

PLANNING COMMISSION MEETING TOWN OF PORTOLA VALLEY, AUGUST 5, 2009, SCHOOLHOUSE, TOWN CENTER, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

Chair McKitterick called the meeting to order at 7:30 p.m. Ms. Lambert called the roll:

Present: Commissioners Gilbert, McIntosh, Von Feldt and Zaffaroni, and Chair McKitterick
Absent: None
Staff Present: Tom Vlastic, Dep. Town Planner
Richard Merk, Town Council Liaison
Leslie Lambert, Planning Manager

ORAL COMMUNICATIONS: None

REGULAR AGENDA

- (1) PUBLIC HEARING: Conditional Use Permit Application X7D-169, Request to Permit Additional Floor Area and Impervious Surface Area on 229-acre parcel, 555 Portola Road, Spring Ridge LLC (Neely/Myers).

Chair McKitterick said after public comment and discussion, the public hearing would be continued to the first meeting in September to permit time for completion of the environmental document review period.

Mr. Vlastic said since the staff report was prepared, several communications had been received: 1) letter from Committee for Green Foothills dated 8/3/09 that addressed the "future" 8,000 sf of floor area; 2) MROSD letter dated 8/4/09 that addressed the unspecified location for the future 8,000 sf; 3) MROSD letter dated 8/5/09 that focused on the need to finish easement commitments for access over open space; and 4) e-mail from Marilyn Walter dated 8/5/09 about the possible use of the additional square footage for a wine tasting room/visitor center. With respect to the future square footage, he said the Town Attorney had reviewed all the material developed thus far and was generally "okay" with what had been presented. But, in light of the communication that had come in, staff wanted to review everything and formulate a final recommendation following public input and commission discussion of the future 8,000 sf.

Mr. Vlastic reviewed the staff report of 7/31/09 and the recommended conditions for the conditional use permit. He said concerns had been expressed that if the Commission authorized the future 8,000 sf, the Town would basically be "walking away" from detailed and public review of the specific requests. The proposed conditions require ASCC public review of all proposals. Further, if a proposal tripped any site development ordinance provisions; e.g., grading in excess of 1,000 cy, it would have to come to the Planning Commission for public hearing. All of the standards in the site development ordinance, all the provisions relevant to second units, etc., would apply. There would be a whole series of steps that would have to be pursued for any project proposed. Staff had worked with the applicant to get specifics on the structures and the locations. A series of overlays had been prepared to further constrain the building envelope. Using the overlays, he discussed: a) land movement potential and conflicts between some of the areas identified as useable by the applicant's geologist and the Town's base map; c) slopes in excess of 30%; d) areas where there was no conflict; e) access; f) building envelope available for siting the future 8,000 sf; g) Pd areas possible for agricultural uses; h) meadow area; i) vineyard area; j) guesthouse locations in relation to the main house; k) existing structures and proposed greenhouse and entertainment building; l) 4,000 sf previously proposed structure; and m) 8,000 sf area. He said the Commission could now require more details relative to site location for future uses or ask the applicant to seek an amendment to the use permit when he had specific plans for the future floor area. Staff had tried to reflect the applicant's wishes to have a master plan for the property over a period of years and constrain it in such a way that reflected the basic policies of the Town—including architectural review and additional Planning Commission review.

Responding to Commissioner Zaffaroni, Mr. Vlastic said staff had been pushing for a more detailed plan in

terms of optional sites and list of uses. Prior to the ASCC 7/13/09 meeting, there was a new proposal for a second house development on the property, which would trip the subdivision requirements. Dr. Neely agreed to pull that out of the proposal. At that time, his design team reconsidered what his needs were. Instead of specifying 4,000 sf for an A or B barn location, he wanted to keep his options more flexible. The 7/27/09 letter from CJW reflected the floor area requested, proposed usage in "future reserve," the impervious surface requested, and geology and slope considerations. Those had been used to develop the overlays and determine which areas should be avoided. The Town would look very closely at any proposal involving the meadow area or within Pd areas. Responding to Commissioner Zaffaroni, he confirmed that there was nothing in the conditions that exempted what was normally required in the normal course of town development review. The debate had been how specific the plans for the future square footage should be. Responding to Commissioner Zaffaroni, he confirmed that this was a single parcel. Any preexisting development would count against allowable square footage for that parcel. In the past, if a subdivision were proposed for larger property that contains an existing house, the house and its floor area could remain if the proposed parcels were defined in such a way that they could accommodate the existing floor area in conformity with Town floor area, setback and other parcel standards. If, however, any structure built pursuant to a Use Permit authorizaed was so situated that it would be in conflict with any rational subdivision design, i.e., town parcel development standards, it would have to be removed prior to subdivision or the applicant could seek a variance. In this case, Dr. Neely has informed staff that he is aware of this issue relative to any future subdivision plan and the possible need for removal of structures.

Responding to Commissioner Zaffaroni, Mr. Vlastic said he had not had time to review the issue addressed in the 8/5/09 letter from MROSD. It appeared that there were steps in an agreement between Dr. Neely and the MROSD that weren't completed. Responding to Commissioner Zaffaroni, he confirmed that the current winery CUP did not allow public tasting. Responding to Commissioner Zaffaroni, he said he would follow up with the Conservation Committee to see if they had any comments. The trails had been discussed with the Commission; trail easements would be pursued only at the time of subdivision and not with the use permit. Commissioner Zaffaroni recommended asking for comments from relevant committees.

Responding to Commissioner Zaffaroni, Mr. Vlastic said the ASCC found the architectural plans acceptable with conditions—particularly with regard to lighting and reflection control. When the applicant came back with specific building plans, it would be presented to the ASCC under the proposed conditions of the use permit to make sure that the issues of lighting and reflection were properly addressed.

Referring to the staff report section on "Proper Community Location (p. 5)," Commissioner Zaffaroni asked if a 4,000 sf structure could be considered a "small structure." Mr. Vlastic said he was referring to accessory structures that might be used to support agricultural uses. A 4,000 sf structure could be used for that reason. Commissioner Zaffaroni said she did not think 4,000 sf was very small, and there were no limitations with respect to the use of the 4,000 sf other than the guesthouse. Mr. Vlastic said it would have to be accessory to the primary use of the property, which could include an agricultural use building.

Responding to Commissioner Zaffaroni's question about the proposed IS (permit, p. 1), Mr. Vlastic said the pool of 25,900 sf could be exceeded by up to 5% if determined necessary and appropriate by either the ASCC or the Planning Commission. It would be brought to the Planning Commission if the grading exceeded 1,000 cy; otherwise, it would be reviewed by the ASCC. Responding to Commissioner McIntosh, he said the 25,900 figure was associated with the greenhouse, cabana, entertainment building plus the future buildings. Responding to Commissioner Gilbert, he said the IS numbers had been developed by CJW based on the range of uses that they anticipated. Some flexibility was included, and it would be tailored to the proposed use. Responding to Commissioner Zaffaroni, he said given the access issues, the numbers did not seem unreasonable, but it was not a refined calculation. Responding to Commissioner Zaffaroni, he said a guesthouse would have to be served by the same utility system, there had to be the same access, and it had to be related to the main house. He discussed roadways to the existing and potential agricultural buildings.

Responding to Commissioner Zaffaroni's question on paragraph #1 of the permit (p. 2), Mr. Vlastic said if a

subdivision was approved, it would supercede the provisions of the use permit. If a subdivision was approved, the 8,000 sf was small compared to other things that could be put on the property. Commissioner Zaffaroni suggested that portion of the permit be clarified. Referring to the permit (p.5, paragraph f) and situations under which the ASCC could refer a proposal to the Planning Commission, Commissioner Zaffaroni felt there should be a more general right to refer. Mr. Vlastic said the inclusion of "policies" was broad, but "any other concerns" could be added. Commissioner Von Feldt said she would be more comfortable with "...allow ASCC to refer proposal to the Planning Commission if it had any concerns that couldn't be resolved with the applicant." Something might qualify as to the letter of the permit but made people uncomfortable. She was more comfortable with the broader terminology.

Commissioner Gilbert asked what would happen if the IS number approved was not sufficient. Mr. Vlastic said if the numbers in the permit were proposed to be exceeded, the applicant would have to request amendment the use permit. Commissioner Gilbert said she was uncomfortable with where that number came from. On the meadow area, she asked how it was referred to in the General Plan and what the history of the sensitivity was. Responding, Mr. Vlastic said sensitivity included ecological sensitivity, sensitivity from a visual perspective, etc. It was also a significant component of Portola Valley. Setting the visual character was probably the most critical component in terms of preserving the open character of the meadow.

With respect to the IS calculation, Commissioner Von Feldt thought setting the IS might define where the buildings could be located. If the 25,900 figure didn't allow enough IS to get a road to the meadow area, she questioned why it was being discussed as a potential building location. Responding, Mr. Vlastic said Dr. Neely would like to reserve the opportunity to consider building for agricultural maintenance, which could be by the culvert adjacent to the MROSD property. Using the overlays, he discussed an area that didn't conflict from a visual standpoint that would not be precluded by a long road. Commissioner Von Feldt said the 8/4/09 letter from MROSD expressed some concern about water quality. Mr. Vlastic said any application that had grading associated with it had to go through the standard provisions the Town had for water pollution control.

Responding to Commissioner Von Feldt, Mr. Vlastic said this project was not exempt from CEQA. The CEQA finding being suggested was that there was no project that was being authorized that wouldn't have to go through the detailed architectural, engineering and geology review. For the Priory, for example, the Commission authorized the use permit and knew generally where the buildings would go, what the uses would be and square footages. But, there were no detailed grading plans, erosion control plans, elevations, etc. For this project, if the Commission decided the applicant could have 8,000 sf of floor area and they chose to put it some place that would potentially have significant impacts on the hillside, the Town would not let that happen pursuant to the normal standard review processes. Given the Town's normal review requirements, which were incredibly detailed, there was no way the Town would authorize a development that would be excessive in grading or tree removal or cause erosion. In terms of visual impacts, he was confident that the ASCC would do a good job on that too. The Planning Commission might decide that the property could accommodate 8,000 sf but not want to authorize it until there was a specific plan. Staff was trying to be accommodating and understanding of both the Town's concerns and the property owner's. Going through the normal procedures, he did not feel major problems would result. Additionally, every proposal for that 4,000 sf or 8,000 sf had to go through a public review process—be it ASCC or the Planning Commission. Commissioner Zaffaroni said it would come to the Planning Commission based on a site development plan in excess of 1,000 cy of grading or if it was referred by the ASCC. Mr. Vlastic added that there were a couple of other trip points in the site development ordinance, and staff could always refer it to the Planning Commission as well.

Responding to Commissioner Von Feldt, Mr. Vlastic said the green areas in the overlay were open to consideration for building without tripping other key factors--such as map modification. The Pd areas would likely require a map modification depending on the kind of use. The meadow area (striped area) was a possibility, but the map highlighted a lot more concerns with visual impact.

Referring to the permit (p. 4, #4) and the description of possible uses for the 8,000 sf, Commissioner Gilbert said "recreation and hobby buildings" was very broad. Commissioner Zaffaroni pointed out that "other accessory buildings similar to the above" was also on the list and made it even broader. Mr. Vlasic said it was a fair question for the applicant.

Responding to Chair McKitterick, Mr. Vlasic said at the Ranch, there was an area that could have accommodated a horse stable. That was part of the PUD that went with the subdivision. It was fairly undefined in terms of scope or size, and it was all predicated on whether or not there was a demand within the Ranch for keeping horses. That never materialized in the later stages of development and was no longer an option.

Chair McKitterick opened the public hearing.

Jon Silver, 355 Portola Road, said he was troubled to see this application before the Commission. There should have been some feedback during the preliminary review to see if this was something the Town wanted to do. He did not think it was ripe for formal action. No public interest would be served by the Town acting on an incomplete application with unspecified buildings in terms of location and use and only generally described. He did not recall ever seeing an application like this. In response to the question about CEQA, he said Mr. Vlasic indicated that someone could propose building in a bad place that would have an impact, but knowing the political stance of the Town of Portola Valley, that would never get through this process. Mr. Silver said CEQA didn't allow that kind of judgment, and it was not a substitute for the kind of rigorous environmental review that the law required. Referring to Lennie Roberts's letter of 8/3/09, he agreed with her concerns. He thought this application was being given a piecemeal review of something that hadn't been designed yet. If there was something offered to the public such as an open space easement across the meadow area in return for certain unspecified things, the rules could be bent a little. As proposed, he did not think it should be acted on because it was incomplete. To the question of private tastings, he said he could imagine a private tasting by invitation only, but that needed to be pinned down. With respect to geology, the Pf area in the meadow was the same fault as the Town Center area. When detailed investigation was done on this site, the Town found the geology was far worse than what the map suggested. The project site had not been studied to the same degree of detail, but the meadow area might be similar to the Town site. The Town should not make a decision until there were more details.

Beverly Lipman, Westridge, said she could not see the proposed buildings from her house. But having read the documents, she was concerned about the 8,000 sf. Additionally, 23,000 sf of IS sounded like a parking lot. The Chairman of the Westridge Committee was also concerned. The Town had a valuable resource in the western hills of which this was a part. She felt this was a community issue and didn't think the Planning Commission should just go ahead and approve the CUP without more details about the issues raised.

Ana Ruiz, Planning Manager MROSD, said MROSD owned the adjacent property. MROSD had a number of major issues and concerns, which were raised in the two letters. She urged the Planning Commission not to approve the unspecified future development. This was a disturbing precedent. After 11 years with MROSD, she had never come across a project where the Planning Commission considered approving a CUP for an unspecified development. She was concerned about what this would mean for other sites in and around the preserve. She did not have a good idea about where these buildings might be located and how they might impact the vistas from the preserve. Also, MROSD recognized that policies changed as to differences in perspectives from planning commissions, the public and the Town, and these things might affect what actually was developed out on the site. If this was approved, she asked that the language for section f in the CUP (p. 5) be revised so that any project would be referred to the Planning Commission if there was any public opposition. MROSD was also curious to know how the Negative Declaration had been developed and what issues were analyzed. She thought it was very bare without a lot of description or analysis. There was not enough detail to provide for a thorough analysis of what the potential environmental impacts might be. Chair McKitterick asked if MROSD had comments on the project other than the 8,000 sf and the access issue. Responding, Erica Simmons said initial comments on the proposed cabana and greenhouse were provided to the ASCC at the June 22, 2009, meeting. For the most part, MROSD was not concerned about

the parts of the project that had been adequately defined. Referring to the MROSD letter, Commissioner Zaffaroni said there appeared to be some concern about the entertainment building. Ms. Simmons said the concern was because it was on a scenic vista that was visible from Spring Ridge Trail. But, as it was currently designed, it was minimally visible and used muted, earth tone colors. It did not appear that it would have substantial visual impact if the design and location remained as proposed. Bev Lipman said at the ASCC meeting, Danna Breen commented about the entertainment building and the fact that noise carried uphill and adversely impacted the public being able to enjoy the open space on Windy Hill.

Carter Warr, architect, said the size and shape of the property were unprecedented. The Neelys had owned the property for a long time and wanted to preserve it. One of the major reasons for asking for more than what he knew and wanted at this point was to give him some headroom as he looked forward to the near future of putting the property into a Williamson Act commitment and give him the opportunity to know what he could and couldn't do without having to come back and risk the same kind of things that were going on now. As Mr. Vlastic mentioned, the buildings intended were all very small. The actual square footage requested was .2% of the lot area. In comparison, the CUP approval on the McKinney property was 2.3%. By zoning on 1-acre lots, the average floor area coverage was 12%. The magnitude of what was being requested was being overblown by some of the comments. The largest single building was likely to be a barn. This was a very big property, and there were thousands of places to hide all the buildings. The constraints had been described. The recommended conditions in the use permit were to help hide all of those. There was no intention to stick something out there like a sore thumb. The sites selected had been picked thoughtfully to gain views without impacting anybody else and preserve privacy. All of what was proposed would eventually go through the normal process. This property, while large, was disadvantaged because it didn't have other parcels. The property ran up against the 10,000 sf limit because of its size. It seemed unfortunate to take a property like this and disadvantage it to the point that it started to precipitate the desire to subdivide. That was not what this applicant was interested in at all. With respect to the IS, the purpose was to allow headroom most particularly for the area around the barns. He had allowed the opportunity for a riding ring, which was by ordinance considered impervious surface. A riding ring of 100x200', which was quite small, was 20,000 sf of the 23,675 sf. That was where the majority of that headroom was. From a geologic standpoint, it was ironic that the meadow area was described as having to be preserved with all of these geologic issues associated with it. The residential care facility at The Sequoias had just been constructed with the approval of the Planning Commission between the faults. There had been enormous study of those faults. On the White property there was a CUP for a major residence in the meadow area directly adjacent to the fault. Dr. Neely wanted to preserve the opportunity and wanted to include language to make it invisible. There were lots of places in and around, down below, towards the west side of the Woodside trace to hide small structures. It was Dr. Neely's intention that something would potentially be there. The term of the CUP being ten years with 10 year options was the kind of timeframe that this owner thought about. He was not looking to do 8,000 sf next year or five years from now. He didn't know what he wanted. The intent of asking for the headroom was to give him some comfort that up to that point, he had a way to do it. He also knew that if anything upset the apple cart either geologically or visually as it related to the open space or views from off site, he would be back before the Planning Commission. The intent was to not have to come back and have his property lie fallow for a long period of time. Ten years was the shortest he was considering. If he put it in the Williamson Act, that was the commitment that he would be committing to. He encouraged the Planning Commission to take the comments seriously, just as the applicant's team did. But, the commenters didn't understand the intent, which was to do precisely what the Town fathers wanted and preserve this kind of property but give it an opportunity to be used in a reasonable way with impact significantly lower than any place else in Town. It was to be kept as a single family residential property. He hoped the Planning Commission understood the intent in asking for this CUP. The intent behind the 8,000 sf was to give the Neelys the opportunity to put something on their property without going through months and months of hearings and the cost associated with that.

Jon Silver said Mr. Warr used the word "intent" countless times. The Town did not grant approvals based on intent. Approvals were granted based on specific plans. With respect to the comment about The Sequoias, it should never have been built and sited the way it was, and the Town incorporated to stop that

from happening because it wasn't good planning. Since it was already there, it had been allowed to grow. If the applicant provided the Town with a well-designed plan, the Town would probably approve it. But, he did not support approval of the CUP based on this kind of lack of specificity.

Chair McKitterick temporarily suspended the public hearing to allow for commission comments but noted it would be continued the to the September 2, 2009 regular planning commission meeting.

Chair McKitterick said he did not have any issue with the project other than the 8,000 sf with an unprecedented lack of specificity. He could be influenced by further information or by comments of other Commissioners or further public comment. His concerns had to do primarily with the zoning ordinance as it related to CUP standards where it talked about the location and site. In the past, the Town had interpreted that language as being a particular building location, with the exception of a stable at the Ranch when it was subdivided. The concerns expressed by the public were valid that approving a permit with 8,000 sf that lacked the specificity historically required might create a future precedent that would not be to the benefit of the Town and perhaps contrary to the letter if not the intent of the CUP ordinance. The fact that the 8,000 sf lacked the specificity found in a permit in this Town or other jurisdictions had led to numerous public comments about this application. If there was a more specific application with regard to this 8,000 sf, these comments might not have been received at all. This was something that was unusual, and neighbors were questioning what it meant. In theory, 8,000 sf was not a problem on this parcel. But, he could not abdicate the duty vested in the Planning Commission to properly vet the application much less abdicate the siting responsibilities to the ASCC. The ASCC was a diligent and intelligent body that had the Town's best interest in mind. But, their duties were legally and philosophically different than the Planning Commission. There was a reason why the Planning Commission made decisions on CUPs. If anything, this was the sort of application where the Planning Commission, with greater public accountability and larger policy issues in mind, should be the one to take the heat if necessary for any of the tough decisions about where these buildings would be sited and what the uses were. He remained opened, but he could not approve the CUP with the unspecified 8,000 sf.

Commissioner Zaffaroni said she could not approve the application with the 8,000 sf of unspecified development. This was not an issue of whether the particular parcel could accommodate that. This was an issue of whether it was a proper way to evaluate the findings that were required by ordinance. She could not imagine any location in Town where there was a CUP in existence governing the operation of that area, where the adjacent neighbors would be comfortable if someone came in and asked for an amendment for an unspecified 8,000 sf of development. In any situation there would be a lot of public opposition to that kind of unspecified use. If it was allowed here, she questioned how it would be distinguished in the future for other CUP locations. She was not comfortable making the decision—not because of the parcel size but because she could not make the findings required by the ordinance with respect to paragraphs 2 and 4 that required: a) ensuring the privacy and rural outlook of neighboring residences; and b) determining that the proposed use would not adversely affect the abutting property or the permitted use thereof. She could not make credible findings with respect to those two provisions if she did not have more specific information about the proposed use, proposed location and proposed size. On that basis, she could not approve the application as it was currently configured. This had been an evolutionary process, but with the lack of specificity, as a Planning Commissioner, she could not delegate that authority to the ASCC or make credible findings with respect to the ordinance.

(Tape ended here and comments that follow were added from staff notes of the meeting.)

Commissioner McIntosh said he was conflicted about this application. This was a very unique situation where a large piece of property was really not addressed by the Town's zoning. In exchange for that, it was proposed to be governed by a CUP. He appreciated the applicant's desire to have some flexibility so as to not have to go through the CUP amendment process each time a small building was being considered and felt the recommended staff conditions were significant and appropriate to ensure potential impacts are fully evaluated, and avoided. He noted that the property is unique in not only its size but also its setting, and that

there is no other property in town exactly like this one.

Commissioner Gilbert noted that while she felt the site could readily accommodate the 8,000 sf, she did want more specifics in the use permit documents relative to the planned uses, possible locations and also deviation of the IS numbers. She noted that based on the comments offered by Warr that additional information seemed available as to specific uses and location of those uses that could be added to the permit description. In contrast she stressed that she was very concerned with leaving the meadow area open for future unspecified use consideration and felt that any use of the meadow was a concern in terms of general plan limitations and use permit findings relative to general plan conformity. She encouraged the applicant to develop a more refined and specific use permit proposal.

Commissioner Von Feldt stated she also was very uncomfortable with the proposal for the unspecified future 8,000 sf and that like commissioner Zaffaroni, she could not make required use permit findings 2 and 4 for the 8,000 sf. She also agreed with commissioner Gilbert that leaving the meadow area open to possible use was a significant problem in terms of general plan conformity findings. She stated that the use permit for the future 8,000 sf had to be more specific or this part of the proposal eliminated from the request. She pointed out that she found the currently proposed specific uses, e.g., the cabana and greenhouse, acceptable and if a similar design effort were made for the future square footage, she would likely be able to make similar findings. She concluded that without more specifics for the future uses she could not support the use permit as currently presented.

Vlasic thanked the commission and public for the comments and input and advised that he would be working with the applicant and project design team to respond to commission comments and, hopefully, revise the request for further consideration at the September 2, 2009 commission meeting.

Warr asked if it was possible to continue the public hearing to the August 19 commission meeting as initially recommended in the July 31, 2009 staff report. Vlasic advised that based on commission and public input, he concluded that more time was needed to respond to comments and the it would not be practically possible to do this in time for the August 19 meeting. Warr then agreed to the continuance to the first September meeting.

After discussion, Chair McKitterick, with commission concurrence and concurrence of Mr. Warr, as representative of the applicant, continued the public hearing to the September 2, 2009 regular planning commission meeting.

~~COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS:~~ None

APPROVAL OF MINUTES

By motion and second, the minutes of the meeting on July 1, 2009, were approved as submitted by a vote of 3-0, with Commissioners McIntosh and Von Feldt abstaining.

ADJOURNMENT: 9:37 p.m.

Nate McKitterick, Chair
Planning Commission

Leslie Lambert
Planning Manager