

PLANNING COMMISSION MEETING, TOWN OF PORTOLA VALLEY, JANUARY 16, 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, McIntosh and McKitterick, and Vice Chair Zaffaroni
Absent: None
Staff Present: George Mader, Town Planner
Leslie Lambert, Planning Manager

ORAL COMMUNICATIONS: None.

REGULAR AGENDA

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

Commissioner McKitterick said he had a number of neighbors who were in support of sewers and would step down from the Commission.

Town Planner Mader reviewed the staff report of 1/9/08 on: a) the background for the condition of the CUP that required hook up to the sanitary sewer; b) new information obtained since the last meeting on the subject; and c) actions the Planning Commission could take. He said the Douglasses' attorney indicated today that they would be submitting an application for modification of the CUP.

Commissioner Elkind questioned what the justification would be for removing the hookup requirement. Putting a condition on a use permit was a contract/promise to the community and the best way to implement Town policy. Removing the condition could create uncertainty with respect to Town policy. She would need a careful analysis and statement by the Town Planner and Town Attorney on the justification for any modification to the permit. While the Douglasses had argued that the condition created a hardship, it was a question of to what extent the Town was responsible for that.

Commissioner McIntosh said everything was well spelled out, and everyone knew what was going on. When the Douglasses hooked up their septic, they were aware of the requirement in the CUP as evidenced by the signed memo of 6/16/04. He wanted to know when the Douglasses first found out how much their costs would be.

Responding to Vice Chair Zaffaroni, Town Planner Mader said the Commission could set a hearing for revocation if the Commission felt strongly that there was a lack of compliance. On the other hand, the Commission might delay that until after the application was received from the Douglasses. If the condition remained, the Douglasses would need to comply with it in a reasonable period of Town; if they didn't, the Commission could set the hearing for revocation. Responding to Vice Chair Zaffaroni, he said it was at the discretion of the Commission whether it wanted to move on revocation knowing that an application was coming in. Vice Chair Zaffaroni said the Douglasses' arguments would be heard under any circumstances. If there was a hearing for revocation, they would certainly have an opportunity to give their arguments. Town Planner Mader said a hearing on revocation was not a basis for modifying the permit. Vice Chair Zaffaroni said the Commission could choose not to move in that direction based on the evidence presented. Town Planner Mader said the Town Attorney felt it would be desirable if the Douglasses submitted an application.

Vice Chair Zaffaroni said the Planning Commission had not been involved in any way with setting a policy with respect to sewer infrastructure in Town. It had never been before the Commission, nor had there been any involvement in its development, location, financing, reimbursement arrangements, etc. To a great extent, the Commission was not in a position to answer specific questions about those issues.

Lisa Douglas said the application for modification of the CUP was requested back in 2006 in a letter sent to Ms. Lambert. It was never scheduled or got lost. Her attorney, Mr. Jellins, had spoken today with staff to find out how to apply for modification of that condition of the use permit. She was not prepared to address how to modify a condition in a use permit tonight.

Responding to Vice Chair Zaffaroni, Ms. Lambert said a request to modify the permit had been made in a letter dated 8/10/2006. At that time, the Planning Commission held a preliminary review for a proposed amendment. There had been a number of questions, and staff was asked to follow up. The grace period had been continued for another year. At the time the letter came in, it was not a formal application for a use permit amendment. That had been discussed with Mr. Jellins today.

Lisa Douglas said all of this had broadsided the Douglases. They started out wanting to just remodel the building. Based on the demolition, it was determined that a new building had to be put in because of the condition of the old building. It took a lot of years to build the building; there had been a lot of uncertainty. When they found out that a sewer might become available, they did not have a failed system at the time. They thought it would be best to connect to the sewer at some time in the near future if the use was a restaurant or heavily used building. No restaurant came in, and it ended up being an art gallery. There was one bathroom, one toilet and no showers. The sewer still wasn't available at the time the septic system was put in. That had to be done to get occupancy. The new septic system had been signed off by the Health Dept. She sympathized with the Bujas and the neighbors. But, the Town was also supposed to join on and would have 2-3 hookups. There had been a lot of discussion with the Town that indicated they were going to hook up. They decided not to hook up and indicated that the cost was too high. The Town decided not to hook up after the Douglases had okayed the CUP. Before the CUP was signed, there was complete understanding that the Town would have two and possibly three hookups, and there were more people coming on board. That would have made economic sense. She did not want to be adversarial with the neighbors, but it had become that way by this process. It was definitely not conducive to the Town and neighborhood. It would be nice to find a resolution somehow. The cost of it was way too high for her and her husband.

Michael Douglas said the property had to be improved in order to make the property presentable to the community. The property was completed, and there were banks to pay, a family to support and taxes to pay. He could not wait 1-2 years for the sewer. The only way to get occupancy was to put in a septic. He asked the Commissioners to see it from his position. He did not want to be a victim to the circumstances and have to satisfy something that was not there when the building was completed. He had spent a lot of money for the septic tank, and he did not want to be a victim.

Chris Buja [*partially inaudible*], Wayside, said he did not want to be adversarial either. He loved the gallery and what had been done there. The CUP was a contract with the community. He did not want to see the permit revoked and the gallery closed. This was an issue of implementation of the requirements. It was stipulated that the hookup be done within a year of May 2005. The costs were known in May of 2005 by West Bay when the entire project was accepted. But, the costs were known some years prior to that; West Bay didn't officially recognize costs until they accepted the project. Responding to Vice Chair Zaffaroni, he said he understood the costs in May of 2003. Responding to Vice Chair Zaffaroni, he said the costs were provided by West Bay. They were responsible for providing the costs in 2005 when they accepted the project. The contracts were laid out, and the work began in May 2003. Responding to Commissioner McIntosh, he said there was no process to communicate to people who might be contemplating hooking up. By October 2003, the trenches were being dug down the alley way. Responding to Town Planner Mader, he said West Bay looked at a total cost per project. The division of cost was based on the number of participants. They could not mandate that someone participate. The requirement that the Douglases hook up came from the CUP, and the timetable for that hookup was within one year after completion of the sewer. He was left with higher costs because the contract wasn't fulfilled. Referring to the cost fact sheet attached to his memo of 12/31/07, he said the cost of the total project in May 2005 was \$824,109.28. That cost was paid for principally by the people who chose to participate: Sausal Creek Associates, the Bujas and the

Mejias. The Town paid for a portion of the EIR. He confirmed that bids were put out, and several contractors bid on the project. Costs were known prior to the construction in 2003. Responding to Vice Chair Zaffaroni, he said he arranged for the bidding. When West Bay looked at how the cost was split, they looked at how many people were hooked up. One home was considered one Equivalent Residential Unit (ERU). A business counted as 1.36 ERUs at a minimum; the Church was considered 2.5 ERUs. The 1.36 shown for Sausal Creek represented the business office. Responding to Town Planner Mader, he said when the houses were built, there would be additional ERUs. When a new home or business joined, they took the current ERU and added one or more for the next user. The Douglasses were originally asked to be 2.36 ERUs. West Bay had agreed to bring it back down to a residence rather than a business. New people paid a fee, and West Bay sent payments out to everyone in the system. If the CUP had been followed in May 2006, the Douglasses would have paid West Bay \$196,766.85 plus some other one-time fees. That would have been split among the current participants based on the number of ERUs. The \$159,004.86 that should have been paid to the Bujas in May of 2006 would have paid down the construction loan, which was still outstanding nineteen months later. Responding to Commissioner McIntosh, Ms. Lambert said if the Douglasses were hooked up, the next connector would pay the Douglasses back \$35,000; the next connector would pay about \$24,000. When everyone was connected, it would be about \$180,000 paid back. Mr. Buja added that one of the reasons the Town funded the original EIR was with the realization that some planning had to be done for the failing systems.

Responding to Commissioner McIntosh, Ms. Lambert said the Town had never participated in a sewer project; it was individuals working with West Bay. The Town's only role was to ensure that all work within the Town's right-of-way was done appropriately with an encroachment permit. Responding to Vice Chair Zaffaroni, Town Planner Mader said Blue Oaks, the Ranch, and Portola Green were all on sanitary sewers, and the developer paid the costs.

Responding to Town Planner Mader, Mr. Buja confirmed that the three parties that hooked up paid the balance of the costs the Town did not contribute to the EIR. The Town paid about \$8,000 of the \$53,000. Responding to Commissioner McIntosh, he said at the time it was not known how big the Town Center project would be; there was a range of 2-6 ERUs, which represented one-half to one-third of the overall project. Responding to Town Planner Mader, he said the Town was characterized as a medium-term prospect, with Woodside Highlands seen as a long-term prospect. Some residents along Portola Road were also seen as medium-term prospects in 2003. Responding to Commissioner McIntosh, he said there were additional prospects south of the Town Center. The boundary was Westridge, but it could be extended. Currently, it went as far as the Sausal Creek property.

Responding to Mrs. Douglas, Mr. Buja said there was a fixed bid for the pump station that included everything from Wayside Road along Portola Road and down the alley way. Pump stations were terribly expensive. The only thing that had been broken out separately was the \$3,000 for the Wayside pipe.

Mrs. Douglas said there were many ways to do the math on the construction costs and how to break them out in terms of who was responsible. Where the pump station was could play a factor in what the costs should be for a property. If you were doing it in feet from the point of the pump station, it would be one cost. Or, there could be an even distribution of the cost between the parties with everyone else reimbursing. Another way was to pay for the amount of pipe that you needed to go to your property. That was never factored in. Commissioner McIntosh said there were probably standard rules. Vice Chair Zaffaroni said the Planning Commission didn't know who set the rules or regulations. Mrs. Douglas said there was nothing set for the Douglasses to agree on. There was no definitive number. The Douglasses had said "yes" not knowing any of this or the math. There were many ways of doing the math as far as costs went.

Mr. Douglas [*partially inaudible*] said before his project was done, his contractor had contacted Mr. Buja and West Bay to find out what was going on. No one returned the calls.

Vice Chair Zaffaroni said normally the party involved needed to take the initiative to understand what they

were committing to in the CUP. Whether the Douglasses tried to get those questions answered with diligence was unknown because there was no factual record. She suggested the Douglasses develop that record and show that there really were no answers available and who was contacted. Mr. Douglas said the contractor tried to get the information.

Richard Crevelt, Russell Ave., said he had worked with Mr. Buja to try to bring sewers to the Highlands. He felt the community needed to support the efforts of people like Mr. Buja who had taken the initiative to provide solutions to more than just 1-2 individuals. As a community, septic was an issue—whether or not people wanted to admit it. Tests in some of the creeks indicated that it was an issue. Efforts going forward needed to provide a solution to an ongoing problem. A lot of people thought of this as a big cost. If everybody got involved and got a piece of it, the cost came way down to \$15,000-\$25,000, which was less than a septic system. Mr. Buja had offered some solutions and had put money out of his pocket. The Douglasses could look at other financing options to help support their commitment to the community as well. Additionally, he hoped the Town would reconsider its position to connect to the sewer.

Bonnie Crater, Wayside, said in May of 2003, Casey Construction started work on the pump station. The costs for the contracts were distributed to all the parties who were interested or who Mr. Buja assumed would be interested because of the condition of the Douglasses' CUP. Responding to Vice Chair Zaffaroni, she confirmed that the Douglasses had the information distributed to them in 2003. Responding to Town Planner Mader, Mr. Buja said the costs were distributed by e-mail to all the people involved. Ms. Crater said in October of 2003, there was a trench dug right in front of the property at 888 Portola Rd. It was clear that some activity was happening. Mr. Buja added that that was when the entire alley way was excavated. Ms. Crater said in August of 2003, the Town issued the permit. Two years later the project was finished in May of 2005. In October of 2005, the SPUR gallery opened. Estimates had been put together for construction costs. When construction started, there was activity in front of the 888 Portola Rd. property shortly thereafter—6 months thereafter. Responding to Vice Chair Zaffaroni, Mr. Buja said the contract was let in May of 2003 and bids were made for the cost of the pump station and the trenching. The request went out in May 2003 to all of the parties concerned—the three who were committed and the one with the permit for that. That was communicated to the Douglasses. May 2005 was the critical date because that was when West Bay accepted the costs for the project; the costs could not be changed from that point. May 2006 was the time when the Douglasses were supposed to fulfill the permit. It didn't happen. In August, the Commission had its first hearing on why the CUP was not being followed.

Responding to Commissioner McIntosh, Ms. Lambert said the project at 888 Portola Rd received the final inspection on the building permit in August 2005. The septic was installed in June or July of 2004. Responding to Commissioner McIntosh, she said the Health Department approved the use of the existing septic system for the two buildings, and it was upgraded and repaired. That was approved in June 2004. The memorandum to hook up to the sewer within a year of its availability was signed in June 2004. Responding to Commissioner Elkind, she said in July 2004, the County Health Dept. allowed the Douglasses to install an upgraded septic system. The County Health Dept. issued a septic system approval. In order to get a final inspection you had to have either a sanitary sewer or septic system. That was why they had been asked to sign the memorandum.

Town Planner Mader noted that Mr. Buja indicated that he sent e-mail to people. The Douglasses indicated that they didn't receive it.

Tom Lodato, Sausal Creek Associates, said in the early stages of planning his project, a self-contained sewer system was considered. That would have been far less expensive than joining Mr. Buja's efforts to join his coalition. At the time, it was thought that the Town and other immediate neighbors would be joining the system, and it would be a win win for all parties. He agreed to join Mr. Buja's group. It came as a great surprise that the Town and other neighbors were resisting efforts to put in a system that was far cleaner than any of the other alternatives being entertained. He did not know the particulars of the Douglasses' situation. He thought the reception would be far more favorable than what was occurring.

Commissioner McIntosh said comparing the Douglasses' situation to the Town Center was comparing apples and oranges. The Town Center was on 11 acres. Two issues had been considered. One was the environmental impact, and the other was cost. An 11-acre parcel had plenty of room for a successful system. Having a septic was a savings of about \$400,000. Responding to Mr. Lodato, he said a leach field wasn't approved or recommended unless there was 1-acre or larger. Mr. Lodato asked if a leach field was more environmentally desirable than hooking into an existing sewer line. Commissioner McIntosh said he understood that in some ways it was. Part of that related to the energy required by the pumps. If you had a good septic system, it didn't have much impact. Vice Chair Zaffaroni said it would vary with all the facts and circumstances. Some people were coming up with very creative septic systems. It depended on the individual parcel and the commitment to energy and environmentally innovative solutions.

Commissioner McIntosh said while he was sympathetic with the seemingly huge amount that it would cost the Douglasses to join the sewer, he was struggling with any justification for them not to do what they said they would. He knew the Douglasses and personally like them. But clearly, the information had been available. It was an individual's responsibility to find out costs, etc., if they knew they were facing hooking up. As much as he empathized with their hardship, he could not find justification for them not having to comply. He favored a reasonable period in which to do so, although they had been given another year. The Town Center was another question that should be addressed later. It was a relief that when all was said and done, it would cost \$10,000 or \$20,000 to hook up. Clearly, Mr. Buja had gone overboard to make this thing work for everybody. He was a reasonable person and a good communicator. The fact that this would get down to a reasonable number made it fair. Unfortunately, West Bay wouldn't do anything to help.

Commissioner Elkind concurred. She couldn't see any reason to change course and take an action that would revoke a condition that had been put in place. In terms of Town policy long-term, the most constructive thing to do was to make a decision that was consistent and supported the commitments that had been made. She hoped everyone would continue to operate in good faith. She recognized how time consuming it had been for everyone and in particular for the Bujas trying to put together a package to build the sewer with a shared system.

Vice Chair Zaffaroni agreed with the two other Commissioners. She felt the Douglasses had done an exemplary job in rebuilding the structure. The SPUR gallery had been a wonderful addition to the community. She hoped they would stay in the community. It was the right tenant for that location and had worked very well. Originally, the Commission had been advised by the Town Planner that if the Commission wanted to allow further time, the Commission could request to amend the petition to allow for a continuance—even to have a longer extended grace period so that the Town Council could be brought into this issue and provide some direction. She did not think that was warranted at this time unless there was an indication that the Town Council was going to provide the Commission with some options other than the two that were before the Commission. She did not know if the option to continue this for a while longer still existed. This had changed since the last meeting on the issue, and it sounded as though the Commission had to schedule this for revocation of the CUP or the applicant could come forward and apply for an amendment. Given the feelings expressed by the Commissioners, she wondered which would be the best way to proceed. There were a number of people in financial limbo here, and it was clear that some form of speedy resolution was needed. Responding to Vice Chair Zaffaroni, Town Planner Mader said the Douglasses had heard quite a bit from the Commission at this point. They needed to consider their next action. Hopefully, they would realize that they were going to have to comply. If they did not comply within a reasonable period of time, then revocation was the option.

Vice Chair Zaffaroni said this was scheduled as a discussion item, but she felt it should move toward a more formal resolution so people had some certainty. Town Planner Mader said a formal resolution, according to the Town Attorney, was to take action to revoke the permit. That might cause the Douglasses to comply with the conditions of the permit because they certainly would not want it revoked.

Commissioner McIntosh said the Douglasses had applied to amend this. Ms. Lambert said they had yet to formally apply. Commissioner McIntosh said the community preferred to work things out. The Douglasses

now had the Commission's sentiment about this issue.

Vice Chair Zaffaroni said if they applied to amend the permit, they would have to pay the fees for the processing. It appeared that the consensus of the Commission was that they would not be successful. Town Planner Mader suggested that the Douglasses be given some time to consider what they heard tonight. This item could be continued to the next meeting. They might come up with a time period to comply or some reasonable modification. It was apparent that the obligation to the sanitary district could continue as long as one was paying interest on that obligation. There might be different ways to handle this. If they came back for an amendment, and the Commission said "no," they would have to comply with the permit at that time. Normally, if they didn't comply, the next step would be to have the Town Attorney talk to them rather than set it for revocation right away. Ms. Lambert noted that the Douglasses could always appeal the Planning Commission decision to the Council.

Vice Chair Zaffaroni said she would like to expedite things and have clarity. But, she understood that the Douglasses and their attorney might want to consider the direction they wanted to go. After discussion, the item was continued to the February 6, 2008, meeting.

Town Planner Mader noted that much of the costs that had gone into this issue had been Town costs and not charged to the Douglasses since they did not have an application pending. Commissioner McIntosh noted that with planning staff preparation and time, it was a significant cost just to conduct this meeting.

Commissioners discussed: 1) Town Council's role in communicating the availability of sewer and encouraging people to take some action; 2) potential hookups; 3) forming special districts; 4) identifying failing septic systems, 5) hookups on Grove and Westridge; 6) initial costs; 7) dealings with West Bay; 8) Council's financial assistance; 9) Town Center partial hookup and costs; 10) Woodside Highlands; 11) subdivisions; 12) assessments; 13) Town's potential contribution towards extending the line; 14) Sausal Creek project and connections; 15) Town's role in forming districts; 16) number of properties that could hook up to the existing line now and costs; 17) getting people interested in forming a district; 18) the Highlands and existing pump station capabilities; and 19) pump station odors.

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

Town Planner Mader reported on the discussion at the last Council meeting on the proposed basement regulations. He said the Council would be forming an ad hoc committee. Commissioner McIntosh said people who studied this issue as much as the Commission had needed to participate. Vice Chair Zaffaroni agreed and said there was no point in having a committee if just one side was represented. Town Planner Mader suggested two Planning Commissioners, two Councilmembers and two ASCC members be on the committee. Commissioners and planning staff discussed comments at the Council meeting, the new study group, interest in reducing energy usage, timeframes, possible participants on the committee, and the opportunity to educate the community.

Vice Chair Zaffaroni said there were six applicants for the Planning Commission vacancy.

APPROVAL OF MINUTES

By motion and second, the minutes of the 12/5/07 and 12/13/07 meetings were approved as submitted by a vote of 4-0.

ADJOURNMENT: 10:18 p.m.

Leah Zaffaroni, Vice Chair
Planning Commission

Leslie Lambert
Planning Manager

