

PLANNING COMMISSION MEETING, TOWN OF PORTOLA VALLEY, AUGUST 6, 2008, HISTORIC SCHOOLHOUSE, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

Vice Chair Zaffaroni called the meeting to order at 8:05 p.m. Ms. Lambert called the roll:

Present: Commissioners Gilbert, McIntosh and Zaffaroni and Chair McKitterick (arr. 8:25)
Absent: None
Staff Present: George Mader, Town Planner
Steve Toben, Council Liaison
Leslie Lambert, Planning Manager

ORAL COMMUNICATIONS: None

REGULAR AGENDA

(1) PUBLIC HEARING: Site Development Permit X9H-555 and Deviations, Hibbard and Lee

Town Planner Mader reviewed the staff report of 7/31/08 on the site development permit application and deviation requests. He said the applicants indicated that they were not able to obtain funding for the project but wanted to go ahead with the site development permit. He reviewed the conditions of approval set forth in the staff report.

Vice Chair Zaffaroni said condition "d" required a demonstration of full funding for slide repair construction and control of release of funds to guarantee construction completion. In light of the fact that the applicant did not intend to go ahead with the slide repair, she said that condition needed further clarification. The applicant or a future purchaser might want to do some work on the property to mitigate risk to surrounding neighbors. Condition "d" should not prevent someone from doing some work that might not be as costly but would help secure the property. Town Planner Mader said there was no plan for partial work on the property. Vice Chair Zaffaroni said there was a recommendation with respect to the drainage pipes. If it was her property, she would want to do that work to reduce risk to adjacent properties. She wanted to make sure a partial fix would be allowed to reduce risk without requiring someone to put up the money for the whole landslide repair. Town Planner Mader said the Town would have to review detailed plans to see if it was an adequate fix. Some language could be added to indicate the property owner could submit a plan for partial work including drainage with the guarantees the Town would need.

Responding to Commissioner McIntosh, Town Planner Mader said with particularly heavy winter rain, the whole mass could move again. It was known that there was erosion caused by the pipes that fed into the gully that was not protected. That would continue as it had been doing. He did not know if that erosion was a huge problem. The bigger problem would be if the mass of ground was destabilized. It would help to line that ditch or take care of that, which would cause less damage downstream. Responding to Commissioner McIntosh, he said there were two pipes involved. The final design for the drainage solution still needed to be established. Responding to Commissioner McIntosh, John Hibbard said the cost for the repair was \$600,000. Commissioner McIntosh questioned whether it would be practical for someone to buy the properties, spend \$600,000 and build two houses. Town Planner Mader said the Town Attorney indicated that the Commission should base its decision on planning principles and not detailed economics. The Town Attorney's concern was that when you were dealing with a particular project, it was very difficult to evaluate a person's economics. The applicant felt that at the level it would be approved at, it was not financially feasible. Commissioner McIntosh said if the repair was not done, concerns about it sliding again would not be resolved. Vice Chair Zaffaroni said the Commission was only looking at the site development permit. The applicant wanted permit approval because without it, it would be very hard to market the property. Chair McKitterick felt it was better than the status quo to have a permit for the repair.

Responding to Commissioner Gilbert, Town Planner Mader confirmed that the site development permit, subject to the conditions, would transfer to a new owner. Referring to the Nolte report of 7/17/08,

Commissioner Gilbert said there was a statement that indicated the vegetation around the slide repair area should be restored to pre-development condition to maintain the original runoff coefficient. She questioned how anyone could interpret that given that it was quite overgrown right now. Town Planner Mader said the intent was to simulate what the vegetation cover was. The slide area would need to be properly revegetated to reduce the possibility of erosion. He agreed the statement was a little ambiguous, but there would be plenty of chances for review to see that it was protected.

Referring to the Nolte Report (7/17/08), Commissioner McIntosh questioned what “install under drain and storm drain connections at the junction boxes” meant. Responding, Town Planner Mader said there were drains within the hillside itself. The buried drains dewatered the slope, and there were junction boxes on the plans that they connected into.

Referring to the Cotton, Shires report of 7/11/08, Commissioner Gilbert asked what generated “differential fill thickness.” Responding, Town Planner Mader said when fill was put in, it was compacted to a certain amount, and there would be some settlement. Material that was stable would not subside as much. That created the differential fill thickness.

Referring to item #3 (p. 2) in the Cotton, Shires report (7/11/08), Town Planner Mader confirmed for Commissioner McIntosh that there was a question about the height of the fill stockpile. It was not to be as high as shown, and they would have to include a note to show what they were going to do.

Chair McKitterick asked if there was anything the Town could reasonably require now that would reduce the possibility that the slide would cause damage to neighboring properties. Town Planner Mader said language could be added to indicate that in authorizing this permit, the applicant shall prepare a plan to reduce, as much as possible, erosion and potential failure of the slide in what would be deemed a temporary measure. Whether the applicant did it was another question.

John Hibbard, applicant, said no one at the Town had ever understood what happened up there. The problem was the amount of water coming out of the two 14” drainage pipes at the Hayfields. That caused this slide. Jean Isaacson predicted the slide. But, the representatives from Cotton’s office couldn’t bring themselves to say—even after it happened—that it was caused by the water. Jean Isaacson was not trained in geotechnical issues. The reason she thought there would be a slide was because she was sweeping the water out of her carport, and she went back upstream to see where it was coming from. If you were up on that hill, you knew this was a water problem. He asked if Steve Toben wanted the pipes left in place, which would put more water on his property, or if he wanted the pipes disconnected. The pipes had been put in to route the water around the slide and protect it. You couldn’t cover it with plastic. Plastic wouldn’t make any difference. Responding to Chair McKitterick, he said he felt there were some things that could be done short of doing the whole fix. The slide was protected by the pipes, but Mr. Toben’s property was not protected. The same amount of water was dumped on Mr. Toben’s property that had been dumped on his property that caused the slide. If he hooked pipes onto that and took it down to Portola Road, the problem would be sent downstream. The issue was what to do with this water. If the pipes were disconnected, more movement of the slide was more likely in heavy rain. That would affect the other properties more. He added that he thanked the Commissioners for the interpretation of Resolution 500 that was sent to the Council. It was generous, but it didn’t work. And, the problem still existed.

Responding to Chair McKitterick, Mr. Toben said he was not qualified to determine whether anything could be done in the short term that would improve the situation. He essentially accepted a risk probability that had held up for the ten years since this occurred. He was not particularly agitated about the prospect of facing that risk for one more season.

Responding to Chair McKitterick, Town Planner Mader confirmed that as part of the permit, the pipes would be left in place. Additionally, while Mr. Hibbard said he might remove the pipes, that would be a significant problem for him. He now had a pattern of drainage, which he created.

Commissioner Zaffaroni reiterated that she wanted to be absolutely certain that somebody would be able to do a temporary fix of some sort and not be impeded because of the way the conditions read. That issue had not been resolved. The language was not in the conditions to facilitate that. Town Planner Mader said language could be added that would essentially say that temporary measures to decrease the possibility of landsliding could be considered as a part of the permit after proper review by the Town Geologist, Town Engineer and the geologist for the applicant. Chair McKitterick suggested "Interim measures to improve stability and/or drainage of the subject parcels and/or neighboring parcels may be approved by staff." Commissioner Zaffaroni said she didn't want to obligate or involve neighboring parcels.

Mr. Hibbard asked if the Town would have any objection to taking the water down to Portola Road. Chair McKitterick said things like that should be explored. Mr. Hibbard said you could also look upstream to see where the water was coming from. Chair McKitterick said the Town would work with property owners to find a better solution than what currently existed. He opened the public hearing.

Ken Singleton, Santa Maria, said he was the next door neighbor. He recalled that there was monitoring equipment on the site to see whether land was moving, and he asked what that revealed. Responding, Town Planner Mader said there was some movement during the field visit with the Town Geologist. Mr. Singleton said that was at the lowest end of the property just above the Toben property. As part of rebuilding the hillside, they had to put in stitch piers. He asked if there would be any merit to stabilizing the movement in the hillside without doing any of the rebuilding. Town Planner Mader said the stitch piers were a very significant thing to do to help stabilize the hill. And, there was no proposal short of what had been proposed that would stabilize the hill. Mr. Singleton said his swimming pool was adjacent to 16 Santa Maria and large cracks were developing. One might be led to believe that that was a consequence of movement right there. Town Planner Mader said part of this whole discussion was that it was a larger problem than the property. It was a question of how far you should go in rational judgment to allow something that might allow a fix. House sizes, etc., had been looked at. It was a problem because it encumbered more properties.

Chair McKitterick said a solution was better than the alternatives, which included: 1) condemn the property and the Town fix the problem; 2) civil litigation between neighbors; and 3) leave it the way it was and hope for the best. Commissioner Zaffaroni said a fourth alternative would be for the Town to facilitate a solution such as redirecting drainage. Town Planner Mader said that was complicated. Mr. Hibbard believed that a lot of this water was directed from the Hayfields subdivision. That was private property, and it was hard to determine the drainage pattern there because it was not that easy to study. Mr. Hibbard confirmed that he did not know the root of the problem. There were actually three 14" pipes, and one was clearly from the Hayfields. Town Planner Mader added that the Town hadn't been authorized or requested to study the drainage in the whole area. This had only come about by Mr. Hibbard approaching the Town with his project.

Responding to Mr. Singleton, Town Planner Mader said the Town Geologist would have to evaluate the value of putting in the stitch piers in terms of stability. Chair McKitterick said the goal was to get the permit approved so that the applicant could sell the property to someone who could do the fix.

John Boice, Tynan, questioned how long the community was supposed to wait before there was some mitigation for the eyesores that were on the property now. There were two abandoned buildings and a lot of brush and fire hazard that needed attention. He had been looking at this for ten years. Chair McKitterick agreed that there were hazards just by having vacant properties. This was not brought to the Planning Commission's attention until Mr. Hibbard brought his application in. He felt there had been some efforts by Mr. Hibbard over the years to rectify the situation. If construction didn't begin next season or within the life of the 2-year permit, the issues of brush and the vacant properties might be taken up. He wanted to give the applicant a chance to get things done. He hoped the drainage would be addressed. That posed a more probable danger to property than the fire hazard and vacant property. Responding to Chair McKitterick, Mr. Hibbard said the cost of demo-ing the properties would be about \$40,000. He added that one reason that nothing had been done was for forensic reasons. He wanted to preserve everything exactly the way it was so that the geotechnical people could see it. Commissioner Gilbert felt removing vegetation now could

increase erosion. Ms. Lambert added that when demolition of the lower house was discussed, the Town Geologist was very concerned.

Robert Hetland, Hayfields, said he lived above Mr. Hibbard. He was comfortable with the proposal and was sympathetic with Mr. Hibbard. His concern was for the dirt road identified by Mr. Berry. He didn't know if it was a fire road and wanted some assurance that Mr. Hibbard would not bring any construction vehicles through that road. His driveway had just been replaced and was at the beginning of that road. Town Planner Mader said there had been some questions on the status of that road when it had been discussed. Mr. Hibbard said when the Hayfields was built, dirt and brush and debris was pushed down the road. That caused part of the drainage problem. Responding to Chair McKitterick, he confirmed that he did not plan on using that road as part of the construction. Town Planner Mader said the title report should provide more information about access to Louise Lane and the other road just beyond the applicant's property. He used the map to show the location of the dirt road.

Commissioner Gilbert moved to approve the 7/17/08 proposed Negative Declaration, including by specific reference the conditions listed under the site development permit set forth in the 7/31/08 staff report. Commissioner Zaffaroni seconded, and the motion carried 4-0.

Commissioner Gilbert moved to approve the site development permit application as shown on the plans by Berry and Associates dated 7/15/08, including supporting technical documents referenced in the staff report of 7/31/08 and other staff reports on the project, subject to the conditions set forth in the 7/31/08 staff report, with the addition of condition "j" that "Interim measures on subject parcels to improve stability and/or drainage on the subject parcels or adjacent parcels may be approved by staff." Commissioner McIntosh seconded the motion.

Commissioner Zaffaroni said condition "d" should be modified because a temporary or remedial action was being allowed. She felt it could be confusing to a future purchaser in terms of having to put up money before they could do anything in terms of further site development. Commissioner McIntosh pointed out that condition "d" related to the slide repair.

Responding to Mr. Hibbard, Town Planner Mader said if he wanted to tear down the house(s) he would have to come in for a demolition permit, which would be reviewed by the staff including the Town Geologist.

Chair McKitterick called for a vote, and the site development permit was approved by a vote of 4-0.

(2) PUBLIC HEARING: Conditional Use Permit Application X7D-168, Douglas

Town Planner Mader reviewed the staff report of 7/31/08 on the conditional use permit and zoning permit applications to allow an existing building to be used for offices for Red Hawk Real Estate and State Farm Insurance. He discussed the recommended conditions of approval for the CUP. Responding to Commissioner Gilbert, he said Woodside was not in the Town's spheres of influence, but it was in the planning area. For purposes of determining the percentage of a business that served the Town and its spheres of influence, Woodside should not be included.

Responding to Commissioner Gilbert, Lisa Keith, Red Hawk Real Estate, said she lived on Portola Road in Woodside and had included the immediate area of Woodside in her letter as part of the area being served by her business. She was in the Portola Valley School District and her family was very much a part of Portola Valley. Responding to Chair McKitterick, she said with the current office, 50% of her business came from Portola Valley, Ladera and Los Trancos Woods. As she stated in her application, her residential division was on The Alameda in Menlo Park, which took care of the Menlo Park, Atherton, and Redwood City area. Her commercial division was located off of Santa Margarita in Menlo Park. She had been in the current location since 2003. There was no reason why someone from outside the area would come to her office. Responding to Chair McKitterick, she said she expected the new office would continue to serve at least 50% of people from Portola Valley, Los Trancos Woods and Ladera. Chair McKitterick noted that the

letter from State Farm indicated that they already had one half of their customers from Portola Valley.

Responding to Commissioner Zaffaroni, Ms. Keith confirmed that the new office would be strictly residential. Commissioner Zaffaroni agreed it would be unlikely that a lot of people from San Jose would come into Portola Valley to see a real estate agent unless they were looking for Portola Valley property. A restaurant was more of a problem because it drew people into Town and affected traffic.

Commissioner McIntosh noted that the Woodside land across the street was an aberration; he thought of it as Portola Valley.

Chair McKitterick opened the public hearing.

Responding to Bradley Kass, Town Planner Mader said a 3-year review was a standard in Town to see that the holder of the permit was performing in accordance with the permit. Chair McKitterick added that some properties like the Priory were reviewed annually. Town Planner Mader said a use such as this was minimal and didn't require more frequent review.

Responding to Commissioner McIntosh, Phil Hyland, architect, said new windows would be put in as well as a new sustainable-type roof; partitions would be installed inside. It was all interior-type improvement. Some of the impervious area would also be reduced. Responding to Commissioner McIntosh, he said an engineer was looking at reinforcing some of the masonry to stabilize it. Ms. Lambert confirmed that the plan checker would review any shear walls that were proposed.

There were no other comments, and the public hearing was closed.

Commissioner Zaffaroni moved to find the project categorically exempt pursuant to Sections 15501 and 15305 of the CEQA guidelines. Commissioner Gilbert seconded, and the motion carried 4-0.

Commissioner Zaffaroni moved to make the findings required by Section 18.72.130 (zoning) of the Municipal Code and approve the CUP request for professional office uses on the subject site as described in the application documents listed in the staff report of 7/31/08 (p. 5) and subject to conditions "a" through "d" of the staff report. Commissioner Gilbert seconded, and the motion carried 4-0.

Commissioner Zaffaroni moved to approve the zoning permit for State Farm Insurance use as provided for in the "Zoning Application Narrative" prepared by John McAfee received 7/1/08. Commissioner Gilbert seconded, and the motion carried 4-0.

Commissioner Zaffaroni moved to approve the zoning permit for Red Hawk Real Estate as described in the 7/28/08 statement from Lisa Keith. Commissioner Gilbert seconded, and the motion carried 4-0. As set forth in the staff report, Commissioner Zaffaroni noted that action on the zoning permits was subject to the condition that the final floor plan for the uses be provided to the satisfaction of planning staff demonstrating conformity with the floor area limits for office uses.

(3) PUBLIC HEARING: Revocation of Conditional Use Permit X7D-168, Douglas

Town Planner Mader reviewed the staff report of 7/30/08 and options available to the Planning Commission.

Chair McKitterick opened the public hearing.

Responding to Chair McKitterick, Bradley Kass, counsel representing the Douglasses, said he was currently involved in a trial and would like a 90-day extension. He hoped to get the item on West Bay's agenda in September. He had become involved to try to orchestrate and resolve this matter.

Responding to Chair McKitterick, Ms. Lambert said the West Bay Board met twice a month on the second

and fourth Wednesdays. The first Board meeting in August was cancelled. The next meetings would be 8/27/08, 9/10/08, 9/24/08, 10/8/08 and 10/22/08. Mr. Kass added that he was pretty confident that everything would be ready for the 9/10/08 Board meeting.

Responding to Chair McKitterick, Ms. Lambert said the first step was for LAFCo to get the legal description and map, which they would take to the recorder. Then, West Bay would put acceptance of the annexation on their agenda. According to West Bay, the Douglasses or their contractor could immediately go in and apply for the sewer permit through West Bay. The sewer district would then issue the sewer permit. They would also need to come to the Town to get a plumbing permit for the sewer lateral from the buildings to the front of the property. That was over-the-counter. They also had to apply for an encroachment permit for any work that was within the Town's right-of-way. That was also over-the-counter.

Chair McKitterick discussed the Planning Commission's options. He said he did not support revocation of the permit at this time. Commissioner McIntosh said it would be appropriate that the permit holders have an obligation to communicate with staff to ensure the matter was on West Bay Board's agenda on 9/10/08. He also felt there should be a date certain whereby the sewer connection was complete.

Responding to Chair McKitterick, Ms. Lambert said she did not know what West Bay would require for the sewer permit. Commissioner McIntosh said he would like to have a status report at the 9/17/08 Planning Commission meeting. Responding to Chris Buja, Chair McKitterick suggested that if no progress was made, the CUP could be agendized for revocation on 10/1/08. Mr. Buja noted that there had already been a number of extensions.

Town Planner Mader suggested continuing the hearing to the 9/17/08 meeting for a report from staff.

Commissioners discussed what progress needed to be made by the Commission's 9/17/08 meeting. Commissioner McIntosh said the applicants needed to be ready for the 9/10/08 Board meeting. Chair McKitterick felt the applicants should also have applied for the permits by the 9/17/08 Planning Commission meeting. Commissioner Gilbert said that was a little tight. She suggested continuing the hearing to October 1. That would give the applicants a second chance if something happened with West Bay's schedule, etc. If nothing had happened by October 1, that would be an issue.

Commissioner Zaffaroni said Mr. Kass didn't give dates in his letter. But, what needed to be done had been identified along with the steps necessary to comply. She was neutral about having it agendized for the 9/17/08 Planning Commission meeting. Town Planner Mader said if the hearing was continued to October 1, he suggested the Commission not discuss it at the meeting on 9/17/08. Ms. Lambert could make a report to the Chairman.

Commissioner Gilbert moved to continue the public hearing to 10/1/08. Commissioner McIntosh seconded, and the motion carried 4-0. Chair McKitterick said the expectation was that the applicants would go before the West Bay Board on 9/10/08 and obtain the necessary permits--barring any unforeseen and unusual circumstances. Mr. Kass said that was acceptable. Chair McKitterick thanked Mr. Kass for working with the Town Attorney on the issue.

(4) Draft Sustainability Element

Commissioner Zaffaroni distributed a copy of her revised version. Town Planner Mader said it would be helpful to have a tracked version that showed the changes. He suggested continuing the item to allow Commissioners to review the revisions.

Commissioner Gilbert said the appendix implied that at some point, the specific illustrative policies and practices would be implemented. Town Planner Mader said the inference was that this was a list of things that the Town might want to pursue at some point—not that it had to. The things listed were there and available, but it was not a commitment. Councilmember Toben suggested deleting the introductory

sentence that said “The Commission believes these suggestions should be further discussed and considered....” Chair McKitterick suggested “These things may be considered by the Town at some future date.”

Councilmember Toben said he had some minor changes that he would submit to the Town Planner. He had also been thinking about Chair McKitterick’s concern about addressing house size in the element. Responding, Commissioner McIntosh said house size was important. The sustainability consultants wanted people to do an analysis of room use for each room in hopes of convincing them that they didn’t need all the room they thought they did. Councilmember Toben said it was not clear when to play that card—here or at some later point in the process. It was a question of whether you needed general plan language in order to get to the issue of house size. Commissioner Zaffaroni said her rewrite on this issue was shown in objective #2 under “New Buildings.” Councilmember Toben said he liked Commissioner Zaffaroni’s language. Town Planner Mader noted that “site improvements” usually didn’t include the house. Councilmember Toben suggested “...extent of structures and site improvements....” Commissioner Zaffaroni said she assumed this would serve as guidance to the ASCC in terms of looking at the extent of the overall site improvements and doing some balancing in terms of the applicant’s interests and the goals of the Town. If the Town wanted to reduce floor area allowance, that would be taken on directly.

Town Planner Mader noted that size counted in the rating systems. He felt adding “structures” to Commissioner Zaffaroni’s rewrite would be appropriate. Commissioner McIntosh noted that the appendix included room use as an illustrative policy under New Buildings. Additionally, he felt objective #2 under New Buildings was very subtle. There was nothing about size. Chair McKitterick said if you’re talking about size, it should say size. This should not place limits on house sizes that were smaller than what was currently allowed. Commissioner McIntosh suggested specifically stating that there was no intent to reduce or change the existing limits. But, size was something that should be considered. Chair McKitterick said he was comfortable with whatever language was used so long as it was clear that there was no intent to legislate floor area reductions.

After discussion, Commissioners agreed to review Commissioner Zaffaroni’s version and discuss the element at the September 3, 2008, meeting.

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

Town Planner Mader distributed information on Stanford’s Habitat Conservation Plan. He noted that some of the areas involved were in the Town’s spheres of influence and/or planning area. He discussed work that would be done by Stanford to: 1) reduce the siltation in Felt Lake; and 2) replace the fish ladder on Los Trancos Creek at Arastradero.

Ms. Lambert said an offer had been accepted by the new SuRE Coordinator, Brandie de Grameaux. She described her background in planning and sustainability.

Ms. Lambert noted that no phone calls or applications had been received for the Planning Commission vacancy.

APPROVAL OF MINUTES

Commissioners Gilbert and McIntosh submitted changes to the minutes of the July 16, 2008, meeting. By motion and second, the minutes were approved as amended by a vote of 4-0.

ADJOURNMENT: 10:20 p.m.

Nate McKitterick, Chair

Leslie Lambert

Planning Commission

Planning Manager