

TOWN COUNCIL MEETING NO. 758, NOVEMBER 12, 2008

ROLL CALL

Mayor Derwin called the meeting to order at 8:00 p.m. and led the Pledge of Allegiance. Ms. Howard called the roll:

Present: Councilmembers Driscoll, Merk, Toben and Wengert, and Mayor Derwin
Absent: None
Others: Public Works Director Young, Asst. Town Attorney Siegel, Town Administrator Howard, Planning Manager Lambert and Town Clerk Hanlon

ORAL COMMUNICATIONS: None

CONSENT AGENDA: All items removed.

REGULAR AGENDA

(1) Minutes of the Town Council Meeting on October 22, 2008 (Removed from Consent Agenda)

Councilmember Merk submitted a change to the minutes of the 10/22/08 meeting. By motion and second, the minutes were approved as amended by a vote of 4-0, with Mayor Derwin abstaining.

(2) Warrant List of November 12, 2008 (Removed from Consent Agenda)

Responding to Councilmember Merk, Ms. Howard said check #40758 (p. 7) was to settle a claim for damages when some temporary fencing blew over and damaged a vehicle in the parking lot.

By motion of Councilmember Merk, seconded by Councilmember Driscoll, the Warrant List of 11/12/08 in the amount of \$448,450.47 was approved with the following roll call vote:

Ayes: Councilmembers Driscoll, Merk, Toben and Wengert, and Mayor Derwin
Noes: None

(3) Town Administrator Employment Agreement (Removed from Consent Agenda) [8:03 p.m.]

Councilmember Wengert moved adoption of a resolution Approving and Authorizing Execution of Amendment No. 8 to the Town Administrator Employment Agreement Between the Town and Angela Howard. Councilmember Driscoll seconded the motion.

Councilmember Merk said he would vote “no” based on sections B.1 and B.2.5.2.2. Councilmember Toben said he would also vote “no” because of sections B.1 and B.2.5.2.2. He said the terms did not align with his recollection of how the Council intended to proceed as a result of the closed session when the employment agreement was discussed—particularly with respect to the structure of bonuses and whether there should be some singling out of the Town Administrator to this degree. He also thought there were some significant problems with the language.

Councilmember Wengert said the language in B.2.5.2.2 was drafted by the Town Attorney to accommodate possible situations. It was not an authorization of anything specific. The discussion on the specifics would take place during tonight’s closed session. Councilmember Toben said the language in the provision was not clear and did not reflect what the Council intended. The conversation dealt with potential bonuses for other staff and not just for the Town Administrator. That context needed to be clarified, and there needed to

be further specificity with the way this would be executed. Councilmember Driscoll noted that he was not at the last closed session; with the questions raised, he would abstain from the vote. The motion and second were withdrawn. Councilmember Merk moved to continue the item to the next regularly scheduled meeting. Councilmember Toben seconded. Mr. Siegel said another option was to come back to this item after the closed session this evening. Councilmember Wengert said she did not feel the item should be delayed. This resolution did not authorize action relative to the bonus amount or eliminate others from consideration. There might be other bonuses considered and approved for other staff positions. She preferred to finalize the employment agreement for this one individual as the senior Town official. The process had become elongated already.

Councilmember Merk said section B.1 indicated this was effective back to July 1, 2008. He did not feel that the timeframe was critical. Additionally, he did not recall that: 1) section B.2.5.2.2 was to be in the agreement; and 2) there would be a vote on it before the discussion that would happen in the closed session. Councilmember Driscoll suggested reconsidering the item after the closed session. He saw some advantage in trying to deal with this somewhat expeditiously and not have it delayed another month. Councilmember Merk said it was unfair to the public to move the item to after the closed session. As a compromise, Councilmember Toben agreed it could be taken up after the closed session. He withdrew his second of the motion to continue the item to the next meeting. There was no second, and the motion failed. Councilmember Toben moved to continue the item to after this evening's closed session when the public meeting would be re-opened. Councilmember Wengert seconded, and the motion carried 4-1 (Merk).

(4) Agreement to Provide Fencing for All Sports Court and Tennis Courts at Town Center [8:14 p.m.]

Mr. Young reviewed the staff report of 11/12/08 and recommendation for furnishing and installing fencing for the sport courts fencing and gates. Responding to Councilmember Toben, he said a contingency for projects was always allocated to give the Town Administrator some flexibility in case there were change orders. There could be unforeseen issues underground, or the ADT or Council could decide at the last minute to make changes.

Councilmember Toben said a copy of the agreement with Central Fence had not been provided. The resolution indicated that the Council had read and considered the agreement. Mr. Young said the agreement was the Town's standard short form agreement; it was not a special agreement done through the Town Attorney. Councilmember Toben said he had not read and considered the agreement and could not vote for the resolution. Councilmember Merk suggested modifying the resolution to read: "Whereas, the Town Council wishes to enter into an agreement..." Mr. Siegel suggested also modifying paragraph #2 to read: "The Town of Portola Valley hereby approves entering into an agreement and the Town Administrator is hereby authorized..." Councilmember Toben moved approval of Resolution No. 2422-2008 Approving and Authorizing Execution of an Agreement Between the Town and Central Fence Company. Councilmember Merk seconded, and the motion carried 5-0.

(5) Report from Ad-hoc Triangle Park Committee with Suggested Improvements to Triangle Park [8:20 p.m.]

Ms. Howard reviewed the staff report of 11/12/08 noting that when this item was before the Council in September, a representative for the Jelich family asked that it be continued so the Jelichs and other stakeholders would have the opportunity to be heard. All the neighbors had been noticed of this meeting.

Ms. Lambert reviewed her memo of 11/6/08 and e-mail of 11/12/08 on the Jelich's request for a portion of land from the Triangle Park area to accommodate more parking spaces. She said the Jelichs wanted to increase the number of parking spaces for the commercial building to 59.

Responding to Councilmember Wengert, Ed Jelich said the earlier parking proposal that did not encroach

on the park would increase the parking to 56 spaces. He said he had worked with Carter Warr on the revised plan, which would protect the oak tree root systems. Mr. Warr's plan would also keep people from cutting through the parking lot at high speeds and allow more safety for people using Triangle Park. Responding to Councilmember Merk, he used the map to show where half of the pavement at the Portola Road entrance would be removed and given to the park.

Responding to Councilmember Wengert, Ms. Hughes said Parks and Rec looked at the 13 recommendations and agreed with all but recommendation #1. The majority of the Committee felt that unless it was strongly demonstrated that more parking was needed for the shopping center, park land should not be paved over. No one could remember ever having trouble finding a parking spot at the shopping center.

Lisa Green, tenant Pacific Therx, said there was a demonstrable decrease in parking since Roberts Market opened. There were also a lot of people that came off of Portola Road and sped through that area. Kids were running around there. Eighty percent of her clientele were Portola Valley residents, and they were having difficulty finding parking.

Councilmember Driscoll said the Trails Committee was not happy with the proposed location of the hitching post. It was near an area where trucks pulled over and idled their engines. Using the map, he discussed where the Trails Committee would like the hitching post, which was away from Portola Road next to the path in front of the hardware store. They wanted to have input on the design before it was approved. They were not concerned about shade but wanted it farther from the road. They also had a suggestion for a curb cut on one of the paths. Ms. Hughes said that should be considered as part of the ADA upgrade; there should be curb cutouts where the path crossed a driveway.

Kent Mitchell, a trustee for the Jelich Trust, clarified that the previous plan for 56 spaces also called for a four-foot encroachment on the park. Without the encroachment, you wouldn't have the back-out and turnaround movement that was needed. Using the plan, he showed where the additional 3 spaces would be located. He noted that the area where the pavement would be removed exceeded the area that would be used by the additional spaces. There would be pervious surface, but it was not a matter of giving or not giving land. In terms of showing a need for more parking, he said the zoning ordinance spoke to that need. There had been some accommodations made in the past in terms of what the zoning requirements were and what was actually available. Plus, this was being done to make it a much more attractive park for people to enjoy. Those people would be bringing their cars, which would require additional parking. Additionally, the full impact of Roberts was not known; as Roberts became more established, the parking might spill over. The proprietor of the beauty shop noticed that Roberts people were already parking in that area and interfering with her patrons' ability to park. He noted that the Jelichs did not have notice of the Parks and Rec meetings and had not had an opportunity to make a showing relative to parking needs before that Committee.

Maryann Raab, Cresta Vista Ln., said she used the facilities as Pacific Therx and had had trouble finding parking. Additionally, when school let out, the children from Corte Madera walked through that parking lot. Cars flew through that parking lot. For the safety of the children, that area needed to be redesigned.

Virginia Bacon, Triangle Park Committee, said the Town should also look at the parking spaces on the strip mall side. There should be some consistency between the two sides in terms of landscaping strips, etc. There should also be walkways from one side to the other so that there was some continuity. She also recommended the stairs on the left-hand side of the park be made into some sort of ramp or path. She did not think a handrail would be sufficient as indicated in recommendation #2. It was not just a matter for seniors but also for mothers pushing a baby carriage. A path would be more consistent with the rural environment. Ms. Hughes noted that there were three other entrances into the park that did not have stairs.

Responding to Councilmember Merk, Ms. Hughes showed where the current bus stop was located. The Committee wanted to move it closer to the corner next to the berm area. She pointed out the proposed location of the hitching post. Councilmember Merk added that the memorial trees needed to be protected. Responding to Councilmember Merk, Ms. Lambert said staff felt that the previous plan had enough space for people to back out of parking spaces, but the ASCC should look at that along with landscaping, etc. Referring to the plan, Councilmember Merk said it was strange to have a handicap parking space next to a set of steps. Ms. Hughes said this was a misunderstanding on Mr. Warr's drawing. The Committee had discussed putting the handicap space on the other path that was sloped—not next to the stairs.

Councilmember Driscoll agreed there was a need to rearrange the intersection so that there wasn't a cut through. He was tentatively comfortable with the reconfiguration of the entrance and three additional parking spaces, but he would like to see a more detailed, architectural drawing that showed where the memorial trees were, the proposed location of the hitching post and bus stop, etc. Councilmember Wengert said she would like to see more specificity on the squaring up of the Portola/Alpine intersection. Councilmember Driscoll noted that the Trails Committee and Traffic Committee should also see the detailed drawing.

Councilmember Toben used the plans to show where he felt a striped pedestrian crosswalk should be located. He felt it would be an enhancement to pedestrian safety and did not think it would create a false sense of safety as previously argued. He was also in favor of any measures, such as speed bumps, that would slow the traffic in that area.

Referring to recommendation #11 for the bus stop, Councilmember Merk said he was concerned about having a roof structure similar to the one at Woodside Highlands. That was pretty big and solid and might impinge on sight distances around that corner. Additionally, when the parking lot was full, it was due to a lot of activity near the real estate office. There were more and more people pulling up in cars, unloading bicycles, suiting up in bicycle gear, going for rides and leaving their cars. That might be a significant addition to what was described as insufficient parking.

Ms. Green said there were very few people unloading bicycles during the day; on weekends, it was quite significant. The real estate office, Pacific Therx and the salon were not open on Sundays. All of the users of the strip mall used the stores in the strip mall. They generally left their car at the hardware store or Pacific Therx and walked over to Roberts. Even if it was only for 15-20 minutes, it created a backup.

Councilmember Merk said he thought the increased parking was a good idea. He was not concerned with taking a few feet of the slope and converting it to head-in parking—especially if the Town would pick up additional permeable surface. Councilmember Driscoll concurred.

Councilmember Toben said he was somewhat hesitant about the increased parking. There was a more significant burden of proof when you were planning on converting green space into blacktop. He had not heard enough in the way of data. The anecdotes expressed were not consistent with his personal experience. If there was really a need to add spaces and go beyond what the Planning Commission had conceded in the way of shared use, he would prefer more analysis be done of need, times of day, etc. Ms. Green mentioned that there were some uses that weren't operating on weekends. The evidence was quite mixed on need. As far as the suggestion that the park would attract new users, he was not persuaded that this location was a hot destination in Town. It might attract kids after school and bicyclists. But, he did not think it would be a real traffic generator. But, he would not take a hard position on it.

Responding to Councilmember Toben, Ms. Green said there had been stern and contentious warnings given to her clients and other stores' clients from Roberts staff not to park in Roberts parking. Mr. Jelich added that when the salon's clients parked in Roberts parking lot, notes were left on their cars to move out of the parking lot. Ms. Lambert said the parking lot in the back was primarily for Roberts employees. The

parking in front was for Roberts customers. During busy times such as holidays when it would spill over, people could use the parking in the back. Responding to Councilmember Toben, she said the CUP did not state that the parking in front of Roberts could not be used by customers of the strip mall.

Councilmember Wengert said her initial predilection was to not add additional impervious surface for parking. But, she was struck by the fact that the Town's municipal code and ordinances would have allowed for 66 spaces. That was based on usage, size and square footage, etc. She was surprised at how low the Town had allowed it to be. Since it was being readdressed, she was open to increasing the number of spaces and the efficiency of the parking area. With more highly developed plans, there was a reason to create the spaces that were being requested.

Mr. Jelich said he was involved in the transactions of selling the different lots. There were no cross easements between the properties or agreements about parking on each other's property. Each owner controlled his own parking.

Councilmember Merk said a vehicle with a trailer or a large RV that pulled in took 3-4 of the parallel spaces. That would not be possible in the future if the parallel parking was eliminated. Additionally, it should be put in the CUPs when they were next reviewed that the parking was for everyone. If Roberts employees were putting notes on cars telling people they couldn't park there, then the other stores had every right to put notes on cars parked near their stores. That was unproductive. Maryann Raab added that trucks with trailers or RVs could park around the back where there was room.

Mayor Derwin said she agreed the parking could be increased. Councilmember Driscoll said he wanted to see an architectural plan before making a final decision.

Councilmembers and Ms. Hughes discussed which recommendations could be accomplished before making a decision on the parking. Councilmember Wengert said she did not think it was appropriate to hold up all the work of this committee until the detailed drawings were done. Councilmember Driscoll suggested asking the same designer who was doing the Jelich plans to do a plan for the Town for a small fee. If Mr. Warr was doing both, he would make sure they were integrated. Ms. Howard said once the Town had the Jelich's plan and had a sense of whether the ASCC would approve it, staff could get a landscape architect to provide plans that incorporated dimensions, etc.

Responding to Councilmember Wengert, Ms. Hughes said the ad-hoc committee's job was finished by creating these suggestions and turning them over to the Council. If the Council wanted further input, it would be best to go through the advisory committees. Councilmember Wengert concurred.

Councilmember Toben said he did not see any reason why the Town couldn't go ahead with the other elements of Triangle Park itself. That would allow the Town to be on a parallel track with the Jelich's plan. There appeared to be quite a few things that could be done now. It would also give a signal to the ad hoc committee that the Council was responding and moving ahead.

Ms. Plunder disagreed. The committee had been told that the recommendations would go to staff and staff's recommendations would go to every committee. There was not committee buy-in on this yet. The individual committees had been told that they would be able to give input to this. That was the expectation from Trails, Conservation and the others. Ms. Bacon added that Parks and Rec, the Trails Committee and others should be able to comment on what was planned wherever there was access to the parking area to make sure it was all consistent.

Councilmember Driscoll reiterated that there needed to be an architectural quality drawing of the actual locations of things that could be sent to the committees. That could go through a parallel process right away. Responding to Councilmember Driscoll, Mr. Jelich confirmed that he had a parking plan that he could

submit to the Town. Ms. Howard said she would have a landscape person add the committee's suggestions to the drawing. Councilmember Driscoll said that should be routed to Traffic, Trails, Conservation, and Parks and Rec. He added that there was the risk that the ASCC might ask for changes to the drawing. Ms. Lambert pointed out that the ASCC would need to know about the landscaping, the bus stop location, etc. Councilmember Merk added that it also needed to be made clear whether the new head-in parking spaces were on the Town's property, the Jelich's property or both.

(6) Amendment to Firearms Chapter of Title 9 [Public Peace, Morals and Welfare] of the Portola Valley Municipal Code [9:25 p.m.]

Ms. Howard reviewed the staff memo of 11/12/08 and discussed changes that had been made to the first version of the amendment as a result of Council's comments. Mayor Derwin noted that the definition of firearms had been expanded to include pellet guns and air guns. She requested the change after a cat was fatally wounded by a pellet gun. Responding to Mayor Derwin, Mr. Siegel confirmed that it would be illegal to hunt on public as well as private property. The ordinance had also been changed to reflect the Town's code as opposed to referencing the County's code. Responding to Mayor Derwin, he said if someone was caught firing a pellet gun, there could be a criminal prosecution by the District Attorney as well as a prosecution for violation of the municipal code. Responding to Councilmember Toben, Mr. Siegel said if someone shot out their own window with a pellet gun, that would not be allowed with the revised code.

Councilmember Toben said he did not think the BB gun he had as a child was a weapon that involved the "discharge of projectiles propelled by the expansion of gas." Mr. Siegel confirmed for Councilmember Toben, that if a 10-year old fired a BB gun at a paper target on a 2.5-acre parcel in Westridge, that would be a violation of the ordinance. Councilmember Toben said he was not opposed to this entirely, but he felt it could be perceived as overreaching with respect to some supervised use of BB guns. Responding to Mayor Derwin, Mr. Siegel said what other cities and towns had varied. Some towns had lax rules and some made it as tight as they could. Some towns had tried to go tighter than this ordinance and had lost court cases. He said he did not know if the County code referenced BB guns.

Maryann Raab said it was her cat that had been hit and fatally wounded. She did not think a 10-year-old on a 2.5-acre parcel should be allowed to take target practice on the animals around here—including domestic animals. Responding to Councilmember Toben, she said bows and arrows should also be included. Responding to Mayor Derwin, she confirmed that she lived on a 2.5-acre parcel. The cat was found two houses away.

Kirk Raab said when he was growing up, pellet guns were an entirely different category. The issue was that children were using this particular class of guns, which were generally given to them by their parents. He wanted the community to know that this was wrong. Kids standing out there using these guns were a risk to cats as well as other kids. In this type of community, he did not see the benefit to anybody of having little kids using these. People needed to understand that children were using them and that they had been bought for them by their parents.

Councilmember Driscoll said this was a case of a heinous act of animal cruelty. This ordinance focused on the tool used and not the act. When his son was small, he had a sling shot. With enough force, a slingshot could do a lot of damage. His daughter found a fiberglass bow around Corte Madera Creek; a bow and arrow could kill a human being. What was wrong in the cat incident was the targeting of an animal and the infliction of cruelty on that animal. He would rather have the focus be on making that a very serious act than be at variance with the County or other jurisdictions in terms of the tools being used.

Councilmember Wengert said if cruelty to animals was the real issue, a different set of actions was required. She could support the ordinance because it tried to discourage indiscriminate use of weapons on the part of children. She also supported the strict prohibition of hunting on public land. There were ways that people

could responsibly do target shooting, such as using shooting ranges. She didn't know if anything would be lost or if it would be overreaching by having this ordinance in place. As the Town led the way in other areas of life, this was not a bad direction to move in at a relatively slow pace. She thought it would be more positive than negative to have this kind of ordinance in place. Responding to Councilmember Toben, she did not think power slingshots, bows and arrows, crossbows, etc., needed to be added. This ordinance clearly said it pertained to guns of a certain type that had been defined. It was not perfect, but it set an example by not encouraging their use without stepping across the clear line of the right to have firearms.

Councilmember Merk agreed with Councilmember Wengert. This was not an issue just on big lots but an issue on small lots as well. It was not just children; it was also adults. He was near Corte Madera Creek one day when a pellet gun was discharged in his general direction. It had been quite disturbing and had been discharged by an adult who was shooting at cans on a fence into bushes on the creek.

Mayor Derwin said the ordinance sent the right message of discouraging the use of BB guns, air guns and pellet guns. These were mostly used by children but could be used by adults as well. She felt it was an enlightened view. She agreed with the comment that children should not be encouraged to use guns and supported the ordinance.

Councilmember Driscoll was concerned about an ordinance that told people how to rightly or wrongly raise their children. He also felt that when the Town passed an ordinance that some residents would view as overreaching, it diminished the authority of the Town's laws. It was like lowering the speed limit to an absurdly low level. While he understood what the Town was trying to accomplish with this ordinance, he would much rather focus on animal cruelty rules. The Town should not create a law that was artificially strict as a reaction to this incident. Responding to Mayor Derwin, he said if he was a defense attorney defending a 16-year-old who had gone off and done something, this law could be painted for the jury or a judge as being overreaching.

Mr. Siegel said there was wisdom in Councilmember Driscoll's statement about laws on the books that you were not going to enforce or that people thought were overreaching. It could have an impact on rules and ordinances of the Town that were more important to the Council. That had occurred in other towns and cities. His guess with respect to animal cruelty was that much of that was pre-empted by the State and that there were strict rules about it. In this incident, there was no one to prosecute. That was the same whether this ordinance was enacted or not.

Councilmember Wengert noted that this item had been on the agenda a couple of times, and there had been no comments indicating that what was proposed was overreaching in any way, shape or form. Councilmember Toben said he could deal with pushback, but it tended to hold up the Council to ridicule. The concern was whether it undermined the Council's authority to do serious business.

Maryann Raab said there was more to this than just animal cruelty. Her animal was not the only one that had been shot. There was a summer program at Corte Madera that involved air guns; safety was included. That was all well and good, but it encouraged the use of these guns and target practice. Kids would get hurt. She put out fliers looking for her cat, and she got a lot of emails from the Westridge people. Everyone stated that they would happily put their name on a petition to do away with pellet guns, BB guns and air guns. She would be happy to put that together.

Councilmember Driscoll said he would be more comfortable if the ordinance prohibited reckless and malicious discharge of these weapons as opposed to just the discharge of them. It was the intent of this act and not the tool that should be prohibited. That was a heinous act that needed to be stopped and clearly highlighted in that sense. He was uncomfortable with the ordinance as written. A slingshot could do just as much or more damage. He did not want to legislate behavior as opposed to legislating criminal intent. He did not want to pass an ordinance like this in the heat of a heinous event as opposed to thinking about all of

the citizens and having the laws be somewhat light-handed on residents.

Kirk Raab said there would probably be no question about prohibiting shooting a .22. The velocity of a BB was significantly less compared to an air gun and pellet gun. A slingshot was incredibly dangerous, but it was pretty hard to hit something. He felt there was a difference in the weapons. He suggested leaving BB guns out of the ordinance. That was probably where someone could say it was foolish. But, air guns and pellet guns could hurt people and could kill cats.

Councilmembers Driscoll and Toben were comfortable leaving BB guns out of the definition. Councilmember Driscoll said some guns had the muzzle velocity and ability to make a penetrating wound. He did not think that was the case with BBs.

Councilmember Merk moved to introduce and read by title, waive further reading, an ordinance of the Town amending Chapter 9.08 [Firearms] of Title 9 [Public Peace, Morals and Welfare] of the Portola Valley Municipal Code with the deletion of "BB gun" in Section 9.08.010. Councilmember Wengert seconded, and the motion carried 5-0. Councilmember Driscoll requested that a copy of the animal cruelty laws be distributed to the Council.

(7) Changing the Position Title from Town Administrator to Town Manager [9:55 p.m.]

Mayor Derwin reviewed Ms. Sloan's memo of 11/6/08 on the Town Administrator title. She noted that the Town's job description was attached as well as job descriptions for similar positions from Woodside and Los Altos Hills. Councilmember Wengert said there were apparently no other "Town Administrator" titles; it was either City or Town Manager. Mayor Derwin added that "Town Administrator" had been mistaken as an Administrative Assistant.

Responding to Councilmember Driscoll, Councilmember Wengert said the recent survey indicated that the current Town Administrator was already in the same salary range/classification as City Manager. Councilmember Toben said he was comfortable renaming the position to Town Manager.

Councilmember Driscoll said this issue had come up multiple times in the past. His recollection was that it was a deeper issue than just the title. It involved the nature of the Town's government, who held the executive responsibility, and who was the ultimate responsible party. In the past, it was felt that the Town Administrator title reinforced the fact that the Council was the chief executive of the Town and not the Town Manager. In other towns where there was a Town Manager, their government was constituted differently. That being said, he was inclined to vote in favor of changing the title because he had always thought it was artificial. It had also complicated recruiting in the past.

Mayor Derwin said in the past, the Council hired and fired employees. Apparently, that was a model that used to be much more prevalent. Other cities and towns had moved toward the City Manager model, where the employee hired staff.

Councilmember Driscoll noted that there was a time in the past when the Mayor came into the office and had a desk to work from. The Mayor functioned as the chief executive. That changed at some point in the '70s because the Councilmembers were active career people and could not spend the time at Town Hall. The older style of government had transitioned at that point, but the title had persisted.

Councilmember Merk said in the past, it was more prevalent to have a Town Administrator. The Town used to have a Town Clerk and no Town Manager. This question came up a number of times in the 80s. A committee of 20 people was formed to study the issue of whether to change it from Town Clerk to Town Manager. The decision was split, and no action was taken. He thought not having a Town Manager was one of the things that made Portola Valley distinct and supported the volunteer government that existed. He

added that Portola Valley was the only city in San Mateo County where the Council received no remuneration of any kind. He was fine with that. Not having a Town Manager was a way of enforcing or bolstering up that kind of volunteer spirit that was in the Town. He could not support this change without seeing some form of study done that showed that the change needed to be made. If the job title needed to be explained, it could be explained. The problem with recruiting occurred when the previous Town Administrator was hired. Nothing was done until the last minute, and he was hired in a pinch. He did not see a problem with the current title. He did not see the need for the change from reading job descriptions of people working in nearby cities. The minutes of the meetings when this had been discussed in the past had not been made available, and he saw no demonstration that a change was necessary or required.

Councilmember Wengert said things had changed from the '80s to 2008 dramatically. First, there was a parity/fairness issue. If someone was doing a job that had a title within an industry, there was a need to be recognized for the job you were doing with a title that was recognized within that industry that was commensurate with the responsibilities that you held. With respect to everything that had happened, the Council was unduly penalizing itself in the event of any planned or unplanned change in this position. Things continued to change and the Town needed to be ahead of change and not behind it. Mayor Derwin agreed adding that the person who currently held this job was doing a Town Manger job.

Councilmember Toben referred to an article in *The New York Times* a year ago about the coming crisis in public administration and the fact that it would be increasingly difficult to attract people to positions of this kind. Changing the title was a way of positioning the Town and showing what the Town Manager did. That would better situate the Town in the market place for Ms. Howard's successor. He agreed that things had changed, and the time had come to make this change. He could not imagine the Mayor playing the same role he/she did decades ago. While he admired that history, he felt the Town should adjust to realities.

Councilmember Toben moved to direct the staff to prepare an item for Council action at a subsequent meeting considering the renaming of the position of Town Administrator to Town Manager. Councilmember Driscoll seconded the motion. Ms. Howard said the reference to Town Clerk should also be removed. Councilmember Merk said he would vote against the motion because there was not enough data to venture in that direction. This was one more nail in the coffin of the Town of Portola Valley. Mayor Derwin called for a vote, and the motion carried 4-1 (Merk).

(8) Policy on Town Officials and Staff Response to PV Forum Postings [10:20 p.m.]

Ms. Howard reviewed the staff report of 11/12/08 on staff and/or Town Officials' response to PV Forum postings.

Mr. Siegel said it was the purview of the Council to decide what the policy was for staff to respond, whether or not to respond, or how to respond. With respect to Councilmembers participating, there were some additional issues. It was permissible for any or all Councilmembers to be members of the PV forum. Most city and town attorneys felt it would be a violation of the Brown Act for Councilmembers to post on this forum, which was not a publicly noticed meeting. You could end up with a serial meeting if Councilmember A spoke to Councilmember B, and then B posted and C responded knowing that A and B had responded. With respect to staff responding, the Town lost some of its protection and immunity if staff talked about issues that were not within the Town's borders. If staff commented on something going on at the Ladera shopping center, it was not the Town's business and staff was not the expert on what it was posting. For Town affairs, Council and staff were the experts. This would apply to the Planning Commission as well. Responding to Mayor Derwin, he said staff could respond to questions about PG&E outages by referring people to the Town's website, which dealt with the affairs of the Town. Responding to Councilmember Toben, he said it would always be appropriate for a councilmember, planning commissioner or staff to say when a public meeting on a particular subject would take place and the deadline for comments. Anything beyond that was fraught with difficulties.

Councilmember Toben felt that was too conservative. Staff and the Council had been plagued for a long time with the issue of not communicating. With the postings on the forum, once a negative spiral started, things hit bottom in a hurry. There were opportunities for a very quick, strategic intervention that could wipe that out. For example, a group of residents became very upset because it was rumored that the Council was going to eliminate one of the three tennis courts. The rhetoric became increasingly vicious in a short period of time. Councilmember Driscoll wrote a thoughtful and substantive message in which he stated what was going on. The rhetoric disappeared, and it had been a great intervention. On the Ladera shopping center issue, at one point a resident asked why the Town Council wasn't doing something about it. He had intervened with a polite clarification that the Ladera shopping center was subject to the jurisdiction of San Mateo County; if there was an issue involving a CUP on that site, the Town would have had an opportunity to comment. He was very reluctant to back off from that kind of intervention. The Council was always working against a lot of resistance to build good will.

Mr. Siegel said no one was stopping a Councilmember from posting. His and other town attorneys' advice was that it was not a good idea. In the examples cited, the Councilmember could e-mail a staff member and ask them to make the same posting. It might not be as effective and might be slower. But, the Council needed to understand what the dangers and limitations were. That was no different from two Councilmembers having coffee. The Town had never had any problems with the Brown Act, and he didn't expect any.

Councilmember Toben felt there was much more the staff could do that would be constructive and beneficial to staff's standing. If you asked 80% of the people in Town who the Town Manager was, they couldn't tell you. He was looking for ways to improve the visibility and showcase the good work and good people on the staff. For example, a posting asking what was going on at Felt Lake could be resolved in one phone call to Stanford Land Management. It would be a five-minute transaction that would enable the staff to get on the PV forum with an instant response to the residents that was factual. He encouraged that and felt it was an opportunity for the staff to show that it was sensitive and responsive to citizen concerns and not a passive bureaucracy that didn't do anything until someone came forward with a permit application.

Councilmember Wengert said she had never posted on the forum because she had an intuitive sense that anything she said would be construed as the official Town policy. Some situations were factual, and some were much more subjective. In trying to diffuse a situation or complaint, she preferred a post that instructed readers to go to the Town's website where the facts would be addressed. She understood the merits of a quick response. But, if the Council wasn't clear about what role it should be playing, the staff couldn't be clear about what role they should be playing. The goal should be to establish something so that the staff and the Council knew how to respond without getting in a bind. Some of the things on the PV forum didn't necessarily warrant a response. That meant there needed to be a prioritization. She would like to rely on staff to indicate when an issue needed a response.

Councilmember Toben said he was not sure the staff was best equipped to respond to many of the currents he had perceived in the community. Councilmember Wengert said it was a judgment call and a question of who would make that judgment. If Councilmembers responded individually, each would be applying that judgment.

Councilmember Toben said in a few instances, he had asked the staff to respond, and there was no response. He felt strongly that there was value in responsiveness. Staff could respond on some of the straightforward issues. Something like the Felt Lake issue could be resolved expeditiously and accurately. Councilmember Driscoll said he would not recommend staff respond to a Felt Lake question because it wasn't in the Town. Councilmember Toben said the Town Planner's staff knew about the projects that were subject to review and approval. Mr. Vlasic found the answer in five minutes.

Ms. Howard said getting the right information was not always that easy. In the case of PG&E, she could tell

people who to call or post the numbers on the Web site. But, when she received the question, she didn't know why power had been lost. It took some time to contact the right person. Sometimes it wasn't possible for staff to do that because they weren't there or there were other things that had to be done.

Councilmember Toben described staff's response to a PG&E issue; Mayor Derwin had to step in and resolve it. Her very well written e-mail had diffused what was a rapidly deteriorating situation. Ms. Howard said staff could do a better job and try to be more pro-active, but sometimes there was no one there that could do it. It might be a couple of hours before e-mail was even read. There was still the issue of whether the Council wanted the staff to weigh in on some of these issues that had to play themselves out.

Councilmember Driscoll said staff should do factual, informational, non-advocative responses. Staff was supposed to be neutral. Ms. Howard said more people would be able to post on the new website; a short response could be written and people could be directed to the Town's website. The idea was to let people know that the Town's website was the place to go if you wanted the right information.

Councilmember Merk noted that he was not on the forum but had been exposed to some of the material posted on it. Opinions traveled much too quickly, and responses were written without thought. He did not feel it was the way the Town government should work. It was a difficult situation because people had the expectation of getting an instantaneous response. The Council couldn't respond in five seconds. He would much prefer the staff or the Mayor handle this. It could mean additional time and work, but it was a slippery slope. There was a good potential for violation of the Brown Act and getting the Town in trouble. He was nervous about the forum. It was also a private chat group. You had to be approved to join this chat group. If you lived in Woodside, you couldn't be in this chat group and yet there were staff who didn't live in Town who were in the chat group. He was uncomfortable about how it was formed. Maybe the Town should form a chat group. Councilmember Driscoll said it was a moderated group, and the moderator monitored the members to keep it local. Even with that, there were solicitations. He did not think the Town should be involved in moderating.

Councilmember Driscoll said staff should respond when there was a factual error spiraling. Councilmember Toben said he did not think it was just correcting errors. Simple factual answers should be provided. A member of the planner's office calling Stanford Land Management was an opportunity for generating very positive response. The response from the community was incredible when they received a response from the Council or staff.

Councilmember Toben said a resident who came to the Noise Workshop said he had hired Kent Mitchell years ago to address complaints about noise at The Sequoias. A lot of legal expenses could have been saved if the resident had just called Richard Merk. The resident had no idea that there was a responsive body of elected officials. This was all part of an effort to try to put a human face on who made decisions for the Town.

Mayor Derwin said the Council had been heavily criticized for not being responsive and not communicating enough. A councilmember could be appointed to respond to the PV forum. Councilmember Driscoll said he thought it should be part of the Mayor's responsibilities. Councilmember Wengert agreed it might make sense to concentrate the effort in one place. It would also rotate with the Mayor. Councilmember Toben concurred. The Mayor should be the first responder—especially in cases where the staff's response was insufficient. When the Mayor was out of Town, the Vice Mayor should be on call. Councilmember Driscoll added that the Mayor could always forward specific subjects to another councilmember who had more expertise on the subject. Ms. Howard said staff would try to be more pro-active in getting information on the Town's website.

COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

(9) Historic Resources Committee Appointment [10:55 p.m.]

Referring to Nancy Lund's e-mail of 11/5/08, Mayor Derwin appointed Jeannette Fowler to the Historic Resources Committee. By motion and second, Council unanimously concurred.

(10) Status of Town Center Project [10:56 p.m.]

Ms. Howard said the creek was progressing very well; plantings were being done. She described work being done on the driveway, restroom building, and Town Hall interior. The tennis/sports courts had been redesigned so that all three courts were on the same level. Councilmember Driscoll noted that an arborist had been called in to make sure there would be no damage to tree roots. Ms. Howard said the Maintenance Building was almost complete. The office area would be shared between the Town maintenance staff and the Sheriff's Dept. Almost all the bills for phase 1 had been paid; it was about \$10,000 below budget. There were a lot of outstanding bills for phase 2. To date, \$10,127,548 had been paid; outstanding bills totaled \$2,604,951. A match had been made for the creek for a \$200,000 match challenge. To date, the creek fundraisers had brought in \$897,334 in cash. Staff was still trying to reduce costs; about \$200,000 had been cut from the creek project. The pedestrian bridge had been eliminated, and Mr. Young was making engineering changes to make it a simpler and better project.

Councilmember Driscoll said the hole would be dug to connect the creek in about 2-3 weeks after the rest of the planting was done. The expected cost was \$40,000, but bids came in up to \$200,000. Mr. Young found a local contractor who was willing to do it for \$48,000. The survey for the trail around the back of the property showed there would not be room for the trail unless all of the trees above the soccer field were removed. He was negotiating with George Stern on a way to move onto his property; the trash enclosure at the end of the road behind the gate was partly on Town property. One of Mr. Stern's co-owners was adamantly opposed to giving the Town anything. Additionally, there was an agreement with the church to use each other's parking lot in overflow situations. The co-owner was concerned that people were walking from the church parking lot into the walnut grove and picking walnuts. It might be possible for the Town to put a fence around the church parking lot for around \$5,000-\$7,000. That would also create a fenced off path between the two parking lots. The church seemed to be open to the idea as was Mr. Stern.

Councilmember Driscoll described material changes that had been made on a section of path from the Community Hall to the central path so that it would not puddle when it was wet. Using the plans, he described the realignment of the path that used to go out to the bridge and other minor modifications. He said some of the lighting fixtures that had been purchased and delivered were oversized and inappropriate in a couple of places; the fixtures would probably be sold and replaced with fixtures that were safer.

(11) Reports from Commission and Committee Liaisons [11:10 p.m.]

(a) Noise Workshop

Councilmember Toben said the first meeting was held on 11/1/08. Meeting notes had been circulated today. It was an extremely productive meeting with 20 people representing the full spectrum of views. He was hopeful that some common ground could be found; that would probably involve some modifications to the recommended provisions. The second workshop would take place this Sunday.

(b) Trails Committee

Councilmember Driscoll said the Committee discussed the Triangle Park recommendations. The C1 trail

was making some progress, and Mr. Young met with Stanford today. The Committee also received a report on Safe Routes to School. At Corte Madera School, they were attempting to put a crosswalk across Indian Crossing at the mouth of Horseshoe Bend, which was where the bike rack was located. Kids could cross the road where there wasn't school access traffic happening. They also wanted to improve the trail down the side of the road and get people onto the trail that went down Alpine Road. They also wanted a stairway at the southern crosswalk. They were trying to prevent kids walking down the side of Alpine Road, which was common.

(c) Planning Commission

Councilmember Merk said the Douglasses requested that the condition requiring sewer hook up be dropped from the CUP. The Commission did not agree and felt there had not been good faith in terms of following the LAFCo and West Bay Sanitary District processes. The Douglasses had been given to 1/30/09 to show good faith effort or have the permit revoked. Additionally, there was a preliminary review for a variance request from The Sequoias to put two new transformers with twice the capacity of the existing transformers in the rear setback. They had not provided any explanation as to why such a large increase in capacity was needed other than to say that some residents wanted air conditioning and computers. It would be hard to make the findings for a parcel of that size; convenience was not an overriding factor. He anticipated that the proposal would be revised. There were quite a few concerns expressed by neighbors about noise. The Commission also reviewed Council's comments on the Sustainability Element; that would be set for public hearing on December 17. There was also a discussion on the Green Point rating system. There would be a public meeting on the Housing Element on 11/19/08, as required by State law.

(d) Traffic Committee

Councilmember Merk said the Committee needed a lesson in parliamentary procedures. Members of the Committee were having a discussion and members of the audience were having discussions amongst themselves. One member of the Committee made a motion, which the Chair couldn't hear because a conversation was going on with someone else. The issue was a stop sign at the corner of Mapache and Westridge. Police Commissioner Ed Davis attended and discussed policy. Some education was needed, with parliamentary procedures right on top so that multiple conversations weren't happening at the same time and the agenda was followed.

(e) Community Events Committee

Councilmember Merk said a lot of the discussion had to do with the volunteer appreciation party; a lot of expenses were approved at the meeting. Additionally, the Committee was concerned about having enough people to keep the Committee viable. At least one person who was appointed within the last six months had attended only one meeting, and Carolyn Rogers would be leaving the Committee. There were some potential candidates, and the Committee didn't want to wait until January when advertising was done for all the committees. He suggested staff e-mail the Chair and let the Committee know that they could send in application letters/recommendations at any time. Councilmember Toben said the PV forum could be used for vacancies if someone could write something up.

(f) ASCC

Councilmember Wengert said the ASCC discussed the green building point system. They discussed the design review process and ratcheting up the point system minimums as home size increased. They also discussed applications for homes over the last couple of years and how they would have done had the point system been in effect. A new candidate attended who would hopefully apply.

(g) Committee Review

Councilmember Wengert said the second meeting was held a week ago and focused on modifying the committee membership handbook. One more meeting would be required to complete the process with recommendations coming to the Council early next year. Some of the questions raised by Councilmember Merk would be addressed.

(h) Library JPA

Mayor Derwin said the meeting was held in the Community Hall. Brandi de Garneau gave a tour of the facility. There was a reception for the new Director of Services, Martin Gomez, in the library. Everyone was extremely impressed with the Town Center and the library.

(i) Teen Committee

Mayor Derwin said the Committee had a lot of new potential members—teens and mothers. They discussed possible events.

(j) SF PUC

Mayor Derwin said the Town had signed a resolution in support of the Tuolumne River Trust's request to conserve water before diverting 25 million gallons/day. She attended the PUC hearing where it was discussed. Things went in the direction the Town supported. They still had a provision where they allowed the diversion of 2 million gallons/day, but there was strong language to try to get people to conserve. A lot of speakers spoke on behalf of the Tuolumne River.

(k) Green Speakers Series

Mayor Derwin said she met with Ms. de Garneau, Ms. Howard and Ms. Lambert to talk about the next event with Dr. James Hansen. Councilmember Toben was providing some information to help publicize the event on 12/16/08 at 7:00 p.m.

(l) PVCF

Mayor Derwin said PVCF held a thank you lunch for the staff, which was lovely.

(m) Newsletter

The newsletter was at the printer and would be out soon.

(n) Creek Planting Days

Mayor Derwin said she attended both days. She described participants noting that this was an excellent community project.

(o) Council of Cities

Mayor Derwin said the next dinner meeting would be November 21 at the Community Hall. She described the event, noting that Councilmember Driscoll and Larry Strain would be speaking.

WRITTEN COMMUNICATIONS [11:30 p.m.]

- (12) Town Council 10/24/08 Weekly Digest: None.
- (13) Town Council 10/31/08 Weekly Digest: None.
- (14) Town Council 11/7/08 Weekly Digest
- (a) Phillips Brooks School Update

Referring to Ms. Lambert's memo of 11/6/08, Councilmember Toben said he was pleased that staff had followed up on the issue with Santa Clara County; vigilance mattered.

- (b) Use of Historic Schoolhouse

Mayor Derwin referred to the letter of 11/1/08 from Sally Ann and Peter Reiss requesting use of the schoolhouse for six meetings for a non-profit group called "People to People." She supported the request. Responding to Councilmember Driscoll, she confirmed that one of the student ambassadors was from Portola Valley. Councilmember Toben said he liked the concept of encouraging young people to be engaged in government and civil society. Councilmember Wengert agreed. Councilmember Merk said the Town's schoolhouse use policy document said the majority of the people attending the event should be residents. That was not the case here, but he thought it was mitigated by the fact that it was an educational use with very low impact.

CLOSED SESSION

- (15) PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Government Code § 54957
Title: Town Administrator

REPORT OUT OF CLOSED SESSION: None to Report

Mr. Siegel said during the closed session, the Council set eight performance goals for '08-'09. The list would be attached to the Town Administrator's Employment Agreement.

RECONVENE TO REGULAR MEETING: [12:20 a.m.]

The Council resumed discussion of agenda item #3, the Town Administrator's Agreement. By motion and second, Council passed Resolution 2423-2008 Approving and Authorizing Execution of Amendment No. 8 to the Town Administrator Employment Agreement Between the Town and Angela Howard, with the deletion of section 5.2.2, by a vote of 4-1 (Merk).

ADJOURNMENT

The meeting adjourned at 12:25 a.m.

Mayor

Town Clerk