

TOWN COUNCIL / PLANNING COMMISSION SPECIAL JOINT MEETING NO. 829 OCTOBER 5, 2011

Mayor Driscoll called the meeting to order at 7:35 p.m. and led the Pledge of Allegiance. Ms. Howard called the roll.

Present: Councilmembers John Richards, Steve Toben and Ann Wengert; Vice Mayor Maryann Derwin; Mayor Ted Driscoll

Planning Commissioners Denise Gilbert, Arthur McIntosh and Alexandra Von Feldt; Vice Chair Leah Zaffaroni; Chair Nate McKitterick

Absent: None

Others: Angela Howard, Town Manager
Sharon Hanlon, Town Clerk
Sandy Sloan, Town Attorney
Tom Vlastic, Town Planner
George Mader, Planning Consultant

ORAL COMMUNICATIONS

Giving Town Historian Nancy Lund accolades for her role in the Portola Valley School District 150-year celebration event on Sunday, October 2, 2011, Ms. Howard said that Ms. Lund is recovering from a fall during the celebration, in which she sustained a bump on the head and a broken clavicle.

CONSENT AGENDA [7:36 p.m.]

- (1) Approval and Acceptance of revised letter to San Mateo County regarding the lower Alpine Road C-1 Trail [*removed from Consent Agenda*]

Mayor Driscoll recused himself.

REGULAR AGENDA

- (1) Approval and Acceptance of revised letter to San Mateo County regarding the lower Alpine Road C-1 Trail

Mr. Mader indicated that after the Town Council decided to maintain a neutral posture on the issue of the C-1 trail, he and Councilmember Wengert were tasked with writing a letter for the Council to consider sending to San Mateo County. When this came to the attention of Steve Schmidt, Mr. Mader said, Mr. Schmidt wrote to ask why the Town kept showing a path that is no longer on the County plan. As it turned out, Mr. Schmidt was talking about a plan of C/CAG, a cross-jurisdictional entity that also serves as a funding advisory body. Adopted in early September 2011, the C/CAG plan does not show a bike path in the area of the longstanding Dwight Crowder Path (from the Town boundary at Ladera to Arastradero Road). When Mr. Mader discussed this with C/CAG, he said, he was told that it doesn't meet C/CAG's standard for a bike path (eight feet of pavement with two-foot shoulders). Nor does the asphalt path that goes from the Town boundary to Junipero Serra Boulevard meet the standard, Mr. Mader said. However, he added, the official General Plan adopted by the San Mateo County Board of Supervisors does show a bike path all the way from Portola Road, along Alpine Road to Junipero Serra Boulevard.

Mr. Mader also reported a bit of what took place at a San Mateo County-sponsored meeting on the issue on October 4, 2011. It was held at the Ladera Oaks Swim and Tennis Club. He said that San Mateo County Assistant County Manager Dave Holland went over his draft recommendation to the San Mateo County Board of Supervisors, which was based on two prior public meetings, a field trip and all related

correspondence: His draft read: "Staff is recommending that your Board request that Stanford University agree to extend the offer by two years, as permitted in the original agreement, and accept Stanford's offer on the conditions that 1) the County complete design, any necessary environmental and engineering reports to be funded by Stanford; 2) following completion, those reports be made publicly available, that staff conduct public meetings in the Ladera/Stanford Weekend Acres together anyway; 3) the Board retain the right to not proceed with the construction of the trail, and that Stanford reimburse the County for any County expenses related to the project, then returning the remaining funds to Santa Clara County." So, Mr. Mader concluded, it's a two-step process – first, doing a design and evaluating it under CEQA and then, second, the County decides to go forward or not. If the County decides not to go forward, the funds revert to Santa Clara County.

As Mr. Mader explained, Mr. Holland said the recommendation will stand as is unless other information comes in that causes it to be modified.

Mr. Mader said that the notion that Stanford really wants to widen Alpine Road to four lanes also came up at the meeting. He recalled that the Environmental Impact Report (EIR) showed no traffic increase on Alpine Road would result from the Stanford Medical Center project. Although Portola Valley challenged that conclusion, the reason put forth in the traffic study was that they're proposing alternate means, including providing free CalTrain passes and other inducements to get people out of their cars. Although widening the road and the alternatives proposed tend to contradict one another, he said, the reality is that it isn't a workable situation as it stands.

If San Mateo decides not to proceed with the trail after the first phase, Councilmember Richards asked what would happen to the funds. Mr. Mader said the balance of funds not already spent in the first phase would revert to Santa Clara County.

In response to a question from Vice Mayor Derwin, Mr. Mader said the San Mateo County Board of Supervisors is expected to make its decision on October 18, 2011. Ms. Howard said that if the Town Council decides to continue the item, it would have to hold the previously scheduled October 12, 2011 meeting, which had been canceled.

Steve Schmidt, Central Avenue, Menlo Park, thanked Councilmember Wengert and Mr. Mader for reviewing his email so carefully and conducting the research necessary to get to the bottom of it, because neither the 2000 nor 2011 C/CAG county-wide comprehensive bike plans showed either proposed or existing bike paths on Alpine Road. He said that he and others had questions about the inconsistencies.

In reviewing the re-drafted Portola Valley letter to San Mateo County that followed the Town Council's meeting of September 28, 2011, he said that he still takes issue with some portions:

Quoting from the end of the first paragraph, he read, ". . . the Council voted to take a 'neutral' position since the area affected is not within the Town limits and is a decision for San Mateo County to make." Portola Valley took a position on the Cargill Project, he said, which he was glad to see because it could be of interest to everyone in the County. He said, too, that the Town has every right to make a recommendation on a project that occurs outside of its jurisdiction – and actually at least part of this project is within its planning area. An even better reason for a neutral position, Mr. Schmidt stated, would be that the fact of the very mixed sentiments about the lower Alpine Road trail that he's heard expressed in all of the meetings he's attended.

As Mr. Schmidt indicated, point 3 in the re-drafted letter, states, "The present trail presents significant safety and environmental concerns." It may or may not be a minority view, Mr. Schmidt said, that this proposal presents some very serious safety and environmental problems, but in either instance a better explanation for neutrality would be the ambiguity of public sentiment from very well-informed people on both sides of the issue. He said that Portola Valley could not say that it's representing consensus except perhaps consensus on the part of the Town Council. Thus, Mr. Schmidt recommends sending no letter at all, which would really be the neutral thing to do.

Jon Silver, Portola Road, said he agrees with much of what former mayor Schmidt just said. He also wanted to distinguish between what he calls "process" and "position." On the merits of the bigger issue, he said, he's spoken out already. When he first saw the re-drafted letter, he said, he thought it broke faith with what was discussed at the September 28, 2011 Council meeting. Seeing the word "neutral" in quotes suggested that the word wasn't being used in its usual meaning, he stated, although he acknowledged that was not the intent. He said he felt that without saying so, the letter endorsed the project. Historically, he said, when the Town expresses a position, the position has represented a consensus or virtual consensus. He mentioned two examples – recently, the Cargill Project, and a nuclear-freeze issue that was on the ballot in the 1980s. He said that at the September 28, 2011 meeting of the Town Council, he heard consensus from Stanford Weekend Acres residents against the lower Alpine Road trail and in favor of a Regional Trails Grants Program. He said from Ladera he thought he heard three or four speakers favoring the Stanford proposal and two against, and from Portola Valley, two against and one in favor of taking a position in support of the Stanford proposal. At this point, Mr. Silver said, either Portola Valley simply shouldn't send a letter or should continue the discussion.

Councilmember Toben said that he'd like to resolve this issue tonight because he believes a resolution is within reach. He said he appreciates the efforts of Councilmember Wengert and Mr. Mader in re-drafting the letter in a fashion he described as "straight down the middle," which is exactly what he said he'd hoped for. In response to Mr. Schmidt's comment about the first paragraph, he said he'd reasoned that Ladera and Stanford Weekend Acres residents are most acutely affected by this proposal, and those in Stanford Weekend Acres the most directly affected as well. He said that he doesn't know how the San Mateo County Board of Supervisors will weigh inputs from various sources when reaching its decision, but he didn't want the Town to take an official position lest it carry disproportionate weight relative to inputs of those who are more acutely or directly affected. Another reason that he supported a neutral position, Councilmember Toben stated, is related to what Mr. Schmidt said about Portola Valley appearing to be divided on the issue. He indicated receipt of strong support of San Mateo County accepting the Stanford funds from thoughtful voices in Portola Valley such as members of the Trails and Paths Committee, a member of the School Board, the incoming new Councilmember and a member of the Sustainability Committee. He also reported receiving equally thoughtful letters of opposition, including some he ordinarily associates with environmental positions. Thus, as a representative of the community, he said, it's tough for him to decide one way or another.

Councilmember Toben stated that he feels strongly that Portola Valley should submit the letter to the San Mateo County Board of Directors, with a revision to the end of the first paragraph per Mr. Schmidt's observations. Councilmember Toben suggested replacing the last sentence with something such as, "At the conclusion of the hearing, the Council voted to take a neutral position, neither endorsing nor opposing the County's acceptance of Stanford's offer." He said that he does not share Mr. Silver's view of the word "neutral" appearing in quotes.

Councilmember Richards agreed that Portola Valley should send a letter to the San Mateo County Board of Supervisors. He said that one thing that still bothers him is that most of the arguments against the trail have been made absent any design. He doesn't understand that, he said, noting that it makes more sense to go ahead with the first phase, and at least have a design to consider. He also said he favors the revised wording that Councilmember Toben recommended for the first paragraph.

Councilmember Wengert said she concurred, and agreed that the change recommended makes it very clear. She said that in re-drafting the letter, she and Mr. Mader were attempting to present a statement of facts and a statement of position relative to the Town Council's view of current conditions within San Mateo County and Portola Valley's sphere of influence that clearly require some attention. The letter states clearly that Portola Valley is neutral relative to this position, but is not standing back and saying that the current trail is acceptable in its current form.

Vice Mayor Derwin said that she had been inclined to recommend that the San Mateo County Board of Supervisors accept the funds for several reasons – having \$10 million plus in private funds for public works, dealing with increasing traffic congestion on lower Alpine Road, and the opportunity to get more

people onto their bicycles on serviceable trails and out of their cars. She stated that the letter is an excellent one, but she agrees with Mr. Schmidt and Mr. Silver that it needs to be sent. Despite her personal opinion, she said, this is a democratic body so we will make a few changes to the language and send the letter, taking a neutral position.

Councilmember Toben moved that the Town Council approve sending the draft letter, as amended per the Council's discussion, to Carole Groom, President of the San Mateo County Board of Supervisors on October 5, 2011. Seconded by Councilmember Richards, the motion carried 3-1-1 (Derwin against, Driscoll abstained).

(2) Welcoming Remarks from Mayor Driscoll [8:03 p.m.]

Mayor Driscoll noted that he asked for this meeting. By way of background, he said that in the 1980s he served on the ASCC and then the Planning Commission, and during that time as well as his first 10 years on the Town Council, he recalled the Planning Commission and the Town Council having joint meetings approximately once a year. As the two most senior bodies in the Town, he said, now we never meet.

As Mayor, he said, he's somewhat of a lightning rod – people call him when they're upset. Sometimes they're upset with the Planning Commission, he said, but he never hears the Planning Commission's side of the story. He said that he's now suggesting that the annual joint meetings resume to discuss issues, priorities and so forth. He also noted that after talking with the Town Attorney and Town Planner, it would be useful to conduct a brief review of roles and responsibilities.

Mr. Vlasic distributed several pages from *Curtin's California Land Use and Planning Law*, a recognized standard reference document. The book, updated annually, covers all aspects of land use and planning law in California in a way that provides a flavor of what needs to be considered and what needs to be done. The pages he handed out include roles of the Planning Commission, Council, staff and even the public meeting process in summary form, and also reflections upon the statutory framework for land-use decisions.

Then Mr. Vlasic briefly reviewed the framework of Portola Valley's land-use planning, as a starting point for tonight's conversation. Under State planning law, he said that the Town is required to adopt a General Plan and implement it using various tools, such as the Zoning Ordinance, the Subdivision Ordinance and other ordinances that are appropriate to the Town's conditions, such as the Site Development Ordinance. Mr. Vlasic explained that State law also requires the Town to have a planning agency to implement the basic policies, judgments and standards in the General Plan. While the law provides some flexibility in how that agency is organized in terms of form and function, Portola Valley elected to establish a Planning Commission to carry out the basic responsibilities that the State requires. In turn, the Planning Commission – with Town Council approval – has assigned certain grading and design-review responsibilities within the Zoning Ordinance to the ASCC. That role also is specified in the Zoning and Site Development Ordinance.

As Mr. Vlasic explained, the State-mandated requirements for local planning, including adoption of the General Plan and the appropriate implementing ordinances, incorporate powers granted by the State Constitution. Furthermore, he added, the implementing regulations must be consistent with the General Plan, which in turn must be developed within the authority and specific requirements of State planning law. Thus, he pointed out, the General Plan has become a critical document.

In terms of the role of the Town Council, Mr. Vlasic said that it must set Town land-use policy within the General Plan, specifically adopt the General Plan and any amendments pursuant to specific public hearing requirements that are not only set forth in State law but also codified in the Town Zoning Ordinance. The Town Council also adopts the specific implementing ordinances, he added. These ordinances must be consistent with any specific State law provisions as well. For instance, Mr. Vlasic said, Portola Valley's Subdivision Ordinance is driven by the State Subdivision Map Act.

As the Town's planning agency, the Planning Commission is responsible for making recommendations to the Town Council in regard to all of these laws and regulations, as well as proposed amendments to the General Plan. Once the Town Council adopts these documents, the burden for ensuring their implementation falls upon the Planning Commission.

According to Mr. Vlastic, in the mid-1960s, shortly after Portola Valley's incorporation, the Town Council and Planning Commission worked cooperatively to develop the original General Plan, and over the years, amendments to the plan and implementing ordinances.

With regard to the specific responsibilities of the Planning Commission, he said, it implements the General Plan by defining particular Zoning, Subdivision and Site Development Ordinances, and acting on their specific applications – conditional use permits, variances, subdivisions, site development permits where grading exceeds 1,000 cubic yards, exceptions to the ordinances and deviations from Town policy relative to land-movement potential. In dealing with these applications, he explained, the Planning Commission – by State law – must hold public hearings, and based on the record associated with the hearings, find whether a proposal is consistent with specific ordinance provisions and the General Plan. In addition, the Planning Commission must determine whether an application conforms with the California Environmental Quality Act (CEQA), which also requires findings of consistency with local plans and regulations.

Thus, the decision-making framework within which the Planning Commission works and by which it's bound is extremely detailed, Mr. Vlastic said. He noted that it requires the public hearing review process, stems from authority granted in State law and typically is based on input from staff and various committees. Furthermore, detailed analysis is required to create a record associated with any action, which is particularly important in the event someone challenges a Planning Commission action. He said that it's also important to understand that during the course of any application review, if substantial new data is provided or the application changes, the Town is bound to consider whether re-notification is appropriate and what additional evaluation may be warranted.

In addition to application actions, Mr. Vlastic pointed out that the Planning Commission periodically considers needs for changes to the General Plan and ordinances. Certain actions go to the Town Council in the form of recommendations, on which the Council takes final action. As for appeals, any land-use action by staff or the ASCC can be appealed to the Planning Commission, which sits as a Board of Adjustment in those cases. Any action by the Planning Commission to approve or deny a project, or on appeal of staff or ASCC action, can be appealed to the Town Council. Appeal provisions are set forth in the Zoning Ordinance.

Mr. Vlastic emphasized that General Plan consistency has become a very complicated, significant issue. Up until 1971, the General Plan served as an advisory document only. After that, however, court cases and State law changes mandated that all land-use decisions be consistent with the General Plan. At the same time, requirements for General Plans spelled out in guidelines published by the State Office of Planning & Research have become far more complicated. He noted what Portola Valley faced in terms of having its General Plan's Housing Element certified as an example.

(3) Overview of Council / Planning Commission / Liaison roles from Town Attorney Sloan

Building on what Mr. Vlastic said, Ms. Sloan pointed out that cities make legislative decisions in enacting new laws and quasi-judicial decisions. In Portola Valley's case, the Planning Commission primarily makes quasi-judicial decisions, while the Town Council makes new laws. A quasi-judicial decision involves looking at the laws in effect – typically the Zoning Ordinance or Site Development Ordinance – and applying those regulations to specific factual situations or applications. Quasi-judicial decisions are required to have hearings with due notice and be based on findings that are set out in the Zoning Ordinance. The findings themselves must be based on facts in evidence. The proceedings of a quasi-judicial hearing must be fair; under the law, "fair" means that interested parties have a right to receive notice of the proceedings. "Interested parties," including the applicant(s) and those who live within 500

feet of the project, must receive notice. Any interested parties, regardless of proximity to a project, have the right to speak. On top of those rules, the Brown Act gives any citizen a right to speak on any topic. Another aspect of fairness is that everyone has a right to be heard and not have a decision made outside of the hearing. The decisions must be impartial and based on what is presented at the hearing. Putting all of those factors together adds up to "due process."

As Ms. Sloan sees it, applicants sometimes seem to forget that when they apply for a permit, the due process proceedings and the Brown Act make for a three-party process. It's not like a negotiation between a buyer and seller in real estate; rather, it's a process that pulls together the public agency, the applicant(s) and the public.

Ms. Sloan also talked about "ex parte" communications – communications outside a hearing. Citizens, applicants, neighbors, opponents all have the right to speak to their Planning Commissioners, their Mayor, their Councilmembers – especially Councilmembers, as the elected officials. She said that while Councilmembers have a right, perhaps even an obligation to listen, they also have a responsibility to avoid making any decision or even any indication of a decision, until the hearing takes place and all the evidence has been presented. The applicant, likewise, has an obligation to avoid going around telling everyone what everyone else heard. Furthermore, Ms. Sloan said, any ex parte communications should be reported for the record – not necessarily every detail, but one that was met or communicated with a citizen should be mentioned so that other people can learn about it.

Another facet of due process, she said, is that Councilmembers in a liaison capacity – especially with the Planning Commission – should remember that their role is to listen and report on what happened. All Councilmembers, she added, are expected to remain neutral until a matter comes to the Council. She said one never knows what will be appealed and what won't.

Commissioner McIntosh asked whether Councilmember's should avoid expressing an opinion at a Planning Commission meeting, even if the Planning Commission wants to hear them. Ms. Sloan said that is correct; they should not, when the Planning Commission is acting in a quasi-judicial capacity. She would prefer they keep their opinions to themselves even when it's a legislative issue because it's a bad habit, but it's most important to avoid commentary in quasi-judicial situations. Examples of legislative issues she mentioned were the C-1 Trail, the Housing Element and other amendments to the General Plan.

Chair McKitterick said that the very act of deliberation in a body deserves respect, and he always makes a practice of saying that he wants to hear from fellow Commissioners on an issue. He agrees that it's important to avoid giving the impression of pre-judgment in a quasi-judicial hearing. Ms. Sloan said that he made a good point. She said that Portola Valley is good at working things out well with people as they go through the process, and thus there aren't a lot of appeals and a lot of angry people. One factor that has helped in that regard, she added, is that the Council sets up subcommittees to handle difficult situations. At the same time, she said, these subcommittees can't put themselves in making any final decisions.

In response to a question from Mayor Driscoll, Ms. Sloan said that a subcommittee doesn't create an ex parte situation. It does, she said, but ex parte communications in themselves are not wrong – what's important is that the subcommittee isn't making a decision and avoids talking about the merits of a particular application or situation.

In addition to listening to applicants outside a meeting, Commissioner Von Feldt asked whether it's appropriate to approach applicants for clarification on issues. In response, Ms. Sloan clarified that it's Councilmembers in particular who have an obligation to listen to constituents rather than Commissioners. If Commissioners want clarification on an issue, she said, it would be better to go through staff than to approach the applicant directly. Ms. Sloan said that she's spent a lot of time with planning staffs, and Portola Valley's is excellent.

In response to Vice Chair Zaffaroni, Ms. Sloan said that it isn't a violation of the Brown Act to talk to citizens, including applicants, outside of meetings.

Considering that staff has considerable discretion before a matter comes to the Planning Commission for review or a hearing, Chair McKitterick asked where checks on staff are built into the process. He said, for example, that an applicant might consider the cost of complying with a staff request unreasonable, or complain about not being able to get on the hearing calendar for two months due to staff requirements. Under such circumstances, he wanted to know what the applicant's options are. Ms. Sloan said that the applicant could go to the Town Manager, who essentially supervises the planners, or to a Councilmember, who could inquire about the process. If the applicant has an attorney, the attorney would call her, Ms. Sloan said, which can be very useful. In fact, with a complex application, she said she appreciates it if the applicant has an attorney. In response to Chair McKitterick, she said the applicant also could contact the Planning Commission Chair.

Mr. Vlasic pointed out that most of the issues that need follow-up in some detail come through the preliminary review, a step that the Town added to the application processing procedure about 15 years ago. Often, the scope of issues are articulated during that review – or at least alluded to in the discussion. That presents an opportunity for the Commission as a body to indicate whether staff is requesting either too much or not enough of an applicant. After that, he said, staff also solicits input from various committees, and sometimes schedules a second preliminary review if the volume of additional information warrants it.

(4) Discussion: Effective and Ongoing Communications between Council and Planning Commission

Jon Silver, Portola Road, raised several points. 1) Could applicants who feel they're being treated unfairly formally ask either the Town Council or the Planning Commission to overrule staff? 2) To avoid ex parte communications when he was on the Planning Commission, he made a practice of letting citizens know that he would give them ample opportunity to speak on the record. 3) Recommendations from the Planning Commission regarding legislative matters are critical; even if the rules about fairness may not be as tight as they are in quasi-judicial proceedings. 4) He was pleased to hear the clarification about subcommittees. 5) When democracy works best, ideas from different people build on one another – it's a perfect illustration of the whole being more than the sum of the parts. He said that's the magic of democracy, despite how messy the process is.

Thomas Fogarty, Alpine Road, speaking on behalf of his family's business, Thomas Fogarty Winery, said that his father probably was one of the people who called Mayor Driscoll about the Planning Commission. While he said that he isn't sure he agrees with his father on all points, he said, the family came to the Town asking for some revisions in the winery's use permit about three years ago. He said that he didn't think the requests were unreasonable, nor did he believe the Planning Commissioners thought so. Yet, he said, it took well over a year to complete the process, and the cost of requirements imposed by the Planning Commission totaled about \$20,000. Factoring in the loss of productivity of six staff members and loss of revenue incurred in going 18 months without the slightly extended curfews brought the total closer to \$100,000, he said. Even now, he said, they remain dissatisfied with the curfew, and it won't be too long before they come back requesting another amendment to the use permit. He said he hopes it will be achievable without so much "silliness."

Chair McKitterick asked Mr. Fogarty what could have been done differently to make him feel better about the process. Mr. Fogarty said that it could have taken a lot less time, and that his father felt they were bullied into adding blinds, planting a foliage screen, etc. He said that the foliage screen has been problematic, because leaves get in with the grapes when they harvest on blustery days. It was a "giant hassle," he said. Although his father agreed to do those things, he said, they would have preferred to avoid all of that. He said that he didn't think the process represented democracy at its most efficient.

Linda Elkind, Hawkview Street, thanked Ms. Sloan and Mr. Vlasic for their reviews. The things that stand out for her, she said, concern consistency with the General Plan and the Planning Commission's role as a

quasi-judicial body, considering the needs, comments and input from throughout the community. She said that when she served on the Planning Commission, her primary concern was to look at the benefit of each project in terms of the community as a whole, and the best way to evaluate that benefit is to listen to neighbors and others in the community. She said that sometimes issues and ideas come up in response to comments, whether from the applicant or members of the public. She said that she'd hate to see the process changed in a way that would compromise the ability of Commissioners – and Councilmembers – to respond to community needs.

In terms of the Planning Commission's responsibilities for implementing the General Plan, Mayor Driscoll asked to what extent the Planning Commission may in effect negotiate with the terms of the General Plan – for example, introducing new elements to an application in exchange for concessions in interpretation of the General Plan. To reiterate her prior statement, Ms. Sloan first said that the Planning Commission applies General Plan policies and the regulations in the Zoning Ordinance to specific factual situations, which, she said, differs slightly from "implementing" the General Plan. Over the 30 years she's been practicing law, Ms. Sloan said, more and more she sees development as a negotiation. The quasi-judicial matters – such as subdivisions, site development permits, use permits, variances, etc. Certain findings must be made, and they must fit into the community and its conditions. Those conditions sometimes become subject to negotiation, she added. Still, however, the law constrains the kinds of conditions that can be imposed, she explained – they must be reasonably related to the subject of the permit. As applicants have challenged conditions, the whole theory of nexus has emerged, which is the legal term for this relationship. According to Ms. Sloan, two primary cases about nexus came down from the U.S. Supreme Court. The first says there must be a subject matter nexus (Nollan); the second says that it must be proportional (Dolan).

As Mayor Driscoll recalled, Dr. Fogarty felt there was no nexus between what he was requesting and what was suggested to address it. Because it involves a past action, Ms. Sloan said she could use that as an example. If the applicant wanted to extend his curfew but it would create light and noise issues, it would be reasonable to have conditions related to window blinds and trees shielding the light, and to prohibit use of a microphone or loudspeakers after a certain time, etc. At one point, a question came up about whether the Fogartys could be required to add a public trail in exchange for longer hours, and Ms. Sloan said no – that there's no nexus between a trail and hours of operation.

Vice Chair Zaffaroni said that the Portola Valley Municipal Code contains a rather long list of potential conditional use permit conditions that the Planning Commission has discretion to consider, including, for example, street dedication, trail easements and open-space preservation. She asked Ms. Sloan to further explain the nexus issue in light of these specifically authorized types of conditions. Ms. Sloan suggested that it's important to review that list in the context of California case law, and also noted that 1) the Municipal Code is old and 2) the conditions on the list are suggestions that would be reasonable in some cases. She said, for example, that when the Blue Oaks Subdivision was approved, there was a reasonable nexus with conditions that required public trails and a certain amount of open space, because the development was bringing 36 housing units into an area that previously had been all open space.

Because there won't be a specific nexus in each situation, Vice Chair Zaffaroni asked how the Planning Commission could determine whether a nexus exists for a specific set of facts in an application the Commission is considering. In general, Ms. Sloan said, an applicant who wants to put in a subdivision can be asked to widen the street and put in a new sidewalk, for instance. If the application is for a new home, however, it would not be proportional to ask for the street to be widened, she said. Ms. Sloan said that probably the best alternative if the Planning Commission finds itself struggling is to ask Mr. Vlastic to ask her or to ask her themselves, in which she might be able to provide helpful case examples.

Even before the preliminary review stage, Mr. Vlastic said, staff might look at a project within the context of the Zoning Ordinance, try to anticipate a discussion with the Planning Commission and consult Ms. Sloan. If a project would likely have a major impact on traffic, for example, he said, there may well be an appropriate nexus with a road improvement or widening. Ms. Sloan agreed with Vice Chair Zaffaroni's

observation that normally it would be up to staff to meet with the applicant and negotiate mitigations in such situations.

Ms. Sloan said that a good example of a complicated use permit that involved extensive negotiation was The Priory. She recalled five or six meetings to discuss, among other things, the Town's use of The Priory's facilities in exchange for the student body increase.

Mr. Vlasic said that among the first thing staff does when an applicant submits a request for an amendment to a conditional use permit is to examine existing conditions, compliance with those conditions and whether there are any problems. If there are problems, the application may be incomplete or may require modifications. He said that staff has undertaken regular reviews of CUPs, in fact, to avoid finding itself in the difficult position of finding problems with an existing CUP when an applicant comes in with a request to amend it.

In terms of the proportional aspect of the nexus, Mayor Driscoll asked whether that also applies to comments from the public. For example, he said, if a distant neighbor to the Fogartys had complained about noise and light, would that be given as much weight as the comments of an adjacent neighbor? Ms. Sloan said that would be a judgment call. While common sense would suggest paying closer attention to the adjacent neighbor, it would be appropriate to consider other comments proportional to the reasonable impacts.

Councilmember Richards asked whether there's a process whereby an applicant can get an "extra hearing" before a matter goes to appeal. Ms. Sloan said that there probably are situations in which an applicant can press the Planning Commission so that they can appeal, but there is no mechanism by which they can go directly to the Town Council otherwise. Sometimes, Mr. Vlasic added, people have used the Oral Communications period on the Town Council agenda to raise issues they want the Council to look into.

Councilmember Toben said that he can imagine a situation wherein an applicant has gone through the process with the Planning Commission, and a new condition comes in at the 11th hour. In that case, he asked, could the applicant request a re-hearing. Ms. Sloan said that would probably be fine if the Planning Commission agrees, in which case the hearing would require re-noticing, etc.

Councilmember Wengert asked whether we've built efficiencies into the process – or failed to do so – in terms of combining Planning Commission and ASCC visits, meetings, site reviews, etc., in an effort to expedite the process. Chair McKitterick said that joint Planning Commission/ASCC site visits have become commonplace. Mr. Vlasic said that particularly when an application involves a homeowners' association, staff tries to schedule at least one meeting that includes an overall presentation to the Planning Commission, ASCC and the HOA. It often takes the form of a preliminary review, he said, in which all parties have the opportunity to talk, react and raise issues.

Mr. Silver asked whether an issue might be opened for a re-hearing at the request of the public, or just the applicant. Ms. Sloan said that once the Planning Commission makes a decision, a member of the public would need to appeal. Mr. Silver said that he believes it's important to have "what's sauce for the goose be sauce for the gander" – that the public should be given the same consideration as the applicant. When he recalled an example from the 1970s of the Town Council revisiting an issue, Ms. Sloan replied that the rules for the Council to reconsider matters differ from those that apply to the Planning Commission. Mr. Vlasic said that with most applications, the matter is typically continued to another meeting if conditions are crafted during the course of a meeting.

Mayor Driscoll said that one thing that sometimes slows the process is when the application itself is incomplete or vague. Also, as Ms. Sloan pointed out, every project must be reviewed in the CEQA context; although some projects are exempt, others require a negative declaration or an EIR. In some cases, she said, applicants question the need for information that CEQA requires, e.g., a biology report.

When Commissioner McIntosh inquired about complaints that prompted this joint meeting, Mayor Driscoll said that his idea was to discuss the issues surrounding those complaints. Noting that hearing complaints is part of what the Mayor does, he said what's important is to contemplate our actions, do a better job of communicating and avoid getting ourselves in trouble. Mayor Driscoll said that he also wanted this meeting to prompt a dialog between Councilmembers and Commissioners.

Vice Chair Zaffaroni, echoing earlier remarks of Commissioner Von Feldt, said that it's very helpful when applications come to the Planning Commission fully developed. If an application keeps evolving, she added, delays in the process aren't the Commission's fault, in that each amendment calls for due attention and additional comment time for affected individuals.

Chair McKitterick said that the minutes of every Planning Commission contain a record of what happened with each application. He added that he stands by everything the Planning Commission has done. The problem, as he sees it, is more a perception that people were caught up in a process that they may not have completely understood up front.

Chair McKitterick recalled a fairly recent application on which staff made an 11th hour change as a result of a committee report that came in just two days before the public hearing. The applicant was upset, and rightly so. Chair McKitterick said that he found out what happened, it was discussed at Commission level, and it worked out. However, as an upshot of that case, he and staff are now communicating more about the processes for certain applications. The stronger emphasis on communication works both ways as well, he pointed out. In terms of accountability Chair McKitterick gave an example of an applicant who wanted staff to prepare a CUP in two days, and because he was informed about it, he was able to explain why it couldn't be done.

Commissioner McIntosh said that clearly, it doesn't serve the applicant when an application is vague and it draws out the process.

Commissioner Gilbert said another time factor is the Planning Commission's need to balance the applicant's desires and the general community's. She said the Commission bends over backwards to ensure they have all the information necessary to achieve that balance.

Councilmember Wengert said that another side of this issue came out in the T-Mobile cell tower situation, in which a Planning Commission ruling was overturned by the Town Council. It's important that the Council communicates with the Planning Commission about the process the Council went through and how it reached a different conclusion. Chair McKitterick noted that the minutes contain that record. Commissioner Von Feldt suggested it might be appropriate for the Town Council liaison to present the information.

Chair McKitterick said that in terms of the controversial applications, there are some issues on which the Planning Commission feels the Town Council should make the ultimate decision as the Town's elected representatives. Mayor Driscoll said that he thinks about the Planning Commission and Town Council roles philosophically, in that he believes the Planning Commission represents the future Portola Valley wants to shape, and the Council represents the current reality. Mayor Driscoll also said that he appreciates hearing an applicant's "grand plan" for a property. The piecemeal approach, he said, leads to creeping toward a Town we don't want to be.

Ms. Elkind said that she believes one of the biggest problems the Planning Commission faces comes with applicants who don't clearly state the full intent of what they want, which leads to a back-and-forth dance between the Commission and the applicant, with the Commissioners trying to be fair but uncertain about what they're dealing with. She recalled a project that "dribbled in" to the Planning Commission when she was a Commissioner that involved only one house. She said it was clear that the project would be a viewshed issue, but the way different requests trickled in and got approved ended up creating problems with a very large retaining wall and other issues. She also said that she believes it's important for the

Planning Commission and the Town Council to support staff in the pursuit of information so that applications are as clear and complete as possible.

Mr. Silver said that when he served on the Town Council, before taking a legislative action in which the Planning Commission was involved, there was a practice of going back to the Planning Commission for comment if the Council wanted to make any changes. He acknowledged that it made the process take longer, but there was more assurance of better communication, and he would like to see the additional back-and-forth institutionalized again.

Mayor Driscoll reiterated an earlier point, that he'd like to see the Town Council and Planning Commission have a joint meeting on an annual basis.

WRITTEN COMMUNICATIONS [9:35 p.m.]

(5) Town Council September 30, 2011 Weekly Digest

a) #3 – Memorandum to Town Council from Leslie Lambert regarding Phillips Brooks School Update – September 26, 2011

According to Mike Rantz, Treasurer and member of the Phillips Brooks School Board of Trustees, a parcel of land immediately east of Alpine Inn and Los Trancos Creek in unincorporated Santa Clara County was placed on the market for sale in July 2011. The property had been purchased as an investment. Mayor Driscoll said that this is consistent with what the school told the Town a few years ago.

b) #4 – Email from Sheri Spediacci regarding letter from Brisbane City Councilwoman Sepi Richardson – ABAG Election – September 27, 2011

Vice Mayor Derwin said that she'd be going to the ABAG meeting and voting for Councilwoman Sepi Richardson, who represents San Mateo County on the ABAG Board of Directors, serves as Vice Chair of Finance and Regional Planning Committees, and is running for the position of ABAG Vice President.

ADJOURNMENT [9:40 p.m.]

Mayor Driscoll adjourned the meeting in honor of Steve Jobs, Apple's legendary co-founder, who died today after a long battle against pancreatic cancer.

Mayor

Town Clerk