

REGULAR PLANNING COMMISSION MEETING. TOWN OF PORTOLA VALLEY, SEPTEMBER 17, 2003, TOWN CENTER, HISTORIC SCHOOLHOUSE, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

Chairman Breon called the meeting to order at 8:07 p.m. Ms. Lambert called the roll:

Present: Commissioners McIntosh (arr. 8:15), Toben and Zaffaroni, and Chairman Breon
Absent: Commissioner Elkind
Staff Present: Tom Vlastic, Dep. Town Planner
Sandy Sloan, Town Attorney
Pat Shires and John Wallace, Town Geologist
Chris Metzger (Nolte), Town Engineer
Howard Young, Public Works Director
Leslie Lambert, Planning Manager

ORAL COMMUNICATIONS: None.

REGULAR AGENDA

- (1) PUBLIC HEARING: Junglieb Appeal of Administrative Decision re Site Development Permit X9H-476, 170 Shawnee Pass, Walter

Ms. Lambert reviewed the staff report on the appeal filed by Mr. and Mrs. Stanley Junglieb in response to administrative determination made by the Public Works Director approving Site Development Permit X9H-476 which allows for maintenance and repairs to an existing rip rap revetment along a portion of Corte Madera Creek. Ms. Lambert noted the previous property owners installed the existing rip rap revetment without Town approvals during emergency repair work in El Nino 1998. The contractor placed rip rap over the edge of the embankment during high flows. At that time, the Town Geologist was requested to inspect the emergency work and prepared a letter to the Town expressing concerns regarding the emergency placement of the rip rap and recommended additional work to be conducted. Ms. Lambert informed Commission that during El Nino several property owners conducted emergency repair work, at the time the Town Council determined permits were not necessary under the "State of Emergency". She said Pat Shires from the Town Geologist's office is present and would describe the role of the Town Geologist in the review process, and John Wallace from the Town Geologist office is here to provide more detail on the applicants' submittal. In addition, both Chris Metzger, from Nolte Associates representing the Town as Town Engineer and Howard Young, Public Works Director are present to answer questions of the Commission. She noted additional correspondence had been received since preparation of the staff report from the Jungliebs and Lawrence Karp.

Pat Shires said the Town Geologist's role was to review permit applications to assure that the applicants' consultants did their work within the standard of care of the geotechnical industry. The Town Geologist did not design or direct any repairs in Town without specifically being retained by the Town to do so. As part of the peer review process, geologists and engineers reviewed work done by the applicants' consultants. On this project, John Wallace was the Town Geologist's representative; he was a registered geologist and certified engineering geologist in the State with considerable experience in creekbank investigations and repairs. He said he [Shires] had consulted with Mr. Wallace on this project to ensure that quality assurance goals were met and that the applicants' consultant was within the standard of care of the industry.

John Wallace said his involvement on this project began in 1998 after the heavy rains in February. The Town learned that a riprap revetment had been put in without undergoing Town review. Photos were taken of the project at that time when it was approximately 80% complete. There had been no contact with any of the individuals doing the repair. In a March 5, 1998, letter to the Town, three

recommendations had been made, but the applicant had not come in for a permit. The next involvement was in the spring of 2002 with the first submittal for the repair by the current property owners, the Walters. That submittal included an engineering report. The April 2002 review recommended a supplemental plan be generated to allow for smooth, hydrodynamic flow through the creek. The Army Corps of Engineers had also had some significant reservations about some of the proposed riprap at the downstream end. A revised plan was submitted that included laying the slopes further back, laying the toe back to decrease the slope angle, and decreasing the amount of riprap. The Town Geologist's review was dated June 2002 and agreed that the revised plan improved the conditions but did not bring the entire repair up to the standard of care. In the spring of this year, the neighbors and their consultants expressed some reservations about the repair and meetings were held to address concerns about the appropriateness of the repair. At that time, the Town Geologist recommended that the applicant hire an engineer to study the site conditions and determine whether there was a significant hazard from the conditions that were present at the time. Romig Engineers was hired by the applicant, and that report supported the conclusion that the riprap that was placed was essentially a revetment that was large enough to act as a buttress as opposed to a thin layer of riprap over soil that, if eroded, could undermine the soil. In June 2003, the Town Geologist wrote a review report approving the repair plans to lay the slope back. A small portion of the revetment would be laid back. This was essentially a maintenance item that could only improve the situation that existed out there right now.

Commissioner Zaffaroni said the record made reference to the fact that there may have been some federal or State agencies that objected to the work that would be required to properly key the foundation into the creekbed. Responding, Chris Metzger said the Corps of Engineers had jurisdiction over this waterway for anything within a low flow volume channel, which was defined on a creek-by-creek basis. Any work within that area had to have permits from the Corps. They were very protective of any movement of soil or any type of material. Getting permits was a long-term process with uncertain results. Commissioner Zaffaroni said work had been done in the creeks that was properly keyed. She asked if there was something special about this particular site that gave the impression that it wouldn't be approved and whether there had been any attempt to secure approval.

Ron Walter, applicant, said approval had not been sought. He said his application was to extend this area to further stabilize the slope and reduce the angle that existed now.

Responding to Commissioner Zaffaroni, Mr. Wallace confirmed that the toe of the revetment was within the creek and subject to erosion. Mr. Shires added that the huge storm event in 1998 scoured out the creekbed to a low level in some places. Apparently, that happened in this location and undermined the bank. Riprap was placed in that scour created in 1998. He said it might have been naturally keyed to a depth deeper than it would have under other circumstances. The extent to which it was keyed was not known.

Commissioner Zaffaroni said initially Cotton Shires recommended that the foundation be properly keyed into the creekbank. She asked why that recommendation had changed. Responding, Mr. Shires said the recommendation had not changed. It was still recommended that that be done in the long term. This application was for an improvement over the existing condition as a maintenance function. Eventually and to make it right, the keyway needed to be properly engineered.

Responding to Commissioner Zaffaroni, Ms. Sloan said the Town was not required to impose state of the art requirements. The Town's role was to require permits for certain things if the Code required it. When someone applied for a permit, the Town evaluated the merits of that permit. The applicants applied for this permit voluntarily. The Town had no way to ask them to apply for a different permit. Responding to Commissioner Zaffaroni, she said if you wanted to examine policies related to the creek, you could probably impose more restrictions than there were today. It was always hard to require people to do things to structures that already existed. In cases where homes were too close to the creek, you could say that from this day forward, no homes could be within 50' of the creek. You did not have as much

power with something that already existed. In this case, the repair/wall existed. She added that the Town had allowed emergency repairs when El Nino happened.

Commissioner Zaffaroni said the question most relevant to her was whether a provisional solution was one that might pose an increased risk to adjacent property owners or the creek habitat itself. If the answer was "yes," she thought it was better to do nothing. She asked the consultants to address her question.

Commissioner Toben agreed that the critical issue was whether the proposed repair would worsen the risk of damage to the Jungliebs and creek habitat. There was conflicting evidence in the record and presumably conflicting evidence would be heard tonight to answer that question. The position of the Walters and the Town staff was that this represented an improvement of the status quo. But, the Jungliebs and their expert felt that there was some possibility of an aggravated risk resulting from this approach. He did not know what standard of proof he should be operating with in addressing that question.

Responding, Ms. Sloan said when there was an appeal to the Planning Commission, it was de novo. Evidence would need to be heard from the staff, appellant, applicant, and any other members of the public, and then Commissioners would need to weigh everything. Your decision should be supported by substantial evidence; it did not have to be the preponderance of the evidence or even the majority of the evidence, but it must be supported by evidence. Responding to Commissioner Toben, she said the Planning Commission had no authority to compel the Walters to undertake a more extensive repair. If you imposed certain conditions on a project, the applicant always had the option to withdraw the application and do nothing.

Commissioner Zaffaroni said her question was whether there was a greater risk of damage to adjacent property owners and to the creek habitat downstream with this kind of a proposed repair versus the status quo. As the Town Attorney indicated, she said the Planning Commission could not impose a state of the art solution. The applicants had the option of either walking away and leaving conditions as they were or proceeding with the application that they filed.

Mr. Shires said the consultants' reports had been reviewed. Based on their investigation, they came up with the conclusion that this project would improve stability. Based on what we saw in their investigation, it appeared that this project would increase overall stability over what existed today. By laying the slope back and creating a shallower slope angle, it was less likely to have these kinds of failures into the creek. They also removed the amount of area of the repair that was now in the creek flow area. By doing that, you increased the area for the water to flow down the creek. That would then reduce velocity which would reduce erosion and scouring in other places.

Commissioner Zaffaroni said Mr. Wallace indicated that the toe would remain precisely where it was. Mr. Shires said that was correct, but during high flows, laying the slope back would create more room for the water to flow. Responding to Commissioner Zaffaroni, he confirmed that some of the existing riprap would be removed and taken out of the creek.

Chairman Breon asked how far down the rock would be removed and how far back it would be laid.

George Drew, project engineer for the Walters, said he originally proposed a longer repair--to extend the area of the work to the property line. In trying to get the permit, the Corps of Engineers did not think that was necessary because the slope at that part of the property was less severe; they didn't want to destroy the habitat. The proposed work was limited to the area in front of the wine cellar, which was where it was particularly steep. He used the plans to describe the cutback, slope, rock removal and replacement. Responding to Chairman Breon, he confirmed that the work would stop before the redwood trees, which were further to the left. Responding to Commissioner McIntosh, he described the water flow during

summer and in storm conditions and the effects on the flow in the area to be widened.

To the question of whether the repair could make things worse, Chairman Breon said there was a claim that by placing additional rock on a less than well engineered base of rock and having smaller rocks supporting larger rocks, the instability of the slope would be increased. He asked for comment.

Glenn Romig, geotechnical engineer, said laying the slope as proposed would reduce the driving forces that tended to force the creekbank to fail and would result in a more stable situation. The rock that had been brought in was in the 1.5-3' diameter range, which was comparable with what the contractor was proposing to bring in. Responding to Chairman Breon, he said stresses on the rock below would be reduced by the slope angle. Responding to Commissioner McIntosh, he said 3-4 large stones in the creekbed should be pulled out during the repair. Mr. Drew said he was not sure whether that was part of the plan, but they probably should come out. Additionally, there were some gabions in the creek that would not be touched.

Commissioner Zaffaroni said there was some inconsistency in how many tons of additional rock would be brought in. She asked if it was 25 or 240 tons. Responding, Mr. Drew said it was more like 25 than 240, but he said he wanted to double check that. Later in the meeting, he said the estimated amount was 100 tons. Originally, 250 tons was anticipated, but that had been cut back.

Responding to Chairman Breon, Mr. Wallace said putting in a keyway in the entire revetment would first involve creating an access path for equipment to get down into the creek. Then you would have to remove most of the existing revetment to excavate a keyway and replace the riprap. The creek would have to be diverted around the keyway site. You would have to excavate down a minimum of 4' below the existing creekbed where large rock would be placed. The keyway would be a minimum of 2-3 stones in width; those would be the larger stones. It would be about an 8-10' keyway all along the 100' revetment at 4' below creek level. It was not impossible to do but would be a significant amount of work. Additionally, all the vegetation would have to be removed. Mr. Metzger added that a full hydrology study of the creek, up and downstream, would be required to find the limits for that kind of work. Also, it might not be possible to put in that type of material; regulatory agencies were now requiring different types of fixes. It would be a very long process. Responding to Commissioner Toben, he said each agency had its own requirements depending on what they protected. If someone came in for that kind of work, they would be required to contact all the agencies.

Responding to Commissioner McIntosh, Mr. Walter said access to the creek was part of the design. Responding to Commissioner McIntosh, he said a stockpile of rock had been discussed but that was not part of the proposal. Responding to Chairman Breon, Mrs. Walter said the old shed would be demolished and some of the trees removed.

Chairman Breon opened the public hearing.

Stanley Junglieb, appellant, said he had been in contact with Ms. Sloan and Ms. Lambert and appreciated the situation the Town was facing. Obviously, he preferred that the repair be done the right way. Minimum standards were not the right way. The question had been asked whether the repair would make things better or worse. He asked that that be addressed by Mr. Karp, whom he had worked with for a number of years on different projects.

Lawrence Karp, geotechnical engineer, said he had prepared a report for the previous owner of the property in 1991. He told them that they didn't have a foundation then and that it was going to fail in a matter of time. It did fail. The proposal was to cut some of the rock out, add rock, and lay back the slope. There was a remark that this would reduce the driving forces. If you had a slope with an incline plane, it had a horizontal component and a vertical component; the slope was the result of those forces. If you laid the slope back a little bit but it was not keyed in, it could dish out. If it was steeper, the forces

went downward. He displayed pictures and described the "non-foundation" which he felt would have to be removed. The owners needed to know that now. He found it hard to believe that they would try to put this rock on top of that non-foundation. When they took it out, they would have to cut a key. As far as Mr. Metzger saying he thought it was going to be a big mess, he felt Nolte had been remiss in evaluating this situation, in looking at the record, etc. He also thought it was naive to think that here in Portola Valley, the United States Army would come in and watch over what you were doing. They had no one stationed here. He described his professional background in marine construction and said he dealt with the Corps of Engineers all the time in navigable waterways. Additionally, he said he had walked up and down the creek many times since 1991 and had not seen any fish. Once this project started, this material would come down in the creek whether a key was cut in or not. It was an academic exercise to talk about what the Corps of Engineers would do. They would not go out and get a court order and stop somebody from constructing a job properly. The Walters should be prepared for actually doing the job right. If they didn't do the job right, it would fail again. It was not a question of if; it was when. Nobody was looking at the macro picture of what was happening here. It was a very sharp turn and an S-turn. He described the water flow at 10'; there was debris in the trees 12-14' above the surface. When that thing hit this structure that did not have a foundation, it would fail. That was a restricted area in the creek, and as in 1998, somebody would have to do emergency repairs. By then, these people will have lost trees; trees were important too. There were two buildings there, and one of them was close to the creek. He had done the engineering for the gabions down below there. He tried to get the previous owner to fix it right. It was a constricted, close area in the creek. When that came down, the water would have to go over that riprap. Without a foundation, it would fail. He said Mr. Drew knew this. He said he [Drew] would work around this. You ought to just face it and take out those concrete sacks that were there. They were no good. You would not find any text or other project where there was something like this. These things were put in there to try to support the slope 20+ years ago and were falling apart in 1991. Everybody just ignored it. They had disclaimers, and this would not be something where people took a lot of responsibility. When the time came, everyone would be pointing at everybody else and the Town. If I was working for the Walters, I would tell them to bite the bullet and do the job right. We're not talking about 150'. We're talking about just the area they're working on--maybe 25-30'. Just the part in the photos needed to come out--right where the water hit head on. He said Mr. Drew was going to have to do it anyway, but we just can't absolutely rely on that. We need to create a record, write letters, and protest the plans. The report supporting those plans did not show a proper foundation for this structure. If one rock was dislodged because it didn't have adequate support, the rest followed it. It was like dominos. These people would be asleep. The water would erode and scour so fast, and it would cause a lot of damage. This should have been fixed a long time ago. Now there was a chance to fix it. There was no water in the creek right now. Mr. Drew was probably ready to go on it. You just needed to follow the observational approach, let the engineers make a determination in the field, and do the work. Probably that was the way it would happen anyway, with the Walters paying a little bit more for it. There was nothing wrong with it being steep. With this type of rock, he had done less than 1:1 slopes with keyways with 100% success rate. It was a matter of placing rock and fitting it in. Most important was the foundation. Everything had a foundation. There was no foundation shown, and no foundation planned. He expected it would happen anyway, but that was not good enough for these people. They needed to have a record that it was needed.

Chairman Breon said if they went down into the base of the creek and below to put in a foundation, he did not think the work could happen before the rainy season because of the permitting process. Mr. Wallace confirmed it would have to go through the Corps of Engineers. Mr. Metzger added that putting in a keyway would require permits from the Corps of Engineers, Fish and Game, and the Regional Water Quality Control Board or letters from them stating that it was not within their jurisdiction. He felt it would be in all three agencies' jurisdiction. Ms. Sloan noted that there were letters in the record from all three agencies.

Mr. Karp said it could be done if they started on it. They could turn in as-built drawings. As a Town, you did not need to go in there and say "Stop Work" because you weren't following the plan exactly. That

was not the way these things were done. These things were done by what was necessary in the field. Mr. Drew didn't know what was underneath every one of those rocks. Right now, they intended to leave that. He said Mr. Wallace said they thought that was an adequate foundation. It's not. History may tell why Nolte or somebody else didn't do what they should have. But, that would not excuse the fact that it should be done right. It still could be done right. What was he [Drew] going to do when he got down there and there was no foundation. He would have to do something. He couldn't put 100 tons of rock on something without a foundation. Responding to Chairman Breon, Mr. Karp said he was at a meeting where Mr. Wallace made the comment about the foundation.

Mr. Wallace said it was spelled out in at least three of the letters written by Cotton Shires that what was out there did not have a foundation that was built to the standard of the industry of today. At issue was the application at hand. The application was to do, essentially, maintenance--patch up what's there, take some rocks out, lay the slope back, etc. That was what the Town Geologist had been asked to review. The letters recommended considering a keyway, but this application was not that repair project.

Chairman Breon asked Mr. Drew what he would do if he got in there and felt the rock he would be putting on the top might be too much for the slope and foundation below it. Responding, Mr. Drew said he would stop work and ask for a change. He added that he met with the Army Corp representative at the site. The Fish and Game people carried guns. It was not that easy to just say, "I'm going to build it my way, and I'm right." That wouldn't work. They were very demanding about approving things. If he uncovered a problem, he would have to stop, redraw the plans, and, perhaps, come back a year later.

Mr. Karp said in 1991, the gabion walls were put in. Permission was only given to put them in right at the flowline of the creek. They had to be deeper, and we simply notched the gabions in 30". Everybody said it was fine. The contractor had told the owner it would cost more, but it should be done right. We got them in, put them in a key, and they were great. But, the previous owner did not want to spend the money. The whole thing hinged on money.

Mr. Metzger reiterated that if anything was not to plan in the field, the Town would require new plans be drawn up and new approvals be obtained by the applicant from the Corps, Fish and Game, and the Regional Board.

Commissioner McIntosh asked if removing rock, lessening the slope, and replacing rock would place more weight on the existing rock down below. Mr. Drew said he thought it would take off weight on the rock below because the angle would be changed. The thickness of the rock would also change. Responding to Commissioner McIntosh, he recalled that the cement bags were not at the bottom of this area; they were further upstream by 100'. There had been some unraveling with large pieces of riprap in the flow area that could be removed. There were also gabions that he did not want to touch. Chairman Breon said he did not feel the cement sacks were 100' away but agreed they were further upstream.

Responding to Commissioner McIntosh, Mr. Karp said the place where it was failing was failing because it was right on a turn. You needed to put a foundation where that was. He felt it should be done right. By attrition, it had probably reached a point of stability right now. He felt you might as well just leave it. If you were going to work on it, you needed to do the right thing. Once they started on it and there was a failure, you would hear about it for years. It could be done right for a little bit more. Additionally, Mr. Metzger said everything would have to be stopped. As a practical matter, that was not the way it was done. Chairman Breon said a lot of people disobeyed the law and worked without permits. That was something not to be encouraged. Mr. Karp said you had to have an external stability evaluation of the structure and internal evaluation of the design. The sack riprap was right where it failed. If you weren't going to work on that, he asked what the point of working on it was.

Commissioner Zaffaroni said Mr. Karp seemed to feel that making the inclination more gradual would increase the pressure on the lower unfounded rock and maybe increase the risk of collapse. She said

Mr. Drew seemed to feel the opposite. She asked what risks Mr. Karp saw in the addition to the base or foundation. Responding, Mr. Karp reiterated that a structure without a foundation was unstable. They could lay the slope back, but there was still a force downwards. Without a key/foundation, all you had to do was lose one or two of the rocks and the rest would fall right down on it. He had to get the rocks into a keyway. Commissioner Zaffaroni asked if the addition of 100 tons of rock at the base would be something that would help stabilize the situation, albeit not in the best possible way or according to the state of the art available. Or, was it something that might increase the risk to adjacent neighbors or the creek itself. Mr. Karp said the addition of 100 tons of rock at the base in a keyway would be a great improvement. It was, however, to be added to the top after laying the slope back. There was still a horizontal component to it. Keyways were needed for a horizontal force. If there was rock in the stream that raised the stream flow, there would be erosion because the channel would widen as the bottom filled. Responding to Commissioner Zaffaroni, he said adding a big load to a problem that could not support the load right now was an additional risk.

Responding to Chairman Breon, Mr. Walter said he felt there was some confusion about the location of certain items. The work that Mr. Drew was being asked to do was at the downstream end of the property. The sharp bend in the stream was at the upstream end of the property. That was also where the concrete sacks were located. There was not a confluence of all those things in the same location. Responding to Chairman Breon, Mr. Walter said he relied on his consultant with respect to the various options available. He was happy with the alternate design and thought that it would be very stable.

Mr. Drew said he did not think that he would get in there and change this design. He thought he could build this design. He did not anticipate that he would run into a problem and not be able to get it done. If that were to happen, he reiterated that he would have to redesign, get the proper permits, and then proceed. This was not a place where you could just build it and ask for permission later from the Corps or Fish and Game Dept. With respect to the question of a key, the way he saw this potentially failing was not the weight of the rock pushing it out, but the current undermining the rock because the rock was somewhere near the flowline. If a big storm came by and the creek was deepened, then the rock could move into that void. That's what he thought would happen. With time, the rock would adjust, but not in a domino effect. In filling that void, it might take more maintenance. But, he did not see it failing as a block.

Elain Taylor Junglieb, appellant, said there was a wall the same size as what was there now that left in one night in 1998. It was covered with more vegetation because it was somewhat older. That wall was built by SEC. Shortly after she moved to her property, she spoke with the previous owner of this property, Betsy Moulds, about gabions versus riprap, etc. Ms. Moulds had said exactly what Mr. Drew just said--that this was an engineered wall, that it would gradually fill in, and that they were comfortable with this wall. What Mr. Karp predicted happened exactly the way he said it would. That entire 550 ton wall left in one night at 4 a.m. when a log jam was caused by rocks falling; it made a huge noise. The next morning she discovered a bunch of her land was gone. The land that disappeared left a concave area, and the roots of the redwood trees were visible all the way down to the creekbed. The previous owner and she were both terrified that the redwood trees would fall; if they did, they would hit her studio killing anyone who was in there. That was why she was so concerned. This was a huge wall, built by the same company. It disappeared within minutes, and it could happen again. The wall that was there now was not built as well as the wall that was there originally because it was started as an emergency measure. It was true that it should have been stopped at 6-8' and it wasn't. But, that did not mean that it should continue forever. She was sorry to learn that the Town did not feel it had the authority to tell someone that they had to fix something that had failed before. Additionally, she had been told by the person who sold her house that when they bought the house, there had been a landslide. Ken Mosier, who sold the house, started to put in riprap. Somebody from the Town came in and said it was not being done well enough, and it had to stop. That was why the gabions, which were then in fashion, were put in. She thought it should be researched in terms of whether there was a precedent for the Town coming in and saying that if something was going to be done, it had to be done right. If this wall was

approved, she questioned who would check it and who would come out during and after every storm to check and see what rocks had fallen. That needed to happen after every high water. She did not think the Walters would take on that responsibility. She also questioned whether the Walters were qualified to determine whether new rock needed to be added and whether it was a dangerous situation or not. She was the one who saw the wall; the Walters couldn't see it from their house. Also, she said she attended the riparian corridor meeting on October 25, 2001, when Mr. Wallace showed pictures of various things that had been done properly. He showed a slide of the Moulds wall as an example of what not to do. The Town had been aware of it for a long time. She was not only concerned for her family but also for the Walters. She did not think they had any idea of what a force this river was in the winter. It was very different today than it would be in January.

Mr. Junglieb said it was disturbing that the figure under discussion for the past few months was 25 tons; he had just learned it was 100 tons. He felt that was indicative of the professionalism that this project had seen. That was ridiculous. Secondly, he said we're playing fast and loose with what we think the Army Corps of Engineers will do. We can predict that they won't issue a permit, but we could still go down in the creek whenever we wanted and pluck out rocks that we found inconvenient that had fallen off of our wall. If you looked at the pictures he submitted, there was nothing going on on the bottom that would stop this thing from collapsing. Thirdly, the exact location of repairs was irrelevant because it would fail on the upstream side initially, and everything would be pulled off and peeled away as a result. Finally, the figure that he had been given by a hydrologist for the amount of water that passed by his house during El Nino was 550 tons/second. That was the weight of the entire wall every second. He questioned whether it would withstand that pressure.

Responding to Commissioner Zaffaroni, Mrs. Junglieb said Nichols Construction did the work in 1998. Responding to Commissioner Zaffaroni, Mr. Junglieb said 550 tons of rock had been added at that time. Commissioner Zaffaroni asked what had happened to that wall in terms of the amount of degradation. Mrs. Junglieb said large stones had fallen into the creek; there was one that diverted water straight at her bank. It did not take a lot to divert the water. As shown in the photo, there were large pieces of wood that also diverted the water. Responding to Commissioner Zaffaroni's question on quantifying the extent of degradation, Mr. Karp said rocks had fallen out in the neighborhood of 1/8 to 1/4 tons. The reason they came out was because they were not supported.

Mr. Karp asked what punishment the Corps of Engineers meted out in 1998 when someone came in and put 550 tons down. Responding, Ms. Lambert said the Governor as well as the Town Council declared a state of emergency, and it no longer fell under the jurisdiction of the Corps. Chairman Breon said he dealt with resource agencies a fair amount. They did not have near enough resources to cover a lot of illegal work that was done. Even when they found problems, the tendency was not to punish, but to ask people to do something differently, get a permit, etc. There was little punishment except for major, intentional offenses.

Ms. Lambert said since the work done during El Nino, the JPA for the San Francisquito Creek, CRMP, Fish and Game, the Army Corps, Fish and Wildlife, and the Regional Water Quality Board were much more concerned about what was being done in the upper watershed and especially along Corte Madera Creek in terms of erosion and sediment. She said we are highly scrutinized at this point--especially from Fish and Game and Army Corps. Responding to Chairman Breon, she said Corte Madera Creek as well as Los Trancos were currently considered a steelhead run.

Commissioner Zaffaroni said she wanted it clarified for the record that it was possible to get approval to properly key a creekbank stabilization project. Ms. Lambert added that more biotechnical approaches were being used. For example, gabions were no longer allowed in the creeks.

Commissioner Toben said he had yet to hear a succinct answer from Mr. Karp on the question of whether the proposed repair would worsen the situation. He asked that Mr. Karp not answer by saying

that we have to have a keyed foundation. There would not be a keyed foundation. The Planning Commission had no legal authority to direct that. He asked Mr. Karp if he would rather see nothing done than to see this proposed repair done. Responding, Mr. Karp said he did not know exactly what would be done because he had not seen a diagram with each rock numbered and placed a certain way. SEC had done some great jobs. Sometimes it was not their fault, and they were limited by money. He said Mr. Drew was a good engineer, but he did not know how it would turn out, how much it would cost, whether the money would be available, etc. The way it stood right now on paper, it was not proper. Commissioner Toben asked Mr. Karp if the proposed repair job would worsen the situation in terms of risk to the Jungliebs. Mr. Karp said if it was done properly, it would help the situation. The way it was right now, he did not know. He thought that somewhere along the way, there would be a correction, and it would be done differently than shown in the drawings. If it was not done that way, it would worsen the situation. All of a sudden you would have all these people touching it. It was no longer an emergency repair. You would be improving something that was defective. He thought it should be approved but that the contractor/owners/engineers should have the right to make changes as conditions were uncovered.

Mr. Junglieb said he felt it would worsen the situation. It was building a pyramid upside down. It would also cost the Walters a lot more money in the long run. Mr. Karp agreed that in the long run, it would very costly. Responding to Commissioner Toben, Mr. Junglieb said he would rather see nothing done than the proposed job. Alex Weyand, counsel for the Jungliebs, said it was not just a matter of cost; it was a matter of liability. The Walters were relying on experts. When you had a design, a failure, and a recreation of the exact design, if there was another failure, it would be in court. He did not think it was fair to ask his clients whether they wanted to have this project done or not. The question was whether they wanted a project done that adequately corrected a problem--which they did. He said Mr. Karp was telling you that he assumed that his colleague, Mr. Drew, would go in there and find that it did not adequately correct the problem and would make adjustments. You subtract that assumption and proceed strictly with what was being posited by the applicant, and it would be a failure ready to happen. There would be another El Nino, and when it happened, there would be a big lawsuit. He and his clients were trying to avoid that.

Commissioner Toben asked if the Jungliebs had ever considered entering into a cost sharing agreement with the Walters and other neighbors potentially affected by a catastrophic event in order to fix this problem for the benefit of all parties concerned. Mr. Junglieb said there had been something like that in place when 7-10 families banded together to reduce the cost of installing gabions in 1998. The previous owners, the Moulds, opted out of that. The people who bought the property were stuck with the decisions made by the Moulds. Nothing had been offered in terms of sharing costs because there had not been a lot of cooperation during this process.

Commissioner Toben asked if Mr. Walter would be open to a cost sharing arrangement with the Jungliebs and other potentially affected neighbors to arrive at the standard of care of the industry, which was to provide a keyed foundation. Mr. Walter said he didn't see why not. If it was a community issue, then everyone ought to be involved.

Mrs. Junglieb said there was no precedent for people paying for other people's repair of the creek. While she had received a discount because other families were involved, she had had to pay a lot to have her repairs made. Mr. Junglieb noted that \$150,000 had been spent on gabions.

Referring to the Romig report, Commissioner Zaffaroni asked how the flowline of the creek was defined. Mr. Romig said there were different flowlines. There was a normal flowline; right now there was very little water in the creek and the flowline was right at the base of the riprap. During a high flow event, the flowline was on the order of 8-9' above the base of the creek. Once there was any flow in the creek at all, the water in the creek came right up to the toe of the riprap. The riprap formed one side of the channel. During a high flow event, it would come up 8-9' in this particular location. Responding to

Commissioner McIntosh, he said this was what happened during the 1998 storm. Chairman Breon noted that in Palo Alto, those storms were estimated as 70-year floods, but no estimate had been done for the Town. Responding to Commissioner Zaffaroni, Mr. Wallace said high water marks were documented in about 6 locations within Town. The highest documented during El Nino was around 9.5' in the vicinity of Westridge; it varied depending on the channel. While a sophisticated analysis had not been done, in general, 6' flows were seen in the upper watershed and as high as 9' in the Westridge area. He confirmed for Chairman Breon that on average, it should be considerably less; 3-4' would probably be average.

Commissioner Zaffaroni asked at what point above the base, rock would be removed in order to lay the bank back. Mr. Drew said about 10' up, or the same elevation as the maximum flow where it started to get laid back. Mr. Romig added that on the downstream side of the riprap area on the lower part of the slope, some of the rocks had fallen down into the creek. It was an irregular slope. Part of the proposal would be to smooth that slope. The upstream 2/3rds of total area of riprap had a pretty even slope. It looked like it had performed very well during the past 5 years since it was placed. The lower 30' of the riprap was an uneven surface. Rocks had come out, and there were some very steep sections, rough sections, smooth sections, etc. That was the part that would be smoothed out.

Chairman Breon said the Planning Commission had not had to deal with this kind of issue very often. Secondly, it was clear that none of the Commissioners had the expertise or specific information to make a determination about driving forces, etc., with certainty. He said he would vote to reject the appeal - not because he did not agree with much of what the appellants and their consultants said. He felt rocks would continue to fall out occasionally, and at some point, portions of this wall would fail. It could be in 2 years or 20 years. The gabions would eventually fail as well; gabion wire eroded, rocks spilled out, and they failed over time and under certain forces. Even small sections of concrete channel failed given certain forces and aging. His decision came down to a determination of whether this was an incremental improvement over the existing situation or whether it was an incremental worsening of the existing situation. While not knowing all of the details about the physical forces out there, he believed that it was an incremental improvement based on what he heard this evening. On that reason alone, he felt he had to reject the appeal. He would never describe this project as a solution. He encouraged Mr. Walter to consider something more advanced and better in the long run such as biotechnical stabilization in order to come up with better stability of the bank for the neighbors and the health of the creek over time.

Commissioner McIntosh said Chairman Breon's comments reflected his sentiment. At issue was the permit request that was before the Town which the Town needed to act on. The Planning Commission did not have the authority to tell the applicant to do more or less. They had applied to do a certain project along the creek, and the Commission was making a decision on whether to reject the appeal or not. He concurred with Chairman Breon. Chairman Breon noted that the Planning Commission had the authority to condition aspects of this permit. The question was then whether the applicant would accept those conditions or not.

Commissioner Zaffaroni said this was an extremely difficult case. It was very disturbing to her that the state of the art kind of solution had not been employed in this particular situation. From a policy standpoint, the Town needed to move to a "best practices" position. To the extent that less than that was approved, the Town was not providing an incentive for creek owners to employ the best practice when it came to creekbank stabilization projects. She understood that there were situations where the cost of best practices would be prohibitive. That might create an insurmountable obstacle such that people needed to come up with some sort of provisional or interim fix. The facts in this situation were not actually on the record with regard to that. Nothing had been heard about the cost of a state of the art kind of fix versus what these individuals were doing. She had a lot of empathy for both the applicant and the Jungliebs who were appealing this decision. There was a lot of uncertainty and a lot of confusion about how to handle creekbank stabilization issues. Riparian corridor regulations is the largest issue we have. She wished there was established policy so that when this case came before the Commission,

Commissioners would know where they stood. As an individual, she would support the appeal. In this particular situation, it was not clear that there were any strong reasons, in terms of factual record, why this couldn't have been done correctly. There were vague allegations about timing, but her concept was that the timing wasn't going to be right here anyway. With a delay of a year, why not go ahead and do it properly and encourage that from a policy standpoint.

Chairman Breon discussed policy options such as making a decision between minor repairs and major repairs; major repairs should be done according to best practices. Commissioner Zaffaroni said that made a lot of sense and reiterated that a lot of factual information was not on the record. She said if there hadn't been such a split of opinion with the experts in terms of whether this would be detrimental or beneficial, that would have helped to determine a clarity in terms of the outcome. But, that clarity did not exist.

Commissioner Toben said there were a number of things that troubled him about this application. Some of his concerns had only been heightened by the comments from the applicant and those who favored granting approval. He was troubled that there hadn't been further effort to clarify what the process would be for securing support for this project from the Army Corps. There were only vague representations as to the process that would be necessitated by that. A question was asked whether the project would entail the removal of rocks that were in the stream. There was a vague response of "probably." He was troubled that the amount of material that would be laid on the site was dramatically different from the number that appeared in the record (i.e., 100 tons versus 25 tons). There was also staff's representation that there would be "...no large scale failure of the creekbank so that it would block the creek channel as a single event." As the appellant pointed out and he also noted, that didn't address the circumstance where you have multiple successive storms in a single winter where the possibility of rapid deterioration over days or weeks could create a terrible situation. He thought this application was unattractive in many ways. The question came down to whether the project as proposed represented some improvement on the status quo. He said Chairman Breon felt that incremental improvement was helpful. The word "incremental" was a useful way of rationalizing this decision. When he had posed the question directly to both the appellants and the engineer, he was not satisfied that the answer was clear. The answer came back, "We don't like it because we want a keyed foundation." That was not an option before us tonight. The question was whether in fact this repair was going to present some incremental improvement to the situation. He was not a certified engineer, but juries in this country were often posed questions that required them to weigh conflicting expert testimony and make a judgement. On that basis, he would vote to deny the appeal, but with a great deal of concern that this had not been handled in the best possible way. He had a great deal of hope that everyone would come to their senses and see that the right solution was a collective decision that involved a cost sharing arrangement so that all of you could sleep peacefully at night in the middle of an El Nino storm.

Commissioner McIntosh pointed out that a lot of the time, the agencies were in conflict. They might not approve something because they each wanted something done in a different way. He noted that Tom Lodato had spent three years trying to get his creek project approved. An approval for a project here could take a couple of years with very high construction costs. The difference between repair and re-doing a structure was huge. He agreed it was very important that the Town encourage things be done correctly, even if the entities made it difficult to do things correctly.

Commissioner Toben said there were a lot of elements to the riparian regulations proposal, but Commissioner Zaffaroni had given new depth to the analysis that needed to be made in terms of establishing best practices as the standard. Commissioner Zaffaroni added that the Town was waiting for the information that would come from the upcoming study. Ms. Lambert confirmed that the consultants would be interviewed on September 29. That study would include best management practices.

Commissioner McIntosh moved to reject the appeal based on the discussion. Commissioner Toben

seconded, and the appeal was rejected by a vote of 3-1 (Zaffaroni opposed).

(2) Preliminary Review of Proposed Amendment to CUP X7D-13, Alpine Hills Tennis and Swim Club

Chairman Breon reviewed the purpose of a preliminary review. Mr. Vlastic reviewed the staff report of 9/12/03 on the proposed modification and expansion of the Alpine Hills Tennis & Swim Club. Responding to Chairman Breon, he confirmed that the 317 figure shown to be the number of members from Portola Valley did not necessarily include those members that were in Ladera or Menlo Park; a portion of the spheres of influence was included in that figure, but a portion was not.

With respect to the floor area determination, Commissioner Zaffaroni said she did not recall the Planning Commission discussing the approach used to calculate the maximum possible floor area for The Sequoias. Mr. Vlastic said Town Planner Mader confirmed that this was the approach used in discussing the intensity of use at The Sequoias when the additional units were proposed. Given the nature of the changes that had occurred since these use permits were originally proposed, he agreed either the zoning ordinance or some policy statement should be looked into to provide a basis for the approach. Chairman Breon said this was not something this Commission had discussed, and he did not want that approach to be considered a standard. Sites of this size and uses of this intensity needed to be looked at individually. Commissioner Zaffaroni agreed. Responding to Commissioner Zaffaroni's question on whether the Commission would need to discuss how maximum floor area was determined for this application, Mr. Vlastic said he felt what was proposed here was reasonable, given the activities that went on and the authorized membership. He suggested it be looked at in terms of the way the club site was used and the intensity of use. After discussion, Chairman Breon said it might be difficult to come up with a policy or standard that could apply to, for example, the Priory, The Sequoias and this site. Commissioner Toben concurred.

Tom Gilman, architect, reviewed the master plan for the Club expansion and the proposed improvements, as set forth in the Alpine Hills letter of 9/12/03. Responding to Commissioner Toben, he used the plans to show where the additional floor area would be located. Responding to Commissioner Toben, he said the Club gave a public presentation of the plans last night; there was a small turnout. Commissioner Toben said there was no more critical task to be undertaken than making sure neighbors were aware of what was proposed; this was a significant amount of new development on this site. Mr. Gilman said the Club was very sensitive to that. Commissioner Toben noted that much of the new development had been concentrated at the center of the property rather than out on the edges. Chairman Breon pointed out that a later phase included tennis courts down below which could be close to neighbors. Responding to Commissioner Toben, Mr. Gilman said the building heights would be approximately the same; the same architectural style would also be used. He used the plans to discuss elevations and roof treatment. A sense of smaller scale had been very critical and of concern to the Club during the review process. They did not want it to become an urban kind of club; a smaller family-style character was something they wanted to maintain in the architecture. He used drawings to illustrate the proposed landscaping/features between the upper and lower areas and the parking area. He offered to review the floor plans, but Commissioners said that was not necessary at this time.

Responding to Chairman Breon, Mr. Vlastic used the plans to show where Los Trancos Creek and a drainage swale were located in relation to the property line. Chairman Breon noted that with the installation of the tennis courts, there might be some creek issues. Mr. Gilman said the geotechnical consultant would address drainage concerns.

With respect to the proposed gates, Chairman Breon said he preferred no gates for residential and would prefer low-key gates here. Mr. Gilman said it was more of a landscape feature and trellises might be used. The gate aspect was a requirement of the Health Dept. because of the pool. Referring to the Club's "Sustainability Program" memo of 9/17/03, Chairman Breon encouraged the applicants to furnish more details about what would be done in terms of green building. Commissioner Toben agreed, noting

that the Town was in a position to take a leadership position with green building design/standards. The fact that the Club had offered up some possibilities was a real plus. He hoped it would be pushed as far as possible, and if necessary, advocate to the decision-makers the many virtues, both financial and otherwise, of doing energy efficient design. He also wanted to commend the Club for maintaining the lease of the Windmill School. It was a wonderful community asset for many of the Town's young families. Nancy Bavor, Club Board Pres., said the Board had looked at this issue when the lease was up two years ago and determined that the pre-school should remain a part of the community. It was a five-year lease, which started less than two years ago.

Ken Lavine, 185 Golden Oak Dr., submitted his letter dated 9/17/03, which the Commissioners read.

Responding to Chairman Breon, Ms. Bavor said there was strong member sentiment against increasing any non-member use of the Club. Right now it was about 75% members on all programs, and 25% non-member. If anything, members wanted that to decrease. Her guess was that more members would use the Club if it was a more attractive facility after remodelling. The Board had not projected any numbers in terms of increased membership.

Responding to Chairman Breon, Mr. Lavine said he served on the Finance Committee reporting to the Board to evaluate what the cost would be to members of the Club. The committee had been provided with information from the Aquatics Director that indicated past usage by program and what they projected it would be for 2007/08. Part of the benefit of building the additional facilities was that professionals could be hired who would bring in additional clients for lessons, etc. Responding to Chairman Breon, Ms. Bavor said the membership would not be increased; if there was an increase in usage, then an increase in parking would have to be looked at. Currently, the parking lots were only full during tennis tournaments and swim meets. Chairman Breon suggested there be some discussion relating to projections of usage, how often parking was full, and the potential for increase.

Responding to Chairman Breon, Mr. Lavine said his concern was that the Club would be turned into one which was used more by non-members. The issues were usage and the impact that that had on traffic, parking, and maintaining a rural versus urban character. Chairman Breon invited Mr. Lavine to participate in the review process by offering specific suggestions for keeping it rural. Commissioner Toben said he was aware that there was some concern among Club members about this proposal. He would have preferred that the Club representatives had a chance to review Mr. Lavine's letter before Commissioners saw it. He encouraged Mr. Lavine to share his concerns with the Club.

As noted in the staff report, Mr. Vlasic said a joint ASCC/Planning Commission site visit would be scheduled.

(3) Report on Compliance with Occupancy Objectives, New Faculty Housing Units at Woodside Priory, CUP X7D-30

Mr. Vlasic reviewed the staff report on the Priory's report on housing unit occupancy. Responding to Chairman Breon, he said the numbers were well within the objectives hoped for. He assumed that the numbers would fluctuate between the very low, low and moderate income levels depending on whether the occupants were families, couples, etc. He noted that the use permit required an annual report. Referring to the table of Income Limits for Below Market Rate Housing, Commissioner Toben noted that Town Planner Mader was investigating some inconsistencies in the State's figures.

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

(a) RFP on Creek Study

Ms. Lambert said 6-7 excellent proposals had been received from very reputable companies. Interviews

would be conducted on September 29. All of the proposals indicated strong support for community participation.

(b) ASCC Vacancy

Mr. Vlasic noted that there was a vacancy on the ASCC. There could be quorum problems for the Alpine Hills Club, The Sequoias, and Priory applications because two ASCC members had conflicts of interest. Ms. Sloan had followed up and indicated that a process could be used to draw straws whereby whoever won could participate despite their conflict. Ms. Lambert noted that the closing date for ASCC candidates was Friday.

APPROVAL OF MINUTES

By motion of Commissioner McIntosh, seconded by Commissioner Zaffaroni, the minutes of the meeting of 9/3/03 were approved as submitted by a vote of 3-0, with Commissioner Toben abstaining.

ADJOURNMENT

There being no further business, the meeting adjourned at 10:55 p.m.

Craig Breon, Chairman
Planning Commission

Leslie Lambert
Planning Manager