

PLANNING COMMISSION MEETING, TOWN OF PORTOLA VALLEY, JANUARY 15, 2014, SCHOOLHOUSE, TOWN CENTER, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

The joint site meeting with the ASCC at 4115 Alpine Road, scheduled for 4:00 p.m., was canceled. Chair Von Feldt called the Planning Commission regular meeting to order at 7:30 p.m. Ms. Kristiansson called the roll.

Present: Commissioners Judith Hasko, Nate McKitterick and Nicholas Targ; Vice Chair Denise Gilbert; Chair Alexandra Von Feldt

Absent: None

Staff Present: Tom Vlastic, Town Planner
Karen Kristiansson, Deputy Town Planner
Jeff Aalfs, Town Council Liaison and Vice Mayor
Nicholas Targ, Planning Commission Liaison

Chair Von Feldt welcomed Commissioner Hasko to her first meeting since her Town Council appointment to the Planning Commission.

ORAL COMMUNICATIONS

Town Council Liaison Aalfs welcomed Commissioner Hasko and thanked her for volunteering.

REGULAR AGENDA

- (1) CONTINUED PRELIMINARY REVIEW: Proposed Amendment to Conditional Use Permit (CUP) X7D-161, AT&T Mobility, 4115 Alpine Road [7:31 p.m.]

Chair Von Feldt recused herself and left the dais because she lives within 500 feet of the property. Vice Chair Gilbert took the gavel as acting chair and invited Mr. Vlastic to give a staff update.

Mr. Vlastic said they had hoped to have the site meeting to consider the neighbor's concerns, as explained in the staff report and discussed at the Planning Commission's December 18, 2013 meeting, but the neighbor indicated today that he wasn't prepared to have anyone visit his property but would send a letter. He implied that his concerns focus less on visual intrusion than his general reaction to incremental changes at the site.

Mr. Vlastic said revisions received from AT&T yesterday appear to be very responsive to the ASCC's comments. AT&T has scaled back improvements on the ground and removed the fence. Two of the four new antennae are 4G, which will be removed when the LTE system is fully operational and 4G is no longer used. In response to Vice Chair Gilbert's question about the length of an antenna extending from the main pole, Mr. Vlastic said AT&T reduced it from six feet to five feet. The ASCC will review AT&T's revisions at a site meeting on January 27. Enough Planning Commissioners to form a quorum expressed a desire to attend that meeting, so the matter was continued to the 4:00 p.m. site meeting on January 27, 2014.

- (2) CONTINUED STUDY SESSION: 2014 Housing Element Update [7:36 p.m.]

Chair Von Feldt returned to the dais.

Ms. Kristiansson summarized the January 9, 2014 staff report describing the Town's existing inclusionary housing program. This program requires land or funds for below market rate (BMR) housing to be provided as part of a subdivision. In essence, the subdivision must set aside 15% of lots for BMR housing and in exchange receives a 10% density bonus for additional lots from the Town. Due to the difficulties getting housing built on the Blue Oaks lots, which were obtained via this inclusionary housing process, the Planning Commission has discussed potential changes in the past and particularly in 2003-2004. For instance, Ms. Kristiansson said a process whereby the Town might require less land but also require actual building of the BMR units is described

on page 3 of the January 9, 2014 staff report and discussed in more detail in an attachment to the report. Referring to the key points of this process, which are summarized in the staff report (page 3), she said:

At this point, Ms. Kristiansson said only four parcels in Town (El Mirador, Spring Ridge/Neely, Fogarty and the Stanford Wedge) have the potential of providing seven or more lots if they were subdivided. Because no plans to do so are expected in the near future, she said this is a good time to reevaluate and modify the program. Still, she pointed out that an inclusionary housing case pending before the California Supreme Court could change the legal basis for such programs, by requiring a nexus study to document the relationship between market-rate development and the need for BMR housing.

Ms. Kristiansson said the staff report also discusses the California density bonus law. All California jurisdictions are required to adopt density bonus ordinances that meet certain parameters or defer to the state law. Although a density bonus ordinance would rarely come into play in Portola Valley, Ms. Kristiansson said another reason to consider adopting one is that the Town would qualify for streamlined review of its housing element if it had a density bonus implementing ordinance.

In terms of second units, Ms. Kristiansson said that at its meeting on January 13, 2014, the ASCC considered the potential changes to the second units program that the Planning Commission had discussed at its December 18, 2013 meeting. ASCC members had no issues with allowing either second units up to 1,000 square feet on lots of two acres or more or two second units on lots of 3.5 acres or more. They discussed in more depth the idea of pre-approving pre-fabricated green designs, and were uncomfortable about endorsing particular designs or particular manufacturers and also about the time and effort it could take to go through the process of sifting through designs for a list and then keeping the list up to date. As an alternative, the ASCC proposed possible staff-level approval of guest houses up to 750 square feet, rather than the current ordinance which allows staff approval of second units up to 400 square feet. Additional performance standards could potentially be added to those currently in place as part of this.

Ms. Kristiansson also pointed out that tonight's agenda packet includes a 21 Elements affordability study draft. The numbers are fairly close to those in the 2009 Housing Element, she said, which is good because those are the numbers we've been using for projections for the updated Housing Element. The study is currently being reviewed by the state. Ms. Kristiansson said Planning Commissioners would be provided with an analysis of the numbers vis-à-vis the different income levels and the Town's Regional Housing Needs Assessment (RHNA) numbers for their next Housing Element study session on February 5, 2014.

Commissioner Targ asked how streamlining review of the Housing Element (by adopting a density bonus ordinance) would be advantageous. Because it would be a new program, Ms. Kristiansson said she's speaking theoretically, but essentially the state has said that they would accept a red-lined version of the last certified element showing the changes for the updated document, along with page number references for required information. The state would review only the substantive changes, rather than going through the entire document and questioning or commenting on everything.

Vice Chair Gilbert asked whether there would be time to get an ordinance in place before the Housing Element submission deadline. Ms. Kristiansson, noting that she discussed it with Town Attorney Leigh Prince, said drafting the ordinance would be fairly straightforward and should be possible to do within the schedule.

Commissioner Targ inquired whether the countywide nexus study that Ms. Kristiansson mentioned earlier would produce sufficiently precise data to be useful in demonstrating the relationship between market-rate development and the need for BMR housing in Portola Valley in particular. Ms. Kristiansson said that although the study would cover the entire county, it also would include separate components for each jurisdiction within the county to provide the precision necessary.

In response to Commissioner Hasko, Ms. Kristiansson said the decision to opt in for this information would have to come from the Town Council, and there was not time to do that before the study got underway. Still, she said it could be done now at a somewhat reduced cost savings.

Chair Von Feldt asked for confirmation that the inclusionary housing discussion pertains solely to four properties. Ms. Kristiansson said that both she and Mr. Vlasic believe Portola Valley has only these four properties that could reasonably be subdivided into seven or more lots; with seven lots, a 15% set-aside equals one lot for BMR housing. If its tentative map expires (in mid-2015) and the applicant comes back with another subdivision proposal with similar density, Sausal Creek could be a fifth. However, Ms. Kristiansson added, properties that could be subdivided into fewer than seven lots would contribute in-lieu funds instead of real property.

Considering the timelines involved in Housing Element cycles and property development, Chair Von Feldt asked how long the data in a nexus study would be valid. Ms. Kristiansson said that recent nexus studies she's seen included automatic adjustments based on cost of living, building cost index or some other measure to keep them as current as possible for a longer period.

Chair Von Feldt asked whether a minimum number of units must be developed to trigger the state's density bonus. Mr. Kristiansson said she believes it is five units. She also said that the law is fairly prescriptive, and thus probably doesn't provide much leeway for adjustment to the Town's particular circumstances. The flexibility available could be in terms of incentives, such as reduced parking requirements, and the ability to control the process.

Vice Chair Gilbert asked whether reducing the requirement for BMR housing from 15% to 10% of the lots – which would mean one BMR lot in a 10-lot subdivision – would affect the number of Town properties that could be subdivided. Ms. Kristiansson said she didn't think so, because all four of the parcels would accommodate between 20 and 30 lots.

Chair Von Feldt invited public comment, and said that she would consolidate comments/questions for response afterward.

Virginia Bacon, Golden Oak Drive, requested clarification of a statement in the staff report that said the a PUD may include up to four inclusionary units per lot. She also questioned a staff report statement about the second-unit program, which noted that the 21 Elements Affordability of Second Units Study is based in part from data from craigslist. She asked how craigslist would have identified those second units. Ms. Bacon also inquired about the use of deed restrictions and their effect on property valuations over time.

Bud Eisberg, Wyndham Drive, said it's important that any inclusionary housing in Portola Valley's future be built in conjunction with a subdivision development to ensure that it will be built. In terms of the density bonus, he said everyone needs to understand what that means and under what circumstances it could become a slippery slope, leading to loss of control over zoning restrictions.

Vice Mayor Aalfs asked whether the Planning Commission would be addressing the issue of the use of the proceeds from the sale of the Blue Oaks lots.

Phil Vincent, who's lived in his 165 Portola Road home for about 35 years, recalled the controversy over the proposed Nathhorst development and said he had several issues to discuss. As for second units, he said we need an inventory and a specific definition that either includes or excludes "breakout" bedrooms. We also need to evaluate the balance between regulation versus privacy, and the income tax implications of renting second units, he said. Mr. Vincent also raised the issue of local government rights versus state and federal rights, noting that the lines aren't very clear and communities aren't all the same. He said that needing a certain percentage of BMR units seems to be a "done deal," but there are alternatives as well as ways to change the law. One alternative is building our share of affordable housing in other communities. Mr. Vincent also pointed out that people don't necessarily want to live where they work; he recalled years of commuting to San Jose and San Francisco from his Portola Valley home. Mr. Vincent noted that the density issue was very important during the Nathhorst situation. He also noted that eventually the developer managed to get out of the commitment to build BMR housing in the Blue Oaks Subdivision.

Louis Ebner, Wyndham Drive, asked about the rationale for wanting to reduce the inclusionary requirement from 15% to 10%. He also said the density bonus is not just a density bonus but also a menu of incentives, and we must be really clear on the implications of this developers' "Trojan horse." He said we may be flexible in the

intensity of our demands; for instance, we may concede a density bonus but refuse to consider any exceptions to height limits, or setbacks, or some other aspects. Mr. Ebner said it would be helpful to know the legally defined brackets within which the Town can work. He said he would prefer to see a posture on the part of the Town Council and Planning Commission that is closer to being dragged kicking and screaming into compliance rather than bending over for it. The Town needs to understand the law and exactly what we would be getting into.

Virginia Bacon said she understands what Mr. Ebner said, but we are employers, and the cheapest house in Portola Valley currently is \$5.4 million. We must be realistic and consider how we can work as a community to provide housing for people of different income levels.

Chair Von Feldt summarized the questions, and Ms. Kristiansson responded. She explained that with the current inclusionary housing program, the PUD determines the number of units, which could be up to four per lot. At Blue Oaks, it was two units. She said the 21 Elements report looked for certain terms in craigslist to signal second units – the terms “in-law,” “granny” and “attached,” for example. She said also that a couple of people have asked about the possibility of subdividing lots, but have not officially applied. In terms of deed restrictions, Ms. Kristiansson said it’s a complicated subject. She said the ones she has seen do not allow market-rate appreciation of the units; if you buy a BMR unit you must understand that going in. When the owner of a BMR unit with a deed restriction sells the property, it must be sold at a sum considered affordable to a moderate-income household – as it was when it was first purchased. Those sums are based on state income levels determined at the county level, e.g., \$123,600 annual income for a family of four for a three-bedroom home, with 30% or 35% of income available for housing, backed out at current interest rates to determine the mortgage amount.

Mr. Kristiansson said the rationale for reducing the inclusionary housing requirement from 15% to 10% was that developers also would be required to actually build the units, rather than simply providing land as they did in the past. In terms of the Blue Oaks sale proceeds, Ms. Kristiansson said that tonight we’re trying to focus on inclusionary housing and the related density bonus. She said discussion of the funds is a bigger issue that should be covered in a widely noticed meeting.

Chair Von Feldt brought the matter back to the Commission for comments on the inclusionary housing program.

Commissioner McKitterick said we should hold developers responsible for building the units, which seems consistent with the recommendations of the Ad Hoc Affordable Housing Committee and appropriate also considering the Town’s experience with Blue Oaks. To Mr. Ebner’s comment, he added, we should make sure our guidelines are set up so that the Town retains the maximum amount of control over what the developer builds. In response to Commissioner Targ, he said he’d be cautious about it, but willing to consider an in-lieu fee. However, as Commissioner McKitterick pointed out, the idea of the Town receiving land for affordable housing has proven to be non-viable, and he would like to have a direct link between the subdivision and the affordable housing location. Commissioner Targ said that receiving in-lieu funds also would be less in keeping with the Town’s small-government ethos. Ms. Kristiansson advised that the Town would probably need some provision for in-lieu fees for fractional lots.

Commissioner McKitterick said that the Town could revisit the idea of in-lieu fees if state law changes and enables the Town to take an in-lieu fee and pay something to the state or build affordable housing in another jurisdiction.

Commissioner Targ asked whether the state imposes any restrictions on the use of in-lieu fees. Ms. Kristiansson said the only prescription she is aware of is in the Town’s ordinance: “The in-lieu fee shall be placed in a special housing fund for use solely for affordable housing.” Considering the nexus issues that have come up in Palo Alto and San Jose, Commissioner Targ also expressed interest in knowing how much flexibility the Town could build into the use of the fees.

Mr. Vlasic said that the Town’s experience in inclusionary housing has been pretty much confined to Blue Oaks, although limited amounts of in-lieu funds have been paid in as well. Going forward, he said that BMR housing should be part of the infrastructure of a subdivision, and the Town program should include provisions for management of the units by an appropriate entity outside the Town. Commissioner Hasko added that this would

also be consistent with what the Ad Hoc Affordable Housing Committee recommended. Mr. Vlastic advised that one of the objectives of the inclusionary housing program, as well as the second units program, was to disperse affordable housing throughout the community.

Commissioner McKitterick asked whether state law sets a limit as to the percentage that could be required under an inclusionary housing program. Ms. Kristiansson said the State does not set a limit, and the Town could specify that 20% of the units in a development be BMR. She noted that most communities require 10% - 20%. Mr. Vlastic said the key is to come up with a total that balances the Town's responsibility with the number of units that could conceivably be developed – although it wouldn't happen within this next Housing Element cycle.

Ms. Kristiansson said when the inclusionary program was discussed in 2004, former Planning Commissioner Arthur McIntosh spoke with some developers about the feasibility of development with certain percentages for BMR housing. Commissioner Targ said that in San Francisco, the figure is basically at least 20%, and in Emeryville, it's in the neighborhood of 15%, although he noted that Emeryville is about to change its ordinance. Ms. Kristiansson said that if the Planning Commission decides to pursue revisions in the inclusionary housing program, it would want to recommend participation in the nexus study to the Town Council to come up with the appropriate market-rate data. She also pointed out that in the Housing Element itself, the Town wouldn't necessarily have to specify a percentage but could simply explain the direction we're heading. Commissioner McKitterick said he didn't have a sense of what the percentage should be, and he needs a better understanding. Commissioner Targ said that he thought the Town needed the nexus study. Ms. Kristiansson said that although nexus studies have not been needed for inclusionary housing programs in the past, recent and current court cases suggest that this might change.

In response to a further question from Commissioner McKitterick, Ms. Kristiansson said that Woodside doesn't have an inclusionary housing program, nor does either Hillsborough or Atherton. The reason, she said, is that developers build entire subdivisions on spec in most places with inclusionary housing programs.

At this point, Ms. Kristiansson said that with a commitment to participate in the nexus study, the cost to the Town would be approximately \$20,000. Commissioners agreed to recommend that the Council approve this expenditure, so that the Town would at least have the option to explore an inclusionary housing program that would be based on realistic data. The Commission also felt that it would be best to have developers build the units and to only allow in-lieu fees for fractional units.

Discussing changes proposed for the inclusionary housing program in 2004, Vice Chair Gilbert asked whether the proposal to require 10% of the lots for BMR housing rather than 15% would be in addition to the state's 10%. Ms. Kristiansson said no; at the time this was proposed, it was essentially to give the developer the option to choose either the inclusionary housing program or the density bonus program – one or the other but not both. Ms. Kristiansson emphasized that the density bonus law refers to units and homes whereas the Town's inclusionary housing program referred to land.

Commissioners turned their attention to the density bonus law. If the Town adopts its own density bonus ordinance rather than deferring to the state law, Vice Chair Gilbert asked whether it would be necessary to provide the bonus and at least one of the concessions or incentives listed in Program 7, Section 2486a, attached to the January 9, 2014 staff report. Ms. Kristiansson said yes; these incentives could be one of the following:

- Modification of standards such as setback, square footage limits and parking requirements
- Approval of mixed-use zoning if compatible with development in the area and doing so would reduce the cost of the housing development
- Other incentives or concessions that result in identifiable cost reductions

In response to discussion about the Town's prerogative to establish its own incentives, Ms. Kristiansson said she would check with the Town Attorney to determine how much discretion the Town would have, and how having its own ordinance might affect the Town's ability to exercise control. With that kind of understanding, Commissioners directed that there should be a couple of working sessions on the state density bonus law, perhaps with the Town Attorney, to make sure that everyone understands the law before moving ahead.

Chair Von Feldt brought the Commission's attention to ASCC comments about the second-unit program. Mr. Vlasic said his sense was that the ASCC thought a manufactured or modular structure may be fine if it meets all the performance standards, but it would be wrong to penalize applicants who design their own units that meet those same standards. In other words, the ASCC would prefer to focus on ensuring that second units meet carefully crafted performance standards rather than use any particular design or series of designs. Mr. Vlasic pointed out that the standards could even include provisions for notifying neighbors, albeit without a formal hearing process. Vice Chair Gilbert clarified that the ASCC also wanted to authorize staff-level approval for second units up to 750 square feet rather than the current 400 square feet maximum. Issues such as grading and tree removal already require staff to bump certain applications up for ASCC review, Mr. Vlasic added.

In response to Commissioner Targ, Ms. Kristiansson said the idea of staff-level review for 1,000-square-foot second units on larger lots has not yet been addressed, either by the ASCC or the Planning Commission. Chair Von Feldt suggested taking one step at a time, setting the staff-level authorization at the 750-square-foot maximum at first, and seeing how that goes before expanding it to the larger second units.

Looking toward to the next study session, Ms. Kristiansson confirmed that the Planning Commission will move forward with the inclusionary housing program and density bonus ordinance issues, as well as work on the affiliated housing program and RHNA numbers in the context of the 21 Elements affordability study.

(3) ELECTION OF CHAIR AND VICE CHAIRPERSONS [8:48 p.m.]

Chair Von Feldt reviewed the history of Planning Commission Chair and Vice Chair appointments since 2005, asking fellow Commissioners whether they thought the cycle should be more predictable, as it is with the Town Council. Commissioner McKitterick said he's not fond of the rotation for Mayor on the Town Council, but noted that he would like to see Commissioners Targ and Hasko rotate at some point into the Chair and Vice Chair roles. Vice Chair Gilbert noted that everyone has different styles, and to get entrenched in one style may not make sense. Holding the Chair and Vice-Chair positions also provides a greater understanding of how the Commission works, issues we cover and our relationship with the public. It can be useful even for people who have some reluctance to take on the job, she said.

Commissioner McKitterick said that Mayor Ann Wengert told him she would like to see the Planning Commission Chair change every year and assume that under most circumstances the Vice Chair would progress to the Chair position the next year. While he does not like the way it's done with the Mayor's position, he said he does favor the idea of the Planning Commission Vice Chair willingly taking on the role on the assumption that he or she will then serve as Chair and the rest of the Commission supports that.

Commissioner McKitterick nominated Vice Chair Gilbert to be Planning Commission Chair for 2014 and Commissioner Targ to be Vice Chair. Seconded by Chair Von Feldt, the motion carried unanimously.

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS [9: 28 p.m.]

Ms. Kristiansson said that at their January 13, 2014 meeting, the ASCC visited the Villa Lauriston site at 5050 Alpine Road, a private property in the Upper Alpine Hills, where illegal clearing of about 19 significant trees on approximately an acre of land had taken place. Some members of the Town Council and Conservation Committee joined them. The ASCC approved a restoration plan, with a number of conditions including the planting of acorns and additional redwoods. In response to Commissioner Targ's comment about the length of time it would take to grow trees from acorns, Vice Chair Gilbert noted that the terrain is not favorable for putting in container plants. Ms. Kristiansson said that in addition to the plantings, there are provisions for a bond, emergency erosion control, above-ground drip irrigation and periodic monitoring as part of the remediation.

In response to Chair Von Feldt, she explained that the current ordinance does not provide for significant fines on clearing on private property. Although in this instance, no open space preserves are involved, due to the location of the property near Jones Gulch, some state agencies, including California Department of Fish and Wildlife, are involved. Mr. Vlasic said the ASCC asked the Town Council to work with the Town Attorney to see if any additional penalties are possible under the circumstances.

Because the clearing at Villa Lauriston and an earlier clearing on Redberry Ridge were both done by contractors rather than the owners themselves, Commissioners asked what could be done to prevent such violations in the future. Ms. Kristiansson said one possibility would be to send letters to all landscaping firms and other contractors advising them that when they accept work in the Town, they are responsible for making sure before they begin that their work complies with Town regulations, whether it's cutting down a tree, putting up a fence or build an addition for a house.

Ms. Kristiansson advised Planning Commissioners that the League of California Cities' annual "Planning Commissioners Academy" conference will be held in Burlingame this year. It's scheduled for March 26-28, 2014, at the Marriott San Francisco Airport Waterfront Hotel.

APPROVAL OF MINUTES [9: 41 p.m.]

Commissioner McKitterick moved to approve the minutes of the December 4, 2013 Planning Commission meeting, as amended. Seconded by Commissioner Targ, the motion carried 4-0-1, Commissioner Hasko abstaining.

ADJOURNMENT [9:43 p.m.]

Alexandra Von Feldt, Chair

Karen Kristiansson, Deputy Town Planner