

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

Vice Chair Zaffaroni called the meeting to order at 8:04 p.m. Ms. Lambert called the roll:

Present: Commissioners Elkind, Gilbert and McIntosh, and Vice Chair Zaffaroni  
Absent: Commissioner McKitterick  
Staff Present: George Mader, Town Planner  
Richard Merk, Council Liaison  
Leslie Lambert, Planning Manager

ORAL COMMUNICATIONS

Vice Chair Zaffaroni welcomed Commissioner Gilbert.

REGULAR AGENDA

- (1) Discussion of CUP X7D-55, Conditions of Approval Regarding Sewer Connection, 888 Portola Road, Douglas

Town Planner Mader reviewed the agenda memo of 1/31/08. He said the Douglasses just received a letter (dated 1/24/08) from West Bay Sanitary District on the process and costs for hooking up to the sanitary sewer. Ms. Lambert said she understood the Douglasses' attorney also spoke with WBSD

Lisa Douglas noted that there were two places to connect to the sewer, and it was not yet known which was the best. Responding to Town Planner Mader, she said it was difficult to get a call back from WBSD, and she was still waiting for clarification of a number of issues. Ms. Lambert said she spoke with the manager, Tim Clayton, and asked WBSD for their cooperation and help. She said she would place another call. Town Planner Mader suggested the Douglasses make a report at the next Planning Commission meeting on 2/20/08. Commissioners agreed.

- (2) Discussion of Amendment to Nonconforming Use Provisions of the Zoning Ordinance

Town Planner Mader reviewed the staff report of 1/31/08 on proposed amendments to the non-conforming use provisions of the zoning ordinance. He noted that he annotated a copy of the amended provisions to correlate with the existing ordinance. He said the Town had only one nonconforming use. The existing ordinance was based on ordinances for other communities that might have a lot of nonconforming uses, which needed to be phased out. That was not an issue for the Town. Additionally, he said Commissioner McKitterick had put a message on the PV forum about tonight's meeting; there were some inaccuracies, which he said he would bring to his attention.

Vice Chair Zaffaroni said it would be more efficient if housecleaning items such as this could be moved along more expeditiously so there weren't gaps of six months or a year.

Town Planner Mader confirmed for Commissioner Gilbert that old Section 18.46.030 on construction approved prior to enactment of the zoning ordinance had been removed. There was, however, a provision addressing continuation of existing nonconforming uses and structures (new Section 18.46.010). Responding to Commissioner Gilbert, he confirmed that the requirement to reconstruct structures damaged fifty percent or less within 6 months had been deleted (old Section 18.46.080).

Responding to Commissioner Gilbert, Town Planner Mader said one subtlety between Section 18.46.030 A and B was that in B, if the structure complied with height and floor area limitations, it could be restored to the same height, floor area, building coverage and impervious surface, but not to the same setbacks. Referring to new Section 18.46.050 (replacement of buildings in earthquake fault setbacks), Commissioner Gilbert

said the language talked about cases where the damage was greater than 50% of the structure's current value. She questioned why damage less than 50% was not addressed. Town Planner Mader noted that new Section 18.46.030.C indicated that this provision did not apply to buildings addressed in Section 18.46.050. Vice Chair Zaffaroni said since new Section 18.46.050 referred only to situations where the damage exceeded 50%, one could assume that new Section 18.46.030.A pertained to situations where the damage was less than 50%. But, she was not comfortable leaving it in limbo. Town Planner Mader said the Alquist Priolo Act might also apply and was normally more restrictive. Additionally, the Building Code could also affect the ability to reconstruct the building. Other than that, he agreed that new Section 18.46.030.A would apply.

Responding to Commissioner Gilbert's question on new Section 18.46.050.2, Town Planner Mader said the geologist would assist in determining where the rupture zone was. Vice Chair Zaffaroni noted that the Commission had not reviewed section 18.46.050 for this amendment.

Vice Chair Zaffaroni said the Commission had been asked to address old Section 18.46.080. In the original language, it incorporated a definition of "involuntary damage" as damage caused by fire, flood, explosion, wind, earthquake, war, riot, calamity, etc. A definition of "involuntary damage" had been incorporated in both the creek ordinance and Resolution 500. Town Planner Mader said he recalled that the Town Attorney felt "involuntary" covered it. He said he would check with her to see if she felt something should be added. Vice Chair Zaffaroni said there could be situations where there were questions about whether the damage was involuntary. At a certain point, any building would probably collapse with age. Town Planner Mader reiterated that he would raise the question with the Town Attorney.

Vice Chair Zaffaroni said the original language in old Section 18.46.080 with respect to less than 50% damage used the words "restored" and "reconstructed." The new version (Section 18.46.030.A) used the word "repaired." "Restored" and "reconstructed" were used in new section B, but not in section A. Town Planner Mader said he did not recall why it had been changed. He agreed it could be modified to add clarity. Commissioner Gilbert said she recalled reading that "reconstructed" was defined as building from the ground up. Commissioner McIntosh said he recalled the Commission had decided to use "repaired." Town Planner Mader noted that "repaired" was a very broad and general term. The 50% was the key issue, which could prevent you from rebuilding the whole structure.

Vice Chair Zaffaroni said there was a minor inconsistency in Section 18.46.030.A versus B. In B, it referred to "amount of impervious surface" but just "impervious surface" in A. She suggested deleting "amount of."

Referring to new Section 18.46.040 (voluntary demolition), Vice Chair Zaffaroni said the meaning of "including foundation" wasn't clear. Town Planner Mader said the intent was to define what complete removal of the structure was. If you kept the foundation, you still had a part of it there. If the foundation was left in, you could rebuild in that location. If you took it out, you had to conform to the setbacks. Responding to Commissioner Gilbert, he said if the structure was voluntarily removed and the foundation remained, you could rebuild it. Vice Chair Zaffaroni said that was more liberal than what generally applied to involuntary damage. Town Planner Mader said for voluntary demolition, you could require a remodel of more than 50% be moved to a conforming location, which would be more consistent with involuntary demolition. Vice Chair Zaffaroni said it didn't make sense to have a more stringent rule with respect to involuntary damage. You would assume it would be more liberal in those situations. Town Planner Mader noted that Ms. Sloan felt there should be something in the ordinance that addressed voluntary demolition. He agreed this was an inconsistency. If it was voluntarily damaged, they should be held to the same rules as involuntary demolition.

Commissioner Gilbert suggested "When a nonconforming structure or any portion thereof is voluntarily demolished..." That indicated that if you removed just one wall, you would have to conform. Vice Chair Zaffaroni said that was more stringent. Town Planner Mader said he interpreted it to mean whatever was being changed would have to conform—not the whole structure. If you modified the height of the building, that would have to conform. Commissioner Elkind said that would not force conformance with setbacks.

Vice Chair Zaffaroni said the language should be clarified since there were so many opinions. She suggested Town Planner Mader speak with the Town Attorney and draft a memo to the Commission.

Commissioner Elkind said the Commission should provide direction. She thought it made sense to have voluntary demolition conform to the same requirements as involuntary. Commissioner McIntosh thought voluntary should be more stringent. Commissioner Gilbert suggested that if it was more than 50%, it should conform. That would make it consistent. Responding to Commissioner Elkind, Town Planner Mader said if a small part of the building was being changed, the whole building should not be required to conform. That was why the 50% rule had been used.

Commissioner McIntosh said there could be a situation where there was one room that encroached on the setback. If that was torn down, the question was whether you should be able to rebuild it within the setback. Councilmember Merk said if you had a room that was sticking out into the setback, you couldn't increase it. He couldn't imagine anyone voluntarily tearing down something and rebuilding it exactly the same unless there was a reason for tearing it down. He thought "portion thereof" was confusing. With respect to the foundation, Town Planner Mader said if it was removed, you couldn't put it back. If you kept the foundation, you could rebuild on that. Councilmember Merk said someone might need to replace a corner of the foundation that was cracked in an earthquake. Commissioner Gilbert said that would be involuntary damage.

Commissioner McIntosh suggested taking out "or any portion thereof, including foundation." Vice Chair Zaffaroni said that went back to the original policy reason for nonconforming use provisions. The idea was that over time, nonconforming uses would eventually be brought into conformance as structures became old or abandoned. The reason for that policy was that the Town had chosen to adopt certain standards as time went on for things like yard setbacks, which didn't exist at the beginning. There were a number of nonconforming structures in Woodside Highlands. In one case, the house burned down and the new owners wanted to build a house right next to the house next door. The house next door didn't want it to be built that close again for fear of fire. The yard setbacks provided a degree of privacy and safety. As time went on, most people would probably support the idea of having yard setbacks respected—provided they could be. If they couldn't be, there was the variance provision. The Town specifically allowed exceptions in situations where something could not be moved out of the setback area. When there was a voluntary demolition, she felt the structure should be moved out of the setback area and respect the other requirements when possible. The question was whether there were some exceptions that should be allowed for voluntary demolition.

Town Planner Mader said if someone had involuntary damage, the Town tried to accommodate them. Vice Chair Zaffaroni agreed and said financially, they might not be ready to rebuild their house. If you did it voluntarily, that usually meant you had the funds. Town Planner Mader said if the building was taken down voluntarily, you basically started from a clean slate. He thought it was reasonable to be more stringent than in situations that were involuntary.

Vice Chair Zaffaroni said there could be a situation where someone voluntarily razed the house and left the foundation. As long as the foundation existed, Section 18.46.040 as written would allow them to rebuild—even if it was demolished more than 50%. If it was involuntary and more than 50%, they had to respect the yards, etc., if possible. She felt section 18.46.040 should be modified. Commissioner Elkind suggested deleting "including the foundation." Town Planner Mader said "including foundation" modified "any portion thereof." Vice Chair Zaffaroni suggested "when a nonconforming structure or a portion thereof" and take out "including foundation." Commissioners agreed.

Responding to Commissioner Gilbert, Town Planner Mader said if a nonconforming use was in a building that was not designed for a nonconforming use and it ceased for six months, you couldn't reinstall that use. If it was a building that was designed for nonconforming use and it was more than 12 months, you couldn't put it to a nonconforming use again. Vice Chair Zaffaroni noted that there was only one nonconforming use in Town. She suggested deleting "structure occupied by a nonconforming use" in Section 18.46.040.

Commissioners agreed. Commissioner Gilbert noted that “structure occupied by a nonconforming use” should be removed from the section title as well. Vice Chair Zaffaroni noted that “structure occupied by a nonconforming use” was also in Section 18.46.030. She suggested Town Planner Mader discuss it with Ms. Sloan. She added that this language was all carried over from the older nonconforming use provisions. If each time a cleanup was done, the whole chapter was looked at, it would extend the process. When the Commission originally worked on this, just those provisions that had been problematic had been looked at. The Commission didn’t go through it section by section. Town Planner Mader concurred, noting that the provisions on earthquake setbacks had not been looked at. He questioned whether that was necessary.

Referring to new section 18.04.258, Vice Chair Zaffaroni said in the first clause, “parcel area” was included, but in the second part of the sentence, it was not included. Town Planner Mader said it could be added for consistency.

Town Planner Mader said he would discuss the recommended changes with the Town Attorney. Vice Chair Zaffaroni said she would like to see the revised version. Town Planner Mader said he would circulate it and asked Commissioners to submit any comments. Vice Chair Zaffaroni asked if there were any public comments, and there were none.

### (3) Discussion of Fire Hazard Mapping

Town Planner Mader said this issue arose when the Fire Marshal, at a council meeting in Woodside, indicated that there were very high fire hazard areas in Portola Valley—including the Ranch and parts of Alpine Hills. In February 2007, the San Mateo County Fire Safe Council contacted the Fire Marshal and wanted to discuss fire hazard maps. Cal Fire was represented at the meeting along with Philippe Cohen from Stanford, and Tom Vlastic. Mr. Vlastic said the map that was shown was difficult to read and had a lot of errors, which were pointed out to the State. Nothing more happened until the Town learned about a map on the Cal Fire web site. The map did not show any very high fire hazard areas in Town, which contradicted what the Fire Marshal indicated. Additionally, State law required there be public hearings locally on these maps; these hearings never took place. The Fire Marshal had recommended that Cal Fire increase the fire hazard in those areas she mentioned at the Woodside meeting; that information was forwarded directly to Cal Fire. A very high fire hazard area that was designated by the State required that local jurisdictions adopt certain regulations for those areas. He understood that the local jurisdiction was the Fire District. The local jurisdiction could modify the maps if they had adequate justification; the State had to accept those, but the onus was on the local jurisdiction to support that change. A letter (dated 2/6/08) was signed by the Mayor and sent to Cal Fire. The letter raised objections to the procedures that had been followed where the Town was not involved. The Town’s letter also indicated that the Town was undertaking its own fire study with Ray Moritz in conjunction with mapping being done by Thomas Reid Associates of the biology, vegetation, steepness of slopes, etc. That material should be available by the end of next week, and he felt it should be submitted to the State. It was not known what that data would show, but it would probably be much more detailed than the State’s map. Whether that would result in any change to the very high fire hazard areas was not known. It was also not know whether the State would respond to what the Woodside Fire Protection District had recommended. He distributed a printout of the State’s map from their web site.

Responding to Vice Chair Zaffaroni, Ms. Lambert said she understood that the Fire Marshal and Fire Chief identified areas that they felt were significant high fire hazard zones. They mapped those areas with comments about the terrain, vegetation, access, fire weather, etc. John Martinez, Cal Fire, indicated that he had had discussions with the Fire Marshal, the comments she provided would be sent back to the State scientists, and a determination would be made whether the map on the State’s web site would be amended. They intended to finalize their maps at the end of this month. Responding to Vice Chair Zaffaroni, Town Planner Mader said “local jurisdiction” was defined as a town, county or fire agency. He felt it was the Woodside Fire Protection District. That was one reason why the State had interfaced with the fire protection agencies and not the cities. Ms. Lambert noted that most fire departments had a municipality that they were under; that was not the case here. Town Planner Mader said the Fire Marshal gave what she thought was an honest appraisal of the hazard to the State for them to consider. Unfortunately, the Town did not fall

under that process. He said he was not certain what the Town could do to modify the information until the Town's study was complete.

Responding to Vice Chair Zaffaroni, Town Planner Mader said TRA was mapping biology, the steepness of slope, vegetation, etc. Some of that work would be helpful to Mr. Moritz. He also had looked at aerial photos in his evaluation. Responding to Commissioner Elkind, he said staff would need to evaluate the maps and information and see what they showed. Some judgments about next steps could then be made. If the maps were helpful, the information would be submitted to the State. The maps might also be of help to the Fire Marshal. He noted that this had come to light only recently. The procedure the State followed was very confusing. They indicated they would be having hearings in each county, but the Fire Marshal did not think there had ever been a hearing in San Mateo County. If the State's map was bad and the Fire District could make a case it was inaccurate, he understood that the local map could override the State's map. Responding to Vice Chair Zaffaroni, he said the Fire Marshal had made a general appraisal. The mapping that the Town would be receiving would be much more detailed. The Town would work with the Fire District.

Responding to Vice Chair Zaffaroni, Town Planner Mader said with a very high fire hazard area, certain State regulations had to be followed. A local ordinance also had to be adopted, and a model ordinance was available. With respect to fire insurance, he said he spoke with a fire insurance rep and the Fire Marshal. Apparently, Insurance Services Office (ISO) did all the mapping for insurance companies. Their main criteria for classifying areas included: 1) distance from a fire station; 2) distance from fire hydrant; and 3) ease of travel by truck. The Fire Marshal indicated that the ISO made detailed investigations of each fire department. They came out and looked at the fire department, training, equipment, water supply, etc. Unless someone could indicate otherwise, ISO was the common base for fire insurance companies.

Ms. Lambert said in the last four years, more and more residents were reporting that their homeowner's insurance or fire insurance was cancelled for various reasons including vegetation. The Fire Marshal had also received calls from residents about their homeowner's insurance. Cal Fire was reviewing the existing CDF map and updating their fire hazard severity zones pursuant to the Public Resources Code. The intent was to complete a map that was for the SRA (State Responsible Areas). The Government Code chapter classified local areas so that public officials could identify measures that would retard the rate of spread or reduce the intensity of uncontrolled fires that threatened or destroyed resources like property. The intent was to have mapping for the State's use for their area. They were hoping that each jurisdiction would do their own mapping. They wanted to make sure that in those areas that they were responsible for, the adjacent town or jurisdiction was doing the same thing in terms of identifying high or moderate hazard zones. Responding to Vice Chair Zaffaroni, she said in very high fire hazard zones, the International Wildland Urban Interface Code kicked in; that was what the very high hazard zones in Town would be required to comply with. The Town and all other jurisdictions in the State had either adopted the new Building Codes or were in the process of adopting them. The Town would be bringing the codes (building code, fire code, electrical, plumbing and mechanical codes) to the Council for adoption in March. The Town adopted the codes by reference and added some stricter requirements, such as fire sprinklers, Class A roofing, undergrounding utilities, etc. A section of the new State codes included Section 7, which related to the Fire Code. That section included the Wildland Urban Interface Code. It included requirements for new buildings located within any very high risk fire area. Right now, none of the areas in Town were mapped in the very high risk area. Responding to Vice Chair Zaffaroni, she said existing structures were not affected by the codes, and they applied only to new structures—not remodels, etc. Vice Chair Zaffaroni suggested investigating to see how the language had been interpreted in other communities.

Ms. Lambert described fuel management at Blue Oaks and the Ranch and construction materials used in both. She said the Fire Marshal took all of those things into consideration. Town Planner Mader said the concern was for the wildland urban interface in Town. He discussed interface at the Ranch and Alpine Hills. He said if an area undertook measures, the Fire District could reclassify the area and list the reasons. That was supposedly not rebuttable by the Director of Cal Fire.

Pierre Fischer, Valley Oak, said the first time he heard about this was an article in *The Almanac*. It had high visibility in early December. A few days later, the council meeting in Woodside took place. He attended, but the Fire Marshal was not there. The planning staff of Woodside made it clear that they saw the map and had spoken with Sacramento. The response they received from Sacramento was that the draft map would become official on March 1, and that the town would be given four months to refine the map. The town could make the map more restrictive but not less restrictive. If Woodside objected to some of the very high fire hazard zones, they had to present clear scientific evidence for the State to change the map. The conclusion from the Woodside planning staff was that there was no chance to get the map changed. They already approved the new building code in December, and they decided to have an outreach program to inform all the residents of the new code and the fire management implication of the new zoning. While the Town's letter from the Mayor was fine, it was two months too late. He questioned whether the Town still had a chance to change anything. Town Planner Mader agreed that was a big question. Apparently, the Fire Marshal gave a copy of the map to the planning department in Woodside, but the Town did not receive a copy. He understood that the local jurisdictions could make modifications, but they had to justify it. Vice Chair Zaffaroni said the Town might have scientific evidence to rebut it, whereas Woodside hadn't done the same kind of studies. Town Planner Mader noted that the rebuttal might be after the final maps were issued.

Responding to Commissioner Gilbert, Town Planner Mader said it was premature to alert the residents because the final map hadn't been issued. The only map was the one on their website. To get people speculating about how that map might be modified or what the Fire Marshal had recommended was premature. Responding to Commissioner McIntosh, he said the Town saw the map that came from the Fire District, including the Fire Marshal's recommendations. Responding to Vice Chair Zaffaroni, he said Pierre Fischer had put something in the Ranch newsletter about the issue.

Ms. Lambert added that the Cal Fire people told her that public meetings were for agencies such as councils, insurance companies and fire departments—not residents—for areas of State responsibility. Town Planner Mader reiterated that there should have been one in each county according to the law. According to Cal Fire, Ms. Lambert said the meeting was last February. There had been very bad outreach by the State's fire office. Town Planner Mader added that they were behind their schedule and were racing to get the map out.

Commissioner Elkind said she thought the public would be quite upset. Town Planner Mader said the Town would do what it could. Vice Chair Zaffaroni felt the community should be informed to the extent possible. Town Planner Mader suggested putting something on the Town website to let people know that the State had issued preliminary maps with final maps due by March 1.

Responding to Vice Chair Zaffaroni, Ms. Lambert said this came up during a Council meeting in October. The Fire Marshal attended, and mapping and the Wildland Urban Interface Code was mentioned.

Jean Isaacson, Santa Maria, asked what the State's goal was in producing the map. Ms. Lambert said it came along with the new uniform building codes and a new section on wildland urban interface. The mapping was for their use for areas that were the State's responsibility. They encouraged jurisdictions that were adjacent to the SRA to look at the issue on their own. If your area abutted a high risk area in the SRA, that town or city should be looking at it on their side as well. Town Planner Mader said it was the Fire District rather than the Town that would need to implement the regulations. Responding to Commissioner McIntosh, he said Chapter 7A of the Building Code addressed a lot of this in terms of new construction. These were things that people should probably be doing in those high risk areas. Responding to Commissioner Elkind, he said he was not certain that people would lose their fire insurance based on the State mapping. Vice Chair Zaffaroni said there were things that the Town could do like put in more fire hydrants or recommend greater clearing of brush. That might help with insurance issues.

Pierre Fischer said he felt it would impact a home's resale value. He spoke with an agent who indicated that

once your home was declared to be in a very high risk zone, it was like saying it was in a flood zone. Responding to Town Planner Mader, he said Woodside had been told that they had until July 1 to refine the map.

Jean Isaacson said everyone in Town should be paying attention to agendas, but in reality it didn't happen. The PV forum could be used, but she felt an article in *The Almanac* would be the best resource. Vice Chair Zaffaroni asked staff to contact *The Almanac*. Town Planner Mader added that it was important for the Town not to have mixed messages on the PV forum. The website was the official Town site. Ms. Lambert noted that the consultant had just started work on an improved website. Vice Chair Zaffaroni suggested that there also be some clarification about what the PV forum was and was not and about the accuracy of the material posted.

Responding to Commissioner Elkind, Ms. Lambert said the Fire Marshal contacted the Town a number of months ago about a new fire code for the District. It talked about clearing, and there had been a lot of discussion with the planner's office and staff about the wording. It addressed blatant, ongoing problems rather than individual properties. Responding to Commissioner Elkind, she said the Fire Marshal planned to have a discussion with the Ranch about the intent of the ordinance. Mr. Fischer said he understood that the clearing was only required if the Fire Marshal felt there was some danger to nearby properties. The Fire Marshal encouraged the Ranch to be pro-active, look at some of these areas, and start a program to remove dead brush. Some work had been done in the past, and the Ranch planned to restart that program.

#### ELECTION OF CHAIRPERSON AND VICE CHAIRPERSON

After discussion, Commissioners agreed to defer the election until the full Commission was present.

#### COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

Ms. Lambert said there would be a field meeting at 3 Redberry Ridge on 2/11/08 at 3 p.m.

#### APPROVAL OF MINUTES

By motion and second, the minutes of the 1/16/08 meeting were approved as submitted by a vote of 3-0, with Commissioner Gilbert abstaining.

ADJOURNMENT: 10:23 p.m.

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Leah Zaffaroni, Vice Chair  
Planning Commission

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Leslie Lambert  
Planning Manager