

REGULAR PLANNING COMMISSION MEETING. TOWN OF PORTOLA VALLEY, MAY 19, 2004.
TOWN CENTER, HISTORIC SCHOOLHOUSE, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

Chairman Breon called the meeting to order at 8:05 p.m. Ms. Lambert called the roll:

Present: Commissioners Elkind, Wengert and Zaffaroni, and Chairman Breon
Absent: Commissioner McIntosh
Staff Present: George Mader, Town Planner
Tom Vlastic, Dep. Town Planner
Sandy Sloan, Town Attorney
Richard Merk, Council Liaison
Leslie Lambert, Planning Manager

ORAL COMMUNICATIONS: None.

REGULAR AGENDA

- (1) Preliminary Review: Request for Consideration of Modification to Open Space Easement and Building Envelope Area, 16 Buck Meadow Dr., Lopez

Chairman Breon reviewed the purpose of a preliminary review. Mr. Vlastic reviewed the staff report of 5/14/04 on the request to swap some of the building envelope area for an equal amount of open space easement area on the subject Blue Oaks property. Using maps and photos, he discussed the building envelope, landscaping, open space easements, proposed garden/backyard area, existing play structure, and views. Responding to Commissioner Elkind, he said there were no paths or publicly accessible area anywhere near the proposed garden/play area, and the area proposed for open space encumbrance was pretty far removed from Sunrise Trail. Responding to Commissioner Elkind, he said most of the fill had been placed at the building site area, and the applicant had indicated a willingness to return the landscaping to a more native condition. As this process proceeded, the applicant would develop a plan for restoration that would be referred to the Conservation Committee for review. He confirmed for Commissioner Elkind that the various documents that would have to be prepared would come back to the Planning Commission. Responding to Commissioner Wengert, he said the potential square footage of the building envelope wouldn't change, but the potential for placement of structures would be reduced.

Commissioner Elkind said she was comfortable with the request providing that staff was able to create some findings or conditions that made it clear that this was a very unique situation and that it would not create a precedent for other properties in Blue Oaks. Mr. Vlastic confirmed that with the recognitions made in the PUD, this was the most unique site in the project. Commissioner Elkind added that a major concern of hers would be offsite visibility and maintaining continuity of the open space/habitat.

John Lopez, applicant, said the house was maxed out in terms of square footage. The swap would give up some of the building envelope; the structure could not be made bigger.

Craig Taylor, Open Space Committee, asked that a copy of the staff report be given to the Committee.

Commissioner Zaffaroni said she agreed with Commissioner Elkind's concern about precedent. It was important that there be special findings to make this kind of situation unique. Responding, Mr. Lopez said there might be some other properties where something like this was the right thing to do; a lot of the open space configurations were more of a convenience for the developer and how the building envelopes were set up.

Chairman Breon said he was impressed with the applicant's letter. Commissioner Wengert agreed and felt the request was reasonable.

(2) PUBLIC HEARING: Appeal of Architectural & Site Control Commission Decision on Rebuilding of Fire Damaged Residence at 133 Russell Ave., Erikson

Mr. Vlasic reviewed the staff report of 5/13/04 on the Bartlett appeal of the ASCC March 29, 2004, decision on the Erikson architectural review for the property located at 133 Russell Ave. He said the options before the Board of Adjustment were: 1) refer the issue back to the ASCC for review of new septic system data, the fire marshal's suggestions, and comments from neighbors; 2) deny the appeal and uphold the ASCC action with the stipulation that the rebuilt house maintain up to a maximum 5' setback from the side property line; or 3) support the appeal and require the Ericksons' plans be revised to conform to required setbacks. Responding to Chairman Breon, he confirmed that option three would require an average 8.5' setback. He summarized letters/e-mails received by the Town from: a) the attorney representing the Ericksons (dated 5/19/04); b) the attorney representing Mr. Bartlett dated 5/17/04; c) the Ericksons dated 5/17/04; d) Felix Sterling dated 5/18/04; e) Daniel Sobek and Florence Eschback dated 5/17/04; f) Steve Harrison and Deborah Tatar dated 5/14/04; g) Chip McCarthy dated 5/14/04; h) Nathaniel McKitterick dated 5/19/04; and i) Mary and Donna MacKowski dated 5/19/04. He added that he felt the Town had been consistent in the way it had interpreted the ordinance provisions; as set forth in the staff report, he agreed that some of the language needed to be clarified as soon as possible. Additionally, some broader issues had been raised by the correspondence from neighbors; some communication was needed so that the homeowners clearly understood what the provisions were.

Sandy Sloan, Town Attorney, said references in correspondence to a lawsuit that was going on about damage due to a fire had nothing to do with the hearing before the Board of Adjustment tonight. She agreed that the wording in Ordinance Section 18.46.080.B was not clear. She supported the staff's interpretation that Section 18.46.080.B1, which addressed existing buildings that did not comply with floor areas or height limitations, included setbacks for three reasons. First, the Town Planners who worked with the code everyday had interpreted it that way. They both found that there was no intention to differentiate between people who had nonconforming height and square footage from people who had nonconformity as to setbacks. Courts gave great deference to administrative interpretations of a town's codes. Second, it was reasonable to look at the term "floor areas" and conclude that that meant not only the size of the floor area, but the location of the floor area. In the definitions section of the Zoning Code, "floor area" was not defined. If only square footage was intended, the words "square footage" could have been used. She felt "floor areas" meant not only location but also size. Third, following Section B was Section C which called out special setback lines for earthquake faults. It could be inferred that if there was a Section C saying you must rebuild to special setback lines, that implied that you didn't have to rebuild to the normal setback line. Referring to Mr. Mitchell's letter of 5/19/04, she said he stated that not taking action within 55 days would violate the Code. She said that was not the case. The hearing must be called and opened during that 55 day period, but Section .070 said the hearing could be continued if additional information was needed. She confirmed for Chairman Breon that by opening the hearing tonight, the condition was satisfied.

Commissioner Zaffaroni said one of the conditions in the Municipal Code was that the ASCC had to approve the design, which they had with conditions. Condition #1 was worded such that they limited the extension of the setback to 1-2 feet. If remanded back to the ASCC, she asked if the ASCC had discretion to expand that setback beyond that amount. Ms. Sloan said it was not really "remanding" it to the ASCC just to clarify that. She did not think the ASCC should be asked to have another full hearing and look at everything again. If necessary, they could provide input so that the Board of Adjustment could continue this hearing and make a decision. Responding to Commissioner Zaffaroni, she said the ASCC had the discretion to recommend an 8 or 8.5' setback if they felt that was a better design.

Commissioner Wengert said the history of this issue was difficult to follow. She asked Mr. Vlasic to describe what had changed since the time of the original ASCC ruling and what additional information they would consider if it was referred back to them. Mr. Vlasic said the ASCC would now know that there was a possibility of moving it over further; adjusting it over further could have implications in terms of design relationships to adjoining properties. The record showed that they had some concern over visual

impacts--particularly for the neighbor across the street. That neighbor had indicated that they were not concerned about additional view impacts; that had only been partially discussed. The information relative to the septic system had been uncertain. He added that the ASCC would not necessarily come back and recommend an 8' setback; they would consider a variety of things.

Referring to Ms. Lawson's letter of 5/17/04 (p. 4, #4), Mr. Vlasic confirmed for Chairman Breon that circumstances specified in Section 18.54 had to do with specific buildings that were allowed to exceed the height limit; that was not applicable in this case. Referring to page 3 of Ms. Lawson's letter, Ms. Sloan confirmed for Chairman Breon that Section 18.02.050 dealt more with code sections that contradicted each other; what was before the Board tonight was one section and how it was interpreted. Chairman Breon asked if public policy should be taken into account when trying to clarify an admittedly ambiguous code section. In general, the Town's setback rules favored a larger setback in order to provide some additional fire safety, light, access, etc. That would be a public policy that in an ambiguous situation would weigh in favor of supporting the appeal. On the other hand, an additional setback would cause additional expense, delay, etc., to the people rebuilding their home; they were also the victims of a fire rather than the perpetrators of it. He asked if those should be considered when there was some ambiguity. Responding, Ms. Sloan said it was reasonable to consider public policy issues--especially if you had knowledge of the zoning code, worked with it a lot, and had a sense of what the Town's public policy goals were. Responding to Chairman Breon, Mr. Vlasic said if the project moved over laterally to a 3', 5' or 8' setback, he did not think the loquat tree would have to be removed. Responding to Chairman Breon, he said he felt there would probably be some additional burden (e.g., monetary, time, planning) on the Ericksons if an additional setback was imposed.

Chairman Breon opened the hearing noting that the Board was attempting to make a language interpretation of the zoning code. He asked that peripheral issues not be raised.

Kristina Lawson, counsel representing Mr. Bartlett, said the purpose behind the appeal was twofold. First, Mr. Bartlett was concerned about the potential for another fire. The fire started in his garage, but it was not arson. Second, Mr. Bartlett felt that property should be developed in accordance with the Town's regulations and policies; this provided an opportunity to move that residence a little farther away in compliance with those policies. Referring to the code section in question, she said she wanted to focus on the word "dimensions." Dimensions in the dictionary referred to size and shape; there was no reference to location. As stated in Section 18.46.080.B, dimensions referred to size and shape and not to actual location. There was no dispute as to whether the Ericksons could rebuild their house to the same dimension; it was whether they could rebuild in the exact same location. She did not think that under the Town's code they could. She said Ms. Sloan was correct in pointing out that courts gave great deference to towns' interpretations of their own codes. They also gave deference to the plain language of statutes and code sections; dimensions had a clear meaning in every dictionary she consulted. She said Mr. Mitchell's letter indicated that the 3' setback addressed all of the fire safety concerns. As Mr. Vlasic had pointed out, that setback dealt with whether or not you could have windows. There was no requirement in either the CA Building Code or the Uniform Building Code that there be any property setback whatsoever. She agreed that if the tree was in the front of the house and the house was shifted one way, it would not affect the front yard. Previously, it was understood that the house could not be moved because of the septic fields. Now, it apparently could not be moved because of the loquat tree. She said all town codes provided a procedure by which exceptions to the rules could be granted and that was through the variance procedure. If there was an exception to be granted, Mr. Bartlett thought it should be done through that route. In looking at the differences between options 2 and 3 tonight, she felt they were really the same. The Ericksons would be required to redesign and move the foundation over 2 extra feet or 4 extra feet; both options required some additional expenditure of money. The insurance companies would be paying for this. She requested that the Board support the appeal and go to the 8.5' setback.

Dan Bartlett, appellant, said the zoning ordinance said you could rebuild to the same dimensions so long as all other zoning ordinances were adhered to. His interpretation of that was setbacks.

Kent Mitchell, counsel representing the Ericksons, thanked staff for the effort and support given to both Mr. Bartlett and the Ericksons to give them an opportunity to rebuild. The issue was interpretation of the ordinance. In looking at the ordinance section in question and the word "dimensions," it said you could rebuild to dimensions which existed. He did not think that meant you had to pick the building up and move it 8.5' back. The dimensions were defined by the walls, and the walls were where the setback was defined in this case. He felt that the ordinance had always meant that you could build in exactly the same position and location provided that you complied with all other provisions. It went on to say "...provided the extent of non-conformity was not enlarged." The word dimensions applied to the area of the building that constituted the non-conformance; you could not enlarge that but you could build back to those dimensions and those locations. That was all the Ericksons were doing. In this case, the nonconformity was being reduced by the length of the building multiplied by two feet. Additionally, Subsection C said if you had a special setback and you had a fire, that was one you would have to comply with. If the ordinance meant that you always had to comply with all setbacks, there would be no reason for including subparagraph C. By clear implication, it was never intended that people would be told that if their house burned down, they had to lift their house, build to the same dimension, but move it back 10 or 20 feet. That had never been the rule in Town and had never been the interpretation of this section. He agreed the language should be clarified but did not think his client should be penalized because it wasn't drafted exactly the way it was intended to be applied and interpreted for all these years.

People in Town would be in shock if they thought a fire would require them to move their house back to the setbacks. Additionally, he said one option that had not been mentioned was to deny the appeal and affirm the decision of the ASCC, which was a 3' setback, and not condition it upon making any other decisions about the additional 4-5 feet. He asked the Board to consider what it was about that decision that was illegal or contrary to the Town's ordinances. He did not think the ASCC had done anything that was contrary to the ordinances. The appeal was not about what they might have done; it was an appeal of what they did do. The Board's job was to determine whether or not they acted legally under Town ordinances. This ordinance did not require a relocation of the building further back than it was; in this case, it had already been moved back two feet. Consistent direction had been given to the applicants for 7-8 months, and they had done everything that they were told the Town ordinances and staff required them to do. Additionally, he had spoken to the architect who felt that 8.5' was a major problem and would cost a lot of money. He also had a letter from the contractor who said getting closer to a leachfield would require re-engineering the foundation and getting additional data to ensure he wouldn't be liable for a faulty foundation. As far as the proximity to the leachfield, there was a 10' standard in the county; in this case, they looked at it and said they would go along with 5 feet. Once the building was shifted, it would be less than that 10' standard. If it was sold, there would have to be a disclosure about that. He did not want his clients put in a position where they could not meet a standard that they currently met. Also, the delay was a disaster. The building plans could not be processed as long as the appeal process went on. These people had been out of their house since October and had had a baby since. They were now looking at 2005 before they could get back into their house. Some compassion and empathy was in order, and he asked that the appeal be denied so that the process could move forward.

Kay Erickson, applicant, asked for the Board's compassion and understanding.

Paul Lencioni, 132 Russell, said his primary concerns were not about views but about fire prevention. This was an opportunity to do something that could prevent a future fire.

Cynthia Lencioni, 132 Russell, said her concern was about the legal interpretation of the ordinances. Being an attorney, she read the ordinances and came up with similar conclusions as Mr. Bartlett's attorney. With regard to the dimension issue, it would be an unconstitutional taking to not permit someone to build the same house as they had before. But, it wouldn't be okay to let them site it wherever they wanted. The way the ordinance was written, it was an opportunity to re-site homes that were being rebuilt after having been damaged or destroyed due to fire when the setback was violated. If you rebuilt a home and allowed them to violate floor area or height nonconformities, you couldn't necessarily let them build it in the setback again. In light of her concern about fire safety, the Ericksons'

home had burned primarily because of its proximity to the other structure. Given the nature of the neighborhood, she felt this was an opportunity for the Commissioners to make the right decision and read the ordinance as supporting moving the home over and requiring it to have as much setback as possible. She felt an 8.5' setback would be an improvement over the original 4-5' that the ASCC was going to require. Additionally, she assumed that as the home was moved over, it would be lower. She would like to know what the structure would look like--whatever the final setback would be--in terms of height, fill, etc.

John Boyce, Tynan Way, asked what difference 3 or 3.5' would make in terms of fire safety. Responding, Mr. Vlasic said within 3 feet, they did not have to have a one-hour rated wall; there would be no difference in terms of construction if it was 3', 3.5' or 8.5'. The fire marshal would always like to see more rather than less, but she would not state that 5' was substantially worse than 8.5' or that 8.5' was substantially better than 5 feet. She was, however, prepared to sign off on the plan.

Craig Taylor, Santa Maria, said the neighborhood was different than the rest of the Town. His expectation was that if his house burned, he should be able to rebuild it. Additionally, he was concerned about the timeline; at some point, the Town needed to make a decision and move on. While the cost in money for the Ericksons was significant, there was also the issue of the time they had been out of their house. He asked for some compassion and to let people rebuild a fire-damaged house. If the house hadn't burned down, it would be 3' closer to the property line than it was now.

Stephanie Schwartz, Tynan Way, hoped that the Town would show some compassion and get the Ericksons back in their house soon and at the least expense to them.

Lynn Poland, Wayside Rd., felt the fire concern could be managed with materials. She wanted to see it move forward as quickly as possible.

David Brayler, Russell, asked that the Board exercise compassion for Mr. Bartlett who was also having to rebuild his home. He noted that many of the letters that were coming in were not from the immediate neighbors.

Loni Austin, Santa Maria, said she supported the Ericksons' plans. Aside from the compassion she felt for them, she was concerned about the back and forth discussion after a decision had been made. Now, she was worried about remodeling her home or what she would have to go through if her house burned. This issue was an interpretation and that interpretation had been made.

Daniel Sobek, Bear Paw, said the question was whether the ASCC's decision was legal or not, and the Board had the authority to interpret that decision. He encouraged Commissioners to listen to the words of the attorney.

Cynthia Lencioni, 132 Russell, said she did not think the ASCC's decision was being usurped or gone back on. The first condition of approval was that the septic system location and septic system requirements shall be clearly defined; that had not been done at the time of the ASCC decision. Reading the condition, she said the requirement was that any increase in the setback not be more than 1-2' because of potential impacts on views from neighboring properties. Responding to Chairman Breon, she confirmed that it was because of the views that the ASCC had indicated a setback of not more than 1-2'. They might have wanted more. The ASCC came up to her balcony and viewed the story poles. But, that had never been her primary issue which was distance between structures. To have the increase in setback be qualified based on concerns about views was not an accurate representation of her position. There was now information about the septic system and the Board had some choices--up to 8.5 feet. Mr. Lencioni added that another way of looking at it was to consider what was more important: distance from the setback or distance from the septic system.

John Boyce said if 10' was required for septic systems and the Town went for 5', that was also a

violation.

Russ Erickson, applicant, noted that views had also been checked from the house at 134 Russell. That had also been a consideration in the 1-2' recommendation.

With respect to the ASCC's conditions of approval, Mr. Vlasic read condition #1. He said view impacts had been considered from both the Lencioni and Harrison residences. While the ASCC took input from neighbors seriously, they also thought in the long term and about future property owners. They sometimes made adjustments based on their best judgement about the long-term situation.

Ms. Sloan said in discussing the Code section, she had addressed "floor area" while the two attorneys talked about "dimensions." She said dimensions were not defined. A reasonable interpretation could be made that dimension included not only size but also location. Secondly, the Code said that when there was an appeal, the Board could affirm, change or modify the ruling or make such additional determination as deemed proper. Responding to Commissioner Zaffaroni, she said "square footage" was definitely the volume in the box. In terms of "dimension" and "floor area," not everyone might interpret "dimension" as including location, but she felt it was a reasonable interpretation.

Commissioner Zaffaroni said the general provision of the Code (Section A) indicated that if a structure was destroyed less than 50%, the Town would not impose the hardship of requiring the person to totally raze the structure and rebuild it. Section B said that if it was destroyed 50% or more, rebuilding would be allowed without necessarily recognizing all provisions of the zoning regulations. It seemed to apply to buildings that did not comply with floor area or height limitations. She noted that Chairman Breon had asked what other provisions of the zoning ordinance might pertain. Clearly, floor area and height did not pertain--even though other requirements such as off-street parking would pertain within the regulations. The issue was whether setbacks were intended also to be encompassed within the definition of dimension or floor area. It certainly would have been preferable if setbacks had been specified; that would have clarified the point here. The intent of encouraging people with more than 50% damage to rebuild based on the zoning regulations that applied at the time of the disaster was to move the Town, over time, in the direction of compliance with regulations that the Town had determined to be safer, have greater aesthetic values, etc. If the Board affirmed the interpretation that this did not require conformity with setbacks, she asked if that would be binding on the Town in terms of how that might be looked at in the future when the language was clarified.

Town Planner Mader said when this came about and the Town changed its floor area and height regulations, people said, "I couldn't rebuild my house." In order to solve that problem, the Council said people would be grandfathered in on height and floor area. He did not recall any discussion as to setbacks. He did not think an intention could be read in one way or the other because it had not been discussed. The Board was in a position of making an interpretation here and then revisiting the issue and deciding what was proper. Additionally, he agreed that the intention of the ordinances was, when buildings were destroyed more than 50%, to get them into compliance; that was the purpose of non-conforming regulations. He noted that Ms. Sloan had been concerned with the non-conforming part of the ordinance. He felt it should be a high priority to come back and look at several sections that related to non-conforming uses; it could be budgeted under special projects. He confirmed for Chairman Breon that he felt it should be done within the next fiscal year. Responding to Commissioner Zaffaroni, Ms. Sloan said a decision tonight would not limit the Town in terms of future policy decisions.

Commissioner Wengert said she was uncomfortable not having seen all of the information until this evening. Recognizing the sensitivity/timing and relying heavily on some great legal minds, she said the ambiguity clearly stood out. There was ambiguity on the interpretation, ambiguity on the intention, and some element of ambiguity on the historical precedent as well. In the face of that, she felt the appeal should be denied. The initial intention of the ordinance was most likely consistent with the thought that people should be able to rebuild their home in the event of a disaster--something that was unforeseen, unanticipated, and catastrophic. The Commissioners could argue all night about the interpretation of the

Code. She also agreed the language needed to be cleaned up and the intention made clear. She felt the intent was to improve fire safety and that the Town would be facing this in a much greater degree going forward than in the past; that needed to be addressed very quickly. In this case, people had been severely impacted for a long time. She felt it was reasonable to deny the appeal and move forward. Responding to Chairman Breon, she said the homeowners had clearly been cooperative with staff throughout. They had also indicated a willingness to go to a 5' setback, and that was what she recommended. That would address to the maximum degree possible the concerns raised by everyone and particularly relative to the fire safety concerns. She moved to deny the appeal and impose a 5' setback.

Commissioner Elkind seconded the motion. She agreed that the ambiguity was a key issue. Another significant point raised by the Town Attorney was that historically, the Town Planner had interpreted this language to include setbacks. Mr. Vlasic had also indicated that height was looked at as a dimension; that implied location. One of her strong responsibilities as a planner was to try to move the buildings in Town as close as possible to meeting the current zoning codes. Given the ambiguity, she felt the most balanced position was one that would allow a more rapid procedure. The 5' setback was better than the 3' setback, and she was more comfortable taking that position.

Commissioner Zaffaroni said the ordinance language had historically been interpreted to include setbacks--whether defined within the terms of dimension, floor area, or topography based on height limitations. The Town Attorney endorsed that interpretation. She also understood that the Town would not be bound by that particular interpretation when the issue was revisited and clarified. She would support the motion.

Chairman Breon said he initially wanted to support the appeal. In the long term, the Town needed to bring properties as much into conformance with standards as possible. In this situation, the Ericksons had been inconvenienced and the fire safety would be improved. He would support the motion. He called for a vote, and the motion carried 4-0. Ms. Sloan said she would draft a Resolution for the June 2 meeting.

(3) PUBLIC HEARING: Site Development Permit X9H-517, Realignment of Spring Ridge Trail, Windy Hill Open Space Preserve, MROSD

Town Planner Mader reviewed the staff report of 5/14/04 on the proposed realignment and reconstruction of a lower portion of the Spring Ridge road/trail and a new connection to the Kabcenell driveway. Commissioners reviewed a letter/response dated 5/19/04 from MROSD on the sag pond road/trail.

As set forth in the staff report, Town Planner Mader discussed the MROSD CUP approved in 1991, conditions of approval, and modifications shown on the MROSD plan in 2001. Using diagrams, he discussed the location of the Kabcenell driveway, the proposed new connection, "road to restore" (i.e., restored to natural condition), proposed tree removal, and recommendation of staff to retain the 15" oak.

He noted that all of the reviewing bodies had raised the question of retaining the lower road/trail for the reasons stated in the staff report. He discussed conditions #4 and #9 of the CUP (staff report, p. 5). He used a diagram and discussed trails shown on the Town's General Plan since 1970. He said MROSD's position was that general plans were general, that what was shown was not a precise alignment, and that the substitution of the other route would serve the same function. In this case, however, he said that section was clearly on an existing road as had been set forth in the Initial Study. He reviewed MROSD's letter of 5/19/04 and their reasons for not wanting the road/trail in response to staff's comments in support of retaining it. He noted that there were two issues: 1) the site development permit itself, which seemed very reasonable and a good design; and 2) the retention of the trail in question. He said the Planning Commission might want to continue the item to allow more time for discussion with MROSD. Responding to Commissioner Zaffaroni, he used diagrams and discussed the slope along various sections of the trail, wheelchair accessibility, drainage, and distance between the upper and lower trails.

Jay Jernick, Grove Dr., said this was a trail that he had been hiking for over 20 years. In the wintertime, you had to do a lot of hopping and skipping, but it was one of the most beautiful parts of that trail. There was also the seasonal sag pond, and he urged that a small trail be kept through there. He did not think it would be that much more of an upkeep, and it was a nice level walk. Both for young and old people, he hoped a small trail could be retained.

Derry Kabcenell, Cresta Vista, said overall he felt the proposal was good and solved a number of problems for the District and for him. He said a number of things had been done to try to protect the wet areas of that lower portion of the preserve. He noted that some people had supported building the bridge because it got people off the banks of the creek and protected the habitat. More work would be done at Sausal Pond to separate the visitors from the water; there were also fences on the Betsy Crowder Trail to protect against dogs. There were red-legged frogs in the creek in that area, and that habitat needed to be protected. He supported closing that area.

Lynne Davis, Chair-Trails Committee, said the Trails Committee was in agreement with most of what was proposed in the site development permit as set forth in the Committee's memo of 5/18/04. The Committee had this year as well as three years ago objected to closing this piece of trail. It was a very low-lying piece of trail that was an important piece of the system that needed to be maintained as a pedestrian trail. Three years ago, the Planning Commission had agreed and passed that on to MROSD. The Committee recommended the Commission postpone approval of the site development permit until a mutually satisfactory solution could be found regarding this piece of trail that many felt was important.

Councilmember Merk said the section of road that was proposed for abandonment was a connection to other trails in Town like Eagle Trail. He personally had used the trail for forty years and had never seen anyone cutting through or going down to the sag pond; one of the reasons was the poison oak. If the road was made into a trail, it could be closed if conditions demanded that. MROSD's letter said there were numerous swales; he felt there were only three places that got muddy. To use the closing of that section as a mitigation for the other part of the project would be a very unfortunate destruction of a very pleasant trail experience that currently existed. He reminded Commissioners of Herb Dengler's standard of quality for trails: 6% maximum slope. The proposed alternative went up to 12-14%, and the road being proposed for abandonment was essentially flat.

Anna Ruiz, MROSD, said MROSD was investigating whether the 15" oak could be retained and kept healthy. Regarding comments on the desire to retain the sag pond road, she said it was a very complicated issue. Part of the mission of the District was to protect and enhance sensitive habitat areas along with providing public access. The sensitivity of the sag pond was key and something that had been focussed on when improvements, circulation patterns, etc., of the lower areas were reviewed in 2001. This was a key spot that needed to be protected. MROSD still felt it was very important to close and restore that area. The District felt there were a lot of issues involved in keeping that as a trail--not just maintenance. There were noise impacts, dogs spreading their scent and going into vegetation, etc. It had been looked at very carefully.

Commissioners discussed whether to move forward on the site development permit at this time. Town Planner Mader said he did not know whether the Town could assist with maintenance of a piece of trail on the District property. It also might be possible that that section of trail near the sag pond could be re-routed further away. Given some time, there might be other ways to solve the problem. Councilmember Merk said he did not feel the site development permit should be approved while the other issue was unresolved.

Commissioner Elkind said she would like the item continued. The District's need to build roads to move between Alpine Road and drive on up Spring Ridge or drive over by The Sequoias parking lot had driven some changes to the base of Windy Hill that had removed some of the most pleasant hiking opportunities. Now, another trail was about to be lost to meet the convenience of the District's need to move their patrol cars. For many people, those shorter, more level hikes were valued, and she didn't

want to have to hike on a major, wide, patrol road. The opportunity for an aesthetic trail experience needed to be protected. Additionally, the District had not followed up on suggestions that had been made for alternatives for the area by the Kabcenell driveway. There was also a beautiful bench trail that connected to the Spring Ridge Trail that had been closed. She was reacting to a series of losses and projected loss of aesthetic hiking that she valued very highly. The District had made a number of arguments using environmental justification where she thought there could be other ways to solve the problem; Town Planner Mader had made some suggestions. She also felt members of the Town would be very happy to pull some of the thistle mentioned by the District. She did not want to lose any leverage the Town had. She moved to continue the item for further discussion. Commissioner Zaffaroni seconded.

Chairman Breon said the Town needed to make some sort of offer to the District; the Town had asked in the past that the trail be retained, and the District felt otherwise. Commissioners and staff discussed ways in which the Town might assist.

Commissioner Zaffaroni said she did not have a strong personal feeling about that section of the road. But, there needed to be a lot of sensitivity to make beautiful spaces accessible to all. That should be a mission of the Open Space District as much as it was a mission of the Town. She did not believe that there were any other relatively flat trails that someone who was infirm, elderly, or very young could use. A route that could open the beauty of Windy Hill to greater numbers of people who might otherwise feel excluded was important--enough so that she was willing to continue this and see if MROSD could be sensitive to that as a mission in and of itself.

Chairman Breon suggested continuing the item and asking the Council to enter into discussion with MROSD regarding the possible preservation of the lower route in some form, with possibly the Town making some offer of how that burden could be eased.

Responding to Commissioner Wengert, Ms. Ruiz said realignment of the trail had been considered. Bringing a trail below the sag pond had problems with respect to grade. With respect to the Town changing the road to a path and taking care of drainage, she said there would still be the duplication of routes issue, the maintenance issue, impacts that certain uses would have on the surrounding environment, etc. One suggestion might resolve one issue, but it wouldn't resolve all of them. Chairman Breon noted that MROSD's solution didn't solve all of the issues either; there were a number of people who wanted the trail to remain open.

Mr. Jernick said this was another example of a town wanting to have some say but feeling that it was giving up total control to MROSD.

Responding to Commissioner Zaffaroni, Ms. Davis said the Committee wanted to have more time to persuade MROSD of the Committee's position with respect to this piece of trail. The Town had tried several times, but they didn't listen. While the Committee would talk to MROSD, the Committee would prefer that the Town Council approach MROSD. Town Planner Mader suggested continuing the item to June 16 to allow further discussions with MROSD on cost/maintenance. Until it was looked at in some detail, it was difficult to know. He further suggested that the contact be made by the Council and a site visit be scheduled with someone from the Trails Committee, MROSD and a Councilmember to see if there were alternate solutions. Councilmember Merk said he would ask the Mayor to agendize the item.

It was moved and seconded that the item be continued to the June 16 meeting with the request that the Council contact MROSD. Chairman Breon called for a vote, and the motion carried 3-1 (Breon).

(5) Discussion of Basements, Grading and Light Wells

The item was continued.

APPROVAL OF MINUTES

Commissioner Zaffaroni submitted a change to the minutes of the May 5, 2004 meeting. By motion of Commissioner Wengert, seconded by Commissioner Zaffaroni, the minutes were approved as amended by a vote of 4-0.

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS: None.

ADJOURNMENT

There being no further business, the meeting adjourned at 11:15 p.m.

Craig Breon, Chairman
Planning Commission

Leslie Lambert
Planning Manager