

REGULAR PLANNING COMMISSION MEETING. TOWN OF PORTOLA VALLEY, JANUARY 21, 2004.
TOWN CENTER, HISTORIC SCHOOLHOUSE, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

Chairman Breon called the meeting to order at 8:04 p.m. Ms. Lambert called the roll:

Present: Commissioners Elkind, McIntosh, Wengert and Zaffaroni, and Chairman Breon
Absent: None
Staff Present: George Mader, Town Planner
Lisa Tehrani, Asst. Planner
Leslie Lambert, Planning Manager

ORAL COMMUNICATIONS: None.

REGULAR AGENDA

(1) Review and Discussion of Fencing Regulations Report

Town Planner Mader reviewed the staff reports dated 1/15/04 and 1/16/04 and discussed the history of fence regulations, General Plan provisions, existing zoning ordinance regulations and design guidelines, problem statements, and preliminary recommendations. Responding to Commissioner Elkind, he confirmed that a wall could go up to the height of the building if it was set back 50'. Once it was within the building envelope, it would not be subject to the regulations. At 50' the concerns were somewhat less than when it was right at the road. Responding to Commissioner Elkind, he said on the larger parcels, it was recommended that domestic fences be back to the 50' and 20' setbacks. On the 1-acre parcels, the walls/fences would also have to meet the openness standard.

Commissioner Elkind said she was concerned that the regulations did not address creek setbacks. She did not want people to assume they could put fences on the property line, which in many cases would be at the top of a bank along the creek corridor. Given the importance of creeks as wildlife corridors, that would be undesirable. She suggested adding language to indicate that if a perimeter fence was allowed, it could not block known wildlife corridors. Commissioner Zaffaroni said she brought up the same concern when the Planning Commission first discussed fences. At that time, it was decided that it would be dealt with when the riparian corridor regulations were addressed. The riparian regulations had been derailed, and she thought it would be better to deal with it in the fence ordinance. She described a neighbor's fence, which went down into the creek. Commissioner McIntosh suggested not allowing fences to cross creeks or be placed on the top of the bank. Town Planner Mader noted that there had been some question about the definition of top of bank. He suggested "...not go beyond the top of bank." He added that the Council wanted to see the riparian study move ahead; the issue had not disappeared at all.

Commissioner Wengert felt the proximity of adjacent houses should also be considered in determining the type of fencing that might be appropriate. Even on some of the larger parcels, setbacks could not be adhered to and homes were close to one another. Some kind of visual barrier would be desired by the neighbors. Town Planner Mader said the situation would need to be defined sufficiently and rules set up, or the situation could be defined and then indicate that that was subject to separate review by the ASCC. Commissioner Wengert said she preferred the latter. The type of fence that both neighbors might want was somewhat different because of the privacy issue. Town Planner Mader added that there could also be situations where: 1) someone built a house and fence, then the neighbor built a house and claimed that the fence blocked his view; or 2) neighbor "a" wanted to put up a fence that neighbor "b" didn't like. The ASCC might act as arbiter. He felt limitations on opacity/openness should help. If the purpose was to contain children and animals, a solid fence was not necessary. If the purpose was privacy, the fence could be put at the setback line. If someone couldn't adhere to that, the ASCC might also take that up.

Commissioner McIntosh suggested adding something in the regulations about disputes. Chairman Breon

suggested that the fence permit application be noticed to adjacent property owners. If a dispute arose and staff felt it was significant, it could go to the ASCC.

Responding to Chairman Breon, Town Planner Mader confirmed that perimeter fencing (staff report of 1/15/04, item #2) was tied to districts rather than parcel size. Referring to item #4 on the 1/15/04 report, Chairman Breon felt the language indicating that the ASCC could allow fencing within setbacks "...when particularly needed for privacy" would be problematic. He preferred the language included in paragraph 3 of the 1/16/04 report that addressed "variations" that would be considered by the ASCC. Town Planner Mader said in most cases people could obtain privacy with their setbacks and agreed the language in the 1/16/04 report was more appropriate.

Responding to Chairman Breon, Town Planner Mader said if someone wanted to put up an 8' wall on a part of their property, it would probably be part of a residential development that the ASCC would look at. After discussion, he said he did not think the regulations should try to deal with fences within the building envelope.

Commissioner Zaffaroni asked whether the regulations would pertain to replacement of existing fences and whether the 50% rule would apply. Town Planner Mader noted that the Town would not catch board-by-board replacement, which a lot of people did. Something like the 50% rule could be added. That would mean that the fence would have to conform to current regulations. How serious the problem was with the existing fence would also need to be considered.

Responding to Commissioner Zaffaroni, Commissioner McIntosh said he felt a 4' horse fence was sufficient to contain a horse. Town Planner Mader agreed noting that it was a common height. Responding to Commissioner Zaffaroni, he said the opacity requirements for fences in front yards of parcels less than 1-acre should be discussed. Referring to the 1/16/04 report (p. 5, paragraph #2), he recommended that fence opacity regulations not be required if a fence was within the building envelope on properties in districts requiring 1-acre or more.

Commissioner McIntosh said people who came to Portola Valley came from other places where they had significant concerns about privacy and security. With the Town's history of open space and a feeling of openness, there was an inherent conflict every time someone new came to Town. What was done now would be setting a precedent that would determine what Portola Valley would look like in 20 years. If 20 years from now, 50% of all of the existing homes were replaced, there could be a lot of security gates and an Atherton feeling. He said Ms. Lambert had indicated that 80-90% of the people that came to Town now were concerned about having a fence and gate for security and privacy. They needed to be converted to the philosophical approach in the community of open space and the feeling of openness. One guiding principle had been that people could have perimeter fences if they were "horse fences." Horse fences did not need gates across the driveway, etc. The problem of new gates had been minimally addressed. He suggested: 1) gates be half or the full setback on larger lots; 2) people be required to prove they needed a gate; or 3) making a philosophical statement that the Town did not encourage gates. Chairman Breon agreed and felt the regulations could be made more restrictive in certain places.

Commissioner Elkind said she agreed with Commissioner McIntosh's concern. But, she was also sensitive about too many restrictions. She liked the suggestion to require gates be located at the full setback. She was very disturbed by the idea of perimeter fences on properties that were less than 2 acres. She liked the suggestion of some limit on the percentage of the area that was fenced in. Children and pets could be contained, but it didn't require the whole perimeter in order to do that. With respect to vegetative fences, she thought the ASCC needed to play an important part. A guiding principle should be that it not look like a wall of vegetation. In cases where the property line runs along a creek, she did not want to establish a precedent that allows fences along the top of the bank or within the creek channel. She did not want to get people's expectations up and then pull them back when the riparian corridor issue was addressed.

Commissioner Zaffaroni felt public interest was greatest in front yard situations on parcels of 1 acre or smaller. When driving along the road or walking the trails, the openness of the front yard was relevant. She did not see the side and rear yards as of great public interest in terms of how those areas were regulated. On the fence tour, the side and rear yards were not seen with a 50' setback. On Georgia Lane, residents all had side fences. On one side, her neighbor's swimming pool and spa went into the sideyard and were close to her lot. She did not want to see into that yard. Her other neighbor had a chicken coop about 3' from her property along with an area where he kept gardening tools. She did not want to see that either. The idea of having transparency between her neighbors was not something that she valued. With larger lot sizes, that would be a different issue, although there might be cases where the houses were very close together. She was not disturbed by vegetative barriers. She described a home recently built across the street from her house, adding that she was glad to have a vegetative barrier so that she didn't have to see it. She agreed that vegetative barriers that screened long views of open space or conservation easements should be prohibited. She was not disturbed by a fairly natural vegetative area. Solid, uniform, manicured vegetative screening should be discouraged in the Design Guidelines, but other kinds of dense vegetation didn't bother her. Unlike a structure that was built, vegetative screening limitations would require on-going maintenance by property owners. Additionally, she felt the opacity issue with respect to front yards should be the same for all districts--even the smaller districts. In terms of the creek corridor regulations, she agreed that fences should not be allowed to go to the top of the bank.

Responding to Commissioner Zaffaroni, Town Planner Mader confirmed that the intention of the Council was that the creek study move ahead. He questioned how much harm would be done in the interim if fencing near creeks wasn't addressed at this point. He noted that the fence regulations, as proposed, addressed slopes; that would prevent some people from going into the creek channel. While a setback from the creek could be set and modified later, he questioned how that would be received by residents. Responding to Chairman Breon, he recalled that some distances from the creek had been discussed, but he did not recall the numbers. Commissioner Elkind suggested adding language indicating that creeks presented special circumstances and that fences had to be set back in a manner consistent with the future riparian corridor regulations. Chairman Breon suggested looking at what was in the first iteration of the creek regulations and use it for now, with the understanding that it might change.

Commissioner Wengert said she shared the philosophical views of preserving the openness of the Town. Preserving wildlife and view corridors was of utmost importance, and every effort should be made to do so. In front yards, she agreed that maximum openness was the best for all lot sizes. She was against perimeter fencing--particularly on the very large parcels. She felt some compromise position could be reached relative to some of these side yard/privacy issues; different standards could be allowed based on distances between homes or something like that. She agreed she would not want to see her neighbors in their hot tub.

Chairman Breon said he was persuaded by Commissioner Zaffaroni's position. He suggested crafting something that was reasonably tougher on the front yard setback areas, including gates and hedges, for the Design Guidelines. He also suggested language indicating that vegetation/hedges should not be used in the front yard areas to circumvent the intent of fencing regulations. The smaller lot front yards needed to be addressed in the opacity rules, as well as the 4' height limit. He agreed that the 4' rail, horse fences were acceptable. With respect to the General Plan language about fencing necessary to control animals and children, he pointed out that dogs could be controlled with invisible fences. With respect to children, he did not think a 2-year-old should be out in a yard by him/herself. At five, children could climb most fences or open the front door and walk out. He questioned whether children would be contained by fencing. He would consider lessening some of the restrictions on side and rear yards as long as the front yard and creek issues were well covered. He was also "okay" with perimeter fences except in the front yard area in the 1-acre district. In the 2-acre district, most people did not use a front yard fence for their horses. But, the 4' rail, horse fence didn't bother him.

Town Planner Mader summarized the issues raised: 1) the opacity on the side and rear property lines on the less than 1-acre and 1-acre zoning districts; and 2) the domestic fence and limiting the amount of perimeter that could be fenced based on some percentage of the perimeter. Additionally, he questioned whether the Town should rely on electric fences for dogs. Some people might think they were fine; others might not. Chairman Breon felt people could always have something within the building envelope to contain the dog. Responding to Town Planner Mader, he felt that was possible on a 1-acre lot as well.

After discussion, Town Planner Mader suggested staff draft some language about a percentage of the perimeter for that type of fence.

Chairman Breon said existing fences that did not meet standards were a problem. He wanted to recapture those where possible. When someone came in for a permit, if the ASCC made a finding that the proposed development would increase the visibility from off site, there would be legal justification to mitigate that increased visual impact by re-doing the fences using the new standards. As people redeveloped their properties, some of the more offensive fences could be recaptured in order to gain some of the openness sought. Responding to Town Planner Mader, he said that should apply to gates as well. Responding to Ms. Lambert, he said he felt the ASCC had trouble forcing things on people without having explicit directions to do so. He felt there was a legal and design basis for giving the ASCC the authority to do this. Commissioner Zaffaroni said she was having a hard time with the nexus. Commissioner Wengert said she was also unsure. Chairman Breon suggested it could be limited, for example, to visual impacts from a public road or trails. Commissioner Elkind suggested limiting it to front yard fences. Chairman Breon felt it should be broader. There were nice trails that went through side yards, and those fences could be a significant visual component. Commissioner Elkind said she was comfortable with that. Commissioner McIntosh said he would like some means of trying to recapture problem fences over a long period of time. Town Planner Mader discussed how the ASCC worked with property owners. He felt it could be kept broad and rely on the ASCC's judgement. He also was unsure how many fences would be inconsistent with the standards that would be adopted.

Chairman Breon summarized the Commission's comments: 1) the front setback area was of higher value in terms of public interest and goals than the side and rear setback areas; 2) tough but fair standards should apply to the front yard, with somewhat more loose standards for the side and rear setback areas on the 1-acre lots in particular; 3) on less than 1-acre lots, the front yard area should also be addressed in terms of opacity; 4) in 2-acre plus lot areas, domestic fences should not be allowed in the setback areas; 5) horse fencing would be allowed, including in the front yard setback area; 6) gates should go back to the 50' setback in the 2-acre plus lots and 25' in the 1-acre lots; and 7) staff would look into the standard for creek setbacks proposed in the last iteration of the riparian corridor policy.

Responding to Commissioner Elkind, Town Planner Mader suggested including a safety valve for unusual circumstances whereby the permit applications would go to the ASCC for review. Chairman Breon wanted to ensure that the situations were truly unusual. "Usability of property," "privacy and safety concerns," etc., were too loose. He agreed that there should be exceptions for the types of "variations" described in the staff report of 1/16/04."

Commissioner McIntosh said deer fencing was important to a lot of people. He suggested requiring deer fencing be inside the building envelope.

For all fencing, Chairman Breon suggested opacity be 40%. For horse fences, there was no advantage to three 8" planks over three 6" planks. Town Planner Mader said he would run the numbers; thickness was also a consideration.

Referring to the problem statements in the staff report of 1/16/04, Chairman Breon suggested adding a statement indicating that fence location and design occasionally caused problems between neighbors. Commissioner McIntosh suggested adding a statement indicating that fencing detracted from the tradition of open space in the community.

Chairman Breon suggested reviewing each of the recommendations listed in the staff report of 1/16/04. With respect to the definition of fence, Commissioner Zaffaroni noted that it included gates and posts. She was unsure how the opacity issue would affect the posts. People often used brick or stone posts. Chairman Breon noted that the gate was supposed to fit in with the look of the fence; that would discourage the use of brick or stone posts of any significant size. Town Planner Mader said the key was a consistent design. He agreed this was a big change. Commissioner Zaffaroni said the change was subtle. She wanted to make sure that everyone had thought about it.

Town Planner Mader confirmed for Chairman Breon that vegetation and fence height at street corners/driveways had not been addressed before. Chairman Breon said he felt vegetative screening would be difficult to address in an ordinance. He would rather indicate in the Design Guidelines that it was of concern and give the staff or ASCC the ability to alter the standards. Responding to Commissioner Elkind, Town Planner Mader confirmed that field verification would be required in order to make a judgement, which would take some time. Commissioners and staff discussed how widespread the problem was. Ms. Lambert said she thought staff could address this issue when it came up. Every property that came in for a fence would be looked at anyway. If there were questions, she would work with the Public Works Director or refer it to the ASCC. Commissioners agreed it did not need to be in the ordinance.

With respect to the slope issue, Commissioner Elkind suggested not allowing domestic fencing on slopes exceeding 20%. Commissioners agreed.

(2) Review of Draft Revisions to "Resolution 500-1974, As Amended"

Town Planner Mader reviewed the staff report of 1/15/04 and discussed the background of Resolution 500-1974 and subsequent resolutions, the Town's track record on deviations, and proposed changes shown in the draft revision.

Referring to the draft (p. 5, item #2), Chairman Breon said he did not recall the Commission discussing the requirement that "Additions may only be made when there is no feasible plan to make an addition that conforms to the provisions of Table 1." Town Planner Mader said the intent was that if there was an addition, it should be put where it was more stable. People would not be allowed to go into an unstable area unless there were no other options. Responding to Chairman Breon, he said the parcel areas listed under "Houses" in Table 1 (p. 3) were more of a guide. There were no differences between the three categories, and he did not think it was very significant. Chairman Breon suggested simplifying the categories to "Less than 1 Acre" and "1 Acre Plus". Town Planner Mader said it might change in the future. He said the professionals that assembled this data looked at the sizes of lots in Town and then filled in the rectangles based on best judgement. He noted that this table was widely used and had been included in publications, etc.

Referring to the draft (p. 5, item #1), Commissioner Elkind asked why reconstruction of existing structures was not allowed to increase floor area. Responding, Town Planner Mader said these structures were basically on unstable land. Increased floor area increased the potential for human occupancy and increased the amount of asset risk.

Bill Bernardy, 59 Santa Maria Ave. (Woodside Highlands), said he had just learned about the proposed revisions today and was troubled that such an important issue wasn't more widely known about. This needed a lot more discussion and input from people. He was also excited about the proposal because people in his neighborhood had been talking about approaching the Town to discuss these issues. He hoped that nothing would be done too quickly. He supported consolidating all of this and making it more understandable to the people affected. But, he felt the whole issue needed to be revisited. There was now thirty years of experience with this. Construction techniques and geology and changed quite dramatically in the last thirty years. He had questions about the way in which some of these zones had been defined. There were also arbitrary differences between what you could do in one area versus

another, as opposed to, for example, setting a performance/engineering standard and saying that if you could achieve this standard, you could do whatever anybody else could do. The bigger issue was the impact of this resolution over the last thirty years on his area. It had put a real damper on people's interest in improving their properties. That went directly against what the Town policy ought to do. Town policy ought to encourage people to improve the quality of the housing stock. Almost everything about the houses was deteriorating, and they weren't particularly expensive houses in the first place. People were trying to figure out how they could make their house safe and bring it up to current standards (e.g., energy efficiency), address functional obsolescence, etc. But, they were so constrained by the concepts embodied in this resolution that they didn't even try. You had to shell out tens of thousands of dollars for geologic studies to challenge these maps in order to begin to get any place.

Chairman Breon noted that he used to live in that area. When his father sold the house, it was deteriorating. The new people tore it down and built a new one, which the Town allowed. The house had the same footprint with the same number of bedrooms as before.

Mr. Bernardy said the intent of this ordinance was to somehow help the safety of the population. That was a good goal, but the way in which it attempted to do that was with some arbitrary things that had no relevance today. For example, the number of bedrooms had nothing to do with the number of people that lived in the house. There were a lot of houses in his neighborhood where what the owner considered a bedroom might not be what the Town would define as a bedroom. The previous owners considered his house to have three bedrooms and 3 bathrooms; an appraiser considered it to be one bedroom and two bathrooms. There were a lot of other people in the same situation. Another neighbor had huge laminated beams under his house which in the 1970s were considered appropriate for external use; now, they weren't. That neighbor wanted to change that and improve the safety/stability, but he was afraid that would invoke the need for so many other changes that it wouldn't be reasonable.

Responding to Chairman Breon, Ms. Lambert said if someone wanted to do just a seismic retrofit, they would need a building permit. It would not be a deviation, and it would not fall under Resolution 500.

Chairman Breon suggested Mr. Bernardy's group be given some time to address the Commission in writing and indicate the specific standards that they felt should apply. He added that the Town was not limiting people from retrofitting or modernizing their homes. The Town limited people from adding additional livable space under the long-standing principle in the Town that additional people should not be moving into what was considered the more hazardous areas.

Responding, Mr. Bernardy said in the most hazardous areas, there were differences. Family sizes were smaller today, and bedrooms were used as dens and offices. This was something that needed to be discussed in light of the changing function of homes today and the way in which space was used. There were also changes in engineering and construction techniques. There were a lot of houses in Woodside Highlands shown as "Pd." A couple of houses in that Pd area had dramatically changed and improved in the last few years. The feeling of unfairness had escalated considerably as that had happened. Responding to Town Planner Mader, he confirmed that these were changes to homes in Pd areas that had been approved by the Town. His concern was not that the most restrictive conditions existed, but that the Town should be encouraging people to upgrade antiquated housing stock to more current standards. Additionally, he noted that the draft resolution added language that had never existed before such as the 10% limit; for a 1,500 sf house, that was 150 sf.

Jean Isaacson, 19 Santa Maria, said she had been disturbed for quite awhile at the uneven application of the rules and favoritism. This draft resolution was the formalization of policy, like the 10% rule, that had been loosely agreed upon. Just recently, someone had gotten away with 100% expansion. She supported the expansion that was seismically safe--even though it went from 2 to 4 bedrooms and was huge. On the other hand, her house was 80 years old and right in the middle of Pd. Why was the Town penalizing her and her neighbors based on this imaginary hazard. Why not tell people they couldn't live anywhere in Westridge because of the potential for fire. Her house was 1,200 sf. It was absurd to think

that adding a dining room to her house would increase the danger. Everyone had forgotten the point of Resolution 500, which was to protect lives. None of this business about a 10% rule had anything to do with protecting lives. If she tore down her house and built one that was 50% bigger with new construction, it would be a safer structure. It was time to throw out the 10% rule as well as the blanket penalties that people paid in her area. Each property should be treated by itself and on its own merit. If she could design a foundation that was seismically stable, she should be treated just like somebody on Corte Madera Road who was in another zone. Responding to Chairman Breon, she described the house that had been expanded.

Mr. Bernardy added that sewers were badly needed. People would not offer up tens of thousands of dollars for sewers when they had no hope of increasing the value of their properties under current restrictions. People did not think there was anything they could do; they were limited by houses that every year were more functionally obsolete and less desirable on the general market. He thought it should be Town policy to encourage improvements--not upgrades in terms of expansion--for the quality of the housing stock.

Town Planner Mader agreed the definition of a bedroom was difficult. He described the Town's first encounter with landslides in that area back in the 1960s when two doctors wanted to subdivide their land.

They came to the Town, and the Town said it needed to be investigated. They objected and the Town let them proceed without doing the geologic work. Before one of them could move into the house he built on his lot, it slipped and was not usable. They sued the Town and asked why they had been allowed to do it. That landslide was a deep-seated landslide, and there were deep-seated landslides in that area.

It was not good terrain and was very difficult. The Town was and is very concerned about the safety in that area. This was not arbitrary. Even if the mapping was not perfect, it was the best mapping that could be done, and there was a way to change it. You could do a certain amount of engineering, but you could not stabilize a landslide like that. The Town was trying to do its best to protect the people there and the Town by not allowing development on unstable areas. The Town's position has been that if you're on a piece of land that's not good, you should not further increase exposure of people to that. It was not an arbitrary decision to map landslides or protect people and property. There was a long history here and it was not something that was just dreamed up.

Responding to Commissioner Elkind, Mr. Bernardy said there were 85 homes in the area. More than 80% paid dues to the neighborhood association, which had been incorporated since 1935. There was a separate road assessment district for which the Town Council served as the board. Ms. Isaacson added that the whole neighborhood was not in a Pd zone; about 20 homes were affected by Resolution 500. Commissioner Elkind wanted to make sure that there was broad input from the affected people.

Commissioner Zaffaroni read from the minutes of the 11/17/99 meeting during which the Vine application had been discussed. She noted that the project fell within the 10% rule. Ms. Isaacson described what had been done to the house. As of June 2000, she said County records showed two bedrooms and 1,390 sf. The house was 3,100 sf. Responding to Chairman Breon, Ms. Lambert said the Town obtained the existing square footage of a house from the property owner and their architect. Town Planner Mader added that normally the Town received the existing plans (as built) along with the modification. Normally, those were checked in the field.

Mr. Bernardy reiterated his desire to have a broader discussion. Ms. Isaacson reiterated her concerns about unreasonable restrictions.

Referring to the draft resolution (p. 5, #1, "Reconstruction of Existing Structures"), Commissioner Zaffaroni said she had always been puzzled and somewhat disturbed by the language indicating that it would be allowed if made without significant change to existing foundations, weight or height of structure, and no significant change in grading or drainage. That seemed counterproductive to the objective of encouraging a safer and more stabilized building. You might want to encourage someone to do a better engineered solution and/or find a better site within the parcel if there was one. She preferred that that

language be eliminated and replaced by something fresh that made more sense with better rationale in terms of the objectives to be served. In looking back over the background material, she said that language was in a memo from Robert Booth dated 5/23/79. That language was included not because it was logical with respect to the objectives of addressing instability problems, but in order to protect the Town in terms of liability issues. Reading from Mr. Booth's memo, she said he didn't cite anything for his statement, which became the language in the Resolution. She wanted to know if there was still legal relevance to requiring there be no significant change to existing foundations, weight and height, and drainage. You might very well want to change the drainage system or put on a second story. She felt something could be crafted that made more sense in terms of underlying policies. She confirmed for Town Planner Mader that she felt it should be more positive to indicate that if reconstruction was done, it should be done better and not be constrained by this language. He said he would discuss it with the Town Attorney. Additionally, Commissioner Zaffaroni said there was no provision built in the reconstruction section for any additional square footage. It was strange to have restrictions with respect to the square footage in section #1, but allow it in section #2. Chairman Breon and Commissioner Elkind agreed that should be clarified.

Referring to paragraph 2.b (p. 5), Commissioner Zaffaroni said with a small structure, a 10% addition of floor area did not represent any appreciable difference. The original language prohibited changes that would put either people or public/private improvements at risk. The idea of allowing a deviation from that was to provide some incentive to improve the existing structures and increase stability. Most people didn't want to invest a significant amount of money to do retrofitting or stabilization unless they got a little enhancement in terms of their property. Some expansion of square footage would allow a nicer living situation and also provide the incentive to do stabilization projects. Applying the 10% rule to smaller structures didn't provide enough incentive. She thought more flexibility was needed so that the property owners would move in the direction of improved stability and safety.

Chairman Breon discussed a previous application where the Commission had conditioned a converted garage to ensure it was not used as a living space; the property owners had not gone forward with the project. Commissioner Zaffaroni felt the no-increased-occupancy rule could be retained. That was not necessarily synonymous with the 10% rule. Chairman Breon discussed how the 10% standard came about, noting that it was less arbitrary than using the term "minor." Commissioner Zaffaroni said the original 1974 resolution only allowed for minor deviations; "minor" was a requirement in terms of any deviation. She questioned whether setting a set figure was reasonable under all circumstances. Chairman Breon felt using a figure like 10% allowed people some sense of what "minor" was. But, if incorporating it in the new resolution would lead to difficulties, he would not object to using the old language. Town Planner Mader said the Commission might want to discuss using a sliding scale. For a very small house, a larger percentage might be allowed, with the percentage decreasing as the houses got larger. Commissioner Elkind said that was consistent with the approaches the Planning Commission had taken.

Mr. Bernardy felt that if people could come up with plans that tested out and were approved by engineers, etc., they ought to be able to build to the Town's requirements. There should be a standard that everyone had to attain--including the people on bedrock. If it could not be attained or was too expensive, people would decide not to do it. But, there needed to be a motivation and way to recapture a large investment in making those improvements. The only way to do that was to address the functional issues that many of these older homes had. That meant having a little more room and getting the right kinds of things in the house. That had been done very successfully and approved by the Planning Commission at 50 Santa Maria Ave.

Ms. Isaacson said everyone was too wrapped up in the past and the fear of landslides. Her house had been sitting there for 80 years and had gone through numerous earthquakes. If the Town was afraid of liability, they should be afraid to have a Town picnic or allow people to drive on the roads. There was too much exaggerated emphasis placed on a potential landslide.

Responding to Chairman Breon, Town Planner Mader discussed some of the numerous exterior issues that had to be taken into account other than just the homes in that area. Chairman Breon and Mr. Bernardy discussed changes in demographics, ways of keeping additional people out of areas that were less safe, Town versus property owner's liability, etc.

Commissioner Zaffaroni noted that the language in the old resolutions did not actually require highly engineered solutions. The Town always encouraged improved engineering and required the Town Geologist's approval. She felt the language was lenient in the sense of not requiring expensive engineered solutions. Given the state of the art, there was probably an engineering solution for almost any site. But, there were also Town considerations with respect to site disturbance, etc. The existing language did not require highly engineered solutions, and the Town had tried to keep improvements relatively small. A second issue was when people wanted to go for the most highly engineered solutions.

Chairman Breon said standards (i.e., as or more stable than a home built on bedrock, no additional risk to infrastructure in the area, little site disruption, etc.) would have to be established.

Chairman Breon discussed the budget and whether to move forward with the amended Resolution 500. Town Planner Mader added that the residents would need some time to get their comments in. Since some legal questions had been raised, he said he would speak to the Town Attorney and bring it back to the Commission. He also wanted to get a response from Ted Sayre on the issue of solving things through engineering; some things could be solved through engineering, and some things would be exceedingly difficult to solve through engineering. Additionally, he pointed out that a lot of landslide problems could be solved if the hills were graded and the terrain modified. The Town decided early on that it wanted to preserve the environment the way it was and not undertake heroic efforts. In some cases, engineering solutions had been accepted for some instability categories; the category was not changed, but the solution had addressed that issue. He added that he did not see a fundamental difference in what the residents and the Town wanted. The residents knew there were landslides and didn't want to build things that would slide down the hill. They wanted a chance to make some improvements that made livability a little better. The Town didn't want to see a huge change in exposure.

Mr. Bernardy said there were two issues: 1) the percent increase in floor area, which did not address the goals or objectives behind this entire resolution; and 2) encouraging people to think about doing reasonable things with an incentive to recover some of the cost. Ms. Isaacson added that the lots up there were not large enough to allow big houses. Additionally, people who lived up there did not have that much money to do major improvements. It was simply a matter of having reasonable space and not being crammed into a 1,200 sf house. Mr. Bernardy said he also wanted to know in advance what the rules were and what could be done. The attitude had been that if you hired the right architect and approached people a certain way, you might be able to get something by.

Commissioner McIntosh said he did not see how you could avoid dealing with each situation individually. The geology, house, etc., were different in each situation.

After discussion, Chairman Breon suggested the issue be budgeted for the next fiscal year, noting that the Council would need to be involved. He recommended that the residents begin to formalize their concerns and suggestions.

(3) Election of Chair and Vice Chair

Chairman Breon said he would be leaving the Commission within a year. After discussion, Commissioners asked Chairman Breon to continue as Chair until his departure. Commissioner Zaffaroni volunteered to be Vice Chair. By motion of Commissioner Elkind, seconded by Commissioner McIntosh, Chairman Breon was elected Chair and Commissioner Zaffaroni was elected as Vice Chair.

APPROVAL OF MINUTES

By motion of Commissioner Elkind, seconded by Commissioner McIntosh, the minutes of the December 17, 2003, meeting were approved as submitted by a vote of 3-0, with Commissioners Wengert and Zaffaroni abstaining.

COMMITTEE, STAFF, COMMITTEE REPORTS and RECOMMENDATIONS

Town Planner Mader discussed plans for increased lighting of the Ladera Oaks Tennis and Swim Club courts. A negative declaration had been submitted to the County. He said the light reflecting into the sky would increase, but no mitigation had been called out. The Town's position was to reduce illumination into the sky. It did not appear that it had been looked at by the lighting expert, and he thought some indication of the magnitude should be provided. He discussed shielding that would be done to reduce the amount of illumination on Alpine Road. Responding to Chairman Breon, he said some light shields were proposed for the creek.

After discussion, Chairman Breon asked Town Planner Mader to draft a letter about the magnitude of light illuminating into the sky and light shielding of the creek.

ADJOURNMENT

There being no further business, the meeting adjourned at 12:00 a.m.

Craig Breon, Chairman
Planning Commission

Leslie Lambert
Planning Manager