that private sewer systems existed here. Now, they were being pitted against the neighbors, which the Town was responsible for. The Bujas had to put in the sewer system and said they based it on the Douglasses going on. That was not ultimately true. The Douglasses only entertained the conversation because the Town said they were coming on with 3-4. That made it economical for everyone. When the Town jumped out, the Douglasses were held to pick up where the Town escaped. Let the Town buy 2-3 hook ups like they said they would. Whether they chose to connect up or not was up to the Town. The Town should put their money where their mouth was.

Chair McKitterick closed the public hearing.

Chair McKitterick said his issue was the fact that the Douglasses said some time last year that they would hook up. The arguments that had been heard tonight were not raised at that point. While the Douglasses said they would hook up, nothing was getting done. If the Douglasses chose to challenge the merits of the situation, that was their choice. But, the record was clear on what had happened before the Commission in the last couple of years on this application. He wanted to see a tenant in the commercial building and the building being used. That was good for the Town. With that said, he didn't think it was appropriate the way the applicant had prosecuted what they said they were going to do and the way they had dealt with this Commission and staff on doing what was expected of them. He was not willing to relieve them of the requirement. He was willing to revoke the permit or vote for an extension. Additionally, he didn't like the provision that somehow made the residence separate. The Commission could revoke one and continue the other or modify the CUP after notice to change what applied to the residence. He was not sure that the Commission could leave the residence hanging in limbo.

Responding to Chair McKitterick, Ms. Lambert said the Douglasses asked for a hearing with the Commission a couple of years ago to consider seeking an amendment to their CUP requesting that this condition be removed, but no formal application had been made. There was a preliminary meeting. Responding, Mrs. Douglas said she had been told at that meeting that it would be rejected and not to bother.

Commissioner Von Feldt said she was not comfortable rendering a judgment until she was more comfortable with the facts. Town Planner Mader said the history was complicated. When the sewer design was put together, there was a study of the sewer system. There was a theoretical allocation of properties that could connect into the system—including the Douglasses, Village Square, the Town Center, the Bujas property, and other properties. Calculations were done on what the cost would be if all of these connected in. Over time, money would be reimbursed as others connected. It was assumed that the Town would connect to the sewer. When the design for the Town Center was being reviewed, a question was raised about whether the Town should go on a sanitary sewer. There were some arguments that it was environmentally better to go with a septic tank and drainfield on a site of this size. There was also the question of differential cost between a septic tank/drainfield and connecting to the sewer. There were variations on where the balance was on the costs. There was environmental disturbance with both septic and sewer. It might have been less expensive for the Town to go on septic tank/drainfield, but he did not have the numbers. The Town decided not to hook up to the sanitary sewer. There was no formal agreement on the part of the Town to hook up, but the studies assumed that that would be the case. Chair McKitterick added that a number of people put in connections to the sewer that had not hooked up yet. There were assumptions and hopes about the ultimate numbers.

Commissioner Zaffaroni said the Planning Commission had nothing to do with the decision of the Town not hooking up. Most of the Town Center planning was outside the Commission's jurisdiction. Responding to Commissioner Zaffaroni, Town Planner Mader said the ADT made a lot of decisions on how the project would move ahead. He understood the decision not to hook up was made in that context. Responding to Commissioner Von Feldt, he said the Town was not in the business of putting a sewer system in. Property owners working with West Bay proposed doing this. It was a West Bay project funded by property owners. When the study was done, it was a study of what the ultimate system might be. The Planning Commission made some comments about the implications of sewerage, for example, all of Woodside Highlands in terms of density, traffic, etc. That was largely due to review of the environmental documents done for the sewer system. The Planning Commission had no role in the configuration of what was ultimately done. Figuring out assessments and costs was done by West Bay.

Commissioner Gilbert said she had read an enormous amount of paperwork from the meetings on this issue. There were no winners in this situation, and it was unfortunate what had happened over time. Regardless of what the Commission decided, there would be consequences. She came to the meeting presuming that many of the issues raised tonight had already been put to rest. With respect to the timetable, it appeared that it was now on a different timetable than what had been discussed at the last meeting. It looked as though the Douglasses were now trying to deal with the issue of reimbursement first before getting the documents recorded with LAFCo and getting West Bay's approval. She did not know if that meant a couple of months, six months, a year, etc. She understood from the last meeting that there were two quick steps that would be taken. Now, there was a completely new timetable.

Commissioner Zaffaroni said this was a challenging situation. It would not serve the Bujas or the other people who had contributed to the cost of the system to revoke the CUP. Commissioner Gilbert talked about a difference in time scheduling, but she was not sure that was the issue. She had the impression that there was no longer an intent to proceed. If she thought there was an intent to proceed, she could react to that, but that was not indicated by what was said tonight or represented in the letter. The Town had been very flexible in allowing time for the Douglasses to work this out. This was a very small lot and it was located next to a creek. Town policy, as stated in the General Plan, was that in these circumstances, sewer connection was required. The lot was .26 acres and had an intensity of development that was not normally allowed with that small of a lot. There were two variances approved for this lot, and the Town had provided a lot of flexibility for the Douglasses to develop this lot that was normally not allowed. If the property wasn't adjacent to a creek, she might feel differently. But under these circumstances, the Town policy was to require a sewer connection when it was a nonresidential use. The point that the use now was very low intensity was not compelling. The CUP ran with the land. It was true the Douglasses had a low intensity use at this point, but someone could buy the property and have a more intensive use in the future. A more intense use could very well put a strain on the existing septic system such that it could fail and contaminate the creek. If this was a residential user or a user that didn't have such a small lot adjacent to a creek, it would be different. The Town made the recommendation based on these considerations, and she felt the considerations were sound. She did not think anyone else looking at the facts would see that this situation didn't require connection. If there was some seepage on a .26 acre lot with a commercial use and residential use, there was not a lot of flexibility in terms of the leachfield and leach lines. The flexibility that the Town had allowed with respect to the intensity of use was given mindful of the fact that there would be a connection to the sanitary sewer when it was available. She felt the condition was a correct condition. She also didn't see anything in the condition that required that it be a public sewer, which the Town didn't have.

Commissioner Von Feldt said she understood some of the applicants' concerns. But, she also appreciated the rationale for why the condition had been imposed. There was some onus on the person buying the land to understand what the details meant behind a statement on connecting up to the sewer. It was in the applicants' court on whether they wanted to pursue amending the permit or go forward with the sewer connection.

Chair McKitterick said at a preliminary hearing last year, the applicant asked the Commission to give

feedback on a modification of the permit. His recollection was that the Commission had been generally negative towards that. The Douglasses didn't pursue an amendment. He also had the feeling that there was still some interest in that, but no request had been brought forward.

Mr. Kass said the issues raised about that condition had been mentioned to let the Commission know the impacts of taking the drastic step of revocation. His clients were pursuing a connection, and that was what all his work was for. There was an issue with the money, which West Bay understood and was reasonable about trying to work it out. With respect to timing, West Bay only seemed to need a week lead time before each hearing according to Mr. Kitajima. If the money issue could be resolved quickly, LAFCo would be very quick, and it would be a matter of getting back on the agenda with West Bay. He thought it might be 60 days—not six months. Chair McKitterick said he wanted this resolved within 60 days—one way or another. Mr. Kass suggested following up at the November 5 meeting.

Chair McKitterick said the applicants had heard what the Commission was concerned about. There was no tangible evidence that this had moved forward in the way that the Commission expected. Expectations hadn't been met. He didn't know how to convince the applicant that the Commission wanted to see tangible evidence that this was moving forward. The LAFCo work didn't involve West Bay and could be done now. If the revocation hearing was continued again, he wanted to see progress.

Commissioner Zaffaroni said she was leaning towards continuance. She did not think a revocation would serve the Town's interest. Obviously, compliance was what was encouraged. The condition as it was stated was clear in terms of what was expected. The assumption was that people understood the conditions in their use permits. That was an agreement that was made at the time the permit was acted upon. If you didn't understand it or there were questions, that was the time to raise them. But, because of the fact that this property was both residential and non residential, the fact that it was so small, the fact that it had a commercial use that could be more intense in the future, and the fact that it was adjacent to a creek, she felt the condition was reasonable to impose at the time. Everyone wanted to see an outcome that served the original goal, which was the policy to encourage a connection to the sewer in these kinds of circumstances.

Commissioner Gilbert said there was a good chance that the applicants could not resolve the fee issue at one West Bay meeting. One way to indicate that things were moving along would be to go through the LAFCo process, which was relatively quick, while they were dealing with the reimbursement issue. The monetary aspect seemed to be the number one sticking point for the applicants, and that could drag on.

Ms. Lambert said West Bay met on the 2nd and 4th Wednesday of the month. They might not be having a meeting at the end of November. If they didn't have enough items, they would cancel the meeting.

By motion and second, the revocation hearing was continued to November 5. Chair McKitterick suggested this be an information item on the October 15 agenda.

Town Planner Mader noted that the CUP was for the commercial development. The zoning permit was for the occupancy. You could have other occupants through the zoning permit process without doing a new CUP. Additionally, not knowing what use might go in there, the sewer might be very important.

[End of tape recording.]

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS: *[Not recorded]*

APPROVAL OF MINUTES *[Not recorded]*

By motion and second, the minutes of the September 17, 2008, meeting were approved as submitted by a vote of 2-0, with Commissioners Von Feldt and Zaffaroni abstaining.

ADJOURNMENT: 11:13 p.m.

Nate McKitterick, Chair
Planning Commission

Leslie Lambert
Planning Manager