

TOWN COUNCIL MEETING NO. 688 FEBRUARY 22, 2006

ROLL CALL

Mayor Toben called the meeting to order at 8:05 p.m. and led the Pledge of Allegiance. Ms. Howard called the roll:

Present: Councilmembers Davis, Driscoll and Merk, and Mayor Toben  
Absent: Councilmember Derwin  
Others: Town Administrator Howard, Town Attorney Sloan, Planning Manager Lambert and Deputy Clerk Hanlon

ORAL COMMUNICATIONS

Bill Henderson, Brookside Dr. said the Town Attorney had advised him that he must address only the Council during meetings. He asked for an ordinance number or citation for that requirement. Secondly, he questioned why the Administrative Assistant position had been raised to Deputy Town Clerk at the last meeting. That person was performing the same tasks. Citing the old and new salary ranges, he said the cost to the Town would be at least \$12,000/yr plus increased payroll taxes, benefit costs, etc. When he had asked about the qualifications of this Administrative Assistant, the only justification he received was that the person had a certificate of some kind. He felt the Council's analysis and review process was flawed and that that job at that level did not need to be raised. He discussed the goal of small town government, the cost of the Town Center project, and other spending programs on the horizon.

CONSENT AGENDA

By motion and second, the item listed below was approved by a vote of 4-0:

- (1) Minutes of the Special Joint Town Council and Emergency Preparedness Committee Meeting on January 31, 2006

REGULAR AGENDA

- (2) Minutes of the Town Council Meeting on February 8, 2006

Councilmember Merk and Mayor Toben submitted changes to the minutes of the 2/8/06 meeting. By motion and second, the minutes were approved as amended by a vote of 3-0, with Councilmember Driscoll abstaining.

- (3) Warrant List of February 22, 2006

Responding to Councilmember Merk, Ms. Howard said the eight voided checks on the 2/22/06 warrant list were due to error by the Bank of America in prematurely implementing the bank's new security program recommended by the auditors. She explained the program and discussed what had caused some of the checks to bounce. The vendors had all been notified there was a problem, but some of the checks had to be reissued.

By motion of Councilmember Merk, seconded by Councilmember Driscoll, the Warrant List of 2/22/06 in the amount of \$151,289.17 was approved with the following roll call vote:

Ayes: Councilmembers Davis, Driscoll and Merk, and Mayor Toben  
Noes: None

(4) Legal and Administrative Issues Related to Lowering the Utilities Users' Tax (UUT)

Mayor Toben said in January, the Council signaled its intension to address the reduction in the UUT rate. That had to be done prudently and with all of the factors addressed to ensure the stability of the Town's finances. Certain legal and administrative issues had to be researched and discussed before determining what the appropriate adjustment in the 5.5% general fund UUT should be. The 2% rate for open space had not been deemed proper for reduction. The Town Attorney had informed the Council [*memo dated 2/16/06*] that in order to reduce the UUT rate without forfeiting the corresponding amount of property tax, which the Town now expected to receive from the County of San Mateo under the TEA Shift, it must be put to a vote of the residents of Portola Valley. The Town needed to notify the County no later than March 10 of its intention to consolidate a special election with the general election in June. Based on that information, Councilmember Davis had undertaken a very rigorous analysis of the options for reducing the 5.5% UUT. He had discussed his analysis with the Finance Committee, and the Committee's recommendations were set forth in a memo from Councilmember Davis dated 2/17/06.

Councilmember Davis reviewed his memo of 2/13/06 and UUT calculations for FY 2005-2006. He discussed: 1) history and background of the UUT; 2) assumptions used in his analysis; 3) the option of reducing the UUT by the amount that would now be coming in from the additional property taxes; 4) option of funding the specific expenses the UUT revenues were designated for and reducing the UUT by the surplus; 5) projected revenues based on FY 2005-2006; 6) his recommendation to lower the UUT; 7) potential loss of some UUT revenues due to a recent court ruling involving Verizon; 8) the Finance Committee's three recommendations, as set forth in his 2/17/06 memo; and 9) use of UUT surplus if voters voted not to reduce the UUT rate. He recommended a reduction in the UUT rate from the current 5.5% to 3.5% be placed on the ballot. The ballot should explain that if the residents did not wish to reduce the tax, it would be used for general infrastructure activities.

Noting that Bill Urban had suggested undergrounding be financed with a tax-deductible bond, Ms. Sloan confirmed for Councilmember Driscoll that she did not think such a bond would be deductible. Councilmember Davis noted that Mr. Urban's basic point was that the UUT was an inefficient and insufficient taxing method to fund a large undergrounding project.

Responding to Mayor Toben, Ms. Sloan said the 5.5% tax was a general tax. Implementing a general tax took a vote of 2/3rds of the legislative body, but only a majority of the voters. A special tax, like the open space fund or earmarking funds, required a 2/3rds vote. Responding to Councilmember Merk, she said taxes had been suspended and temporarily lowered in other cities, which was prudent. The voters would be asked to support lowering the tax for a period of years, such as four years. At a particular date, it would automatically go back up to 5.5% unless it was suspended by a vote of the people. You would have to go back to the voters each time because of the TEA Shift issue.

Ed Wells, Naranja Way, said the original ordinance was 6.5% for the general fund rate. He had not been aware that in 1995 there was any action on the part of the voters to make an amendment to the original ordinance. He thought it was just an issue of how much the voters authorized as an expenditure limitation. At the time, it was set at 5%. At the same time, the 2% open space rate had been put to the voters with a 2/3rds vote required. To better understand the options here, it would be helpful to know whether the Council was going back to the original ordinance and amending that by this vote, or whether the GANN limit would be changed for a period of three years. Secondly, he had compiled some information on what the costs were for the UUT and learned that the median in December and January for PG&E bills was about \$35-\$40 per family. People had been asked to send e-mails and indicate what their costs were. Less than 100 responses had been received. One retiree reported that the tax on her PG&E bills exceeded \$105 for the months of December and January. Another person reported that his tax was about the same for those two months alone. He said his were less than half of that. It was a question of the style of the home and living

styles. The Council needed to think about putting a cap on what the Town expected from the single families in the community. "Tax deductibility" sounded nice but it really meant that the federal and State government would help to subsidize the residents' payments to the Town. The Council should bring something to the voters that had a characteristic of being an authorized tax-deductible moneymaker. H&R Block did some research for him on tax deductibility of the UUT; their research department said "no." Wendy Crowder agreed it was not deductible.

Ms. Sloan clarified that the UUT was first adopted in 1985 at 6.5%. That was superceded by the voters voting to reduce the tax in 1993 to 5.5%. Four years later in 1997, the Council decided to keep the tax at 5.5% and added the special tax of 2% to the ballot. The UUT was not deductible because it was not on the property tax bill. Responding to Councilmember Driscoll, she said if you had an assessment, it showed up on the property tax bill. A lot of people assumed that because it showed on the property tax statement, it was deductible. Her understanding was that it was not deductible, but most people deducted it.

Mayor Toben said the proposal from the Finance Committee was that the Council direct the preparation of a resolution for a special election in June that would authorize a reduction of the current UUT rate of 5.5% to 3.5%. Whether the term should correspond with the recently adopted rate should be discussed.

Responding to Mayor Toben, Councilmember Davis said if the voters did not support a reduction of the rate to 3.5%, the Finance Committee recommended that the funds that came in would be applied to infrastructure projects within the Town. Whether it was undergrounding or something else could be determined later as it would go into the general fund.

Councilmember Driscoll said it was very difficult to look four years into the future and more difficult to look eight years into the future. He did not want to take any action that would tie the hands or complicate the financing of future councils. He thought it was reasonable to lower the rate now while it appeared that there were sufficient funds. But, he thought there should be an opportunity 3.5 or 4 years out to re-look at the situation at that time and decide whether it should continue at 3.5%, go to 4% or do something else. Whatever was done, the County should not be given an opportunity to take it back. Responding to Councilmember Driscoll, Ms. Sloan said the Town could ask the voters to just reduce the tax or reduce the tax for a certain number of years. She confirmed that the Town did not have to reduce the appropriations limit which would stay where it currently was. Councilmember Driscoll felt the term should be four years and re-examine the Town's position in 2009. Responding to Ms. Sloan, Ms. Howard confirmed that whatever rate was chosen would begin in July of 2006 and expire in June of 2010. She confirmed that by November of 2009, the Council would have to make a proposal for the tax rate.

Councilmember Merk confirmed with Ms. Sloan that a "sunset clause" meant that the action taken now terminated on a specific date. In November of 2009 when the voters were asked to renew the tax for 4 years, they would be renewing it at the 5.5% rate. From their point of view, Councilmember Merk said they would be voting to increase it. Councilmember Driscoll said as in 1993 and 1997, electoral questions would be drafted for the November 2009 ballot asking voters to: 1) maintain the appropriation limit at 5.5%; and 2) set the tax at a certain level, such as 3.5%. They could choose to vote "no" on 3.5% in which case it would be 5.5%. Ms. Sloan concurred. Responding to Mayor Toben, she said of the cities she was aware of that had suspended or lowered the tax; they had a sunset clause because they wanted the ability to have it automatically go up again if necessary. But, she did not think any of those cities were facing a TEA Shift issue and did not have to go back to the voters. They were just working the system themselves.

Councilmembers discussed the timing of the tax renewal and appropriations limit. Mayor Toben said if the Town proceeded with a reduction to 3.5% in June of this year, that would remain in force until the end of FY 2010. In November of 2009, the question before the voters was whether it should go back to a 5.5% rate or reduce the appropriations limit to 3.5% or whatever the number might be. That would be a ratchet down.

Councilmember Davis said he did not think the appropriations limit needed to be addressed now. Ms. Sloan agreed. The voters could lower the tax to 3.5% from July 1, 2006, to June 30, 2010, with nothing said about the appropriations limit. She said Councilmember Merk was just pointing out what would happen in four years. Councilmember Davis said it would only be a problem if the Town needed to raise the rate. He hoped it could be lowered in four years or earlier when some of the unknowns were known. Ms. Sloan reiterated that the voters would always have to be asked to lower the rate; if the Council lowered it, the TEA Shift would be sacrificed.

Councilmember Merk said when people acted quickly, they were more likely to make a mistake. He felt there were too many identified unknowns, and that the Council was rushing into this to make the June ballot. The Council might know a lot more by November. He felt the Council was moving too fast. Personally, he did not know whether to support or oppose lowering the tax. He was, however, in favor of asking the residents of the Town. He thought there were a lot of other things the Town could do with that 2% that would be eliminated. For example, there could be aggressive trimming of non-native trees that were overhanging the power lines and causing a lot of outages. And, a lot of the roads needed better striping. There were a number of things that could be put before the voters as an argument not to lower the UUT. Those needed to be brought out rather than just asking people whether they wanted to spend 2% less on their utility bills. He also thought there should be a sunset provision of some kind. It would be more forthright with the voters if it was in conjunction with the appropriations limit vote. How that was presented would be very important. But, without the sunset clause, the only way the Town could go back to some higher percentage if necessary was to get a 2/3rds vote. Historically, that had been easy, but it was apparently becoming less easy. He was concerned about locking the Town into something that would be difficult to overcome in the future. Responding to Mayor Toben, he said he did not object to what was being proposed but was concerned about the speed. Waiting until November might allow for a resolution of the Verizon appeal as well as knowing whether the Town would be receiving any retroactive funds from the County and what would actually be received from the County in the future.

Councilmember Driscoll noted that the amount of money the UUT actually generated was a question. Everyone expected the number to go up substantially because of energy costs, but it had only gone up 6%. He understood Councilmember Merk's concerns about speeding into this. But, he did not know at what point there would be enough information to make an educated and informed guess about what the numbers should be. He noted that the Verizon suit was having the opposite effect that the energy escalation was having; they balanced each other somewhat. He doubted the money from the County would suddenly evaporate. If it did, the Town could go back to the voters and reinstate the 5.5% rate. He supported a 4-year term including a sunset clause now—especially in light of the time it took the electoral machinery.

Mayor Toben said he appreciated Councilmember Merk's cautionary comments. But, he felt Councilmember Davis had used some very conservative assumptions in his analysis. He had presumed the exclusion of \$50,000 for cell phone fees and forecasted a conservative number on the property tax revenue. The assumption had also been made that the Town would lose the ERAF battle. On that basis, Councilmember Davis and the Finance Committee had come up with a level of comfort about proceeding in June with a reduction of approximately 37% from the current 5.5% to 3.5%. If the Town won one or two of those other skirmishes, the Town would be in a better position than forecasted. He felt the right approach had been used in the analysis. If this was in place for a maximum of four years, the circumstances could be reassessed. There was also intense public interest in seeing the Council respond to the new reality of the financing structure. He thought the Council could proceed with a fair measure of confidence. Putting this off until November tended to feed the commentators in the community who felt the Council was dragging its feet. He wanted to signal those people that the Council was serious about this. Because it was a conservative scenario and there was a sunset clause, he wanted to proceed.

Mayor Toben said it was important that the residents understand the choice before them. As Councilmember Merk indicated, they needed to know that if the voters chose to reduce this tax, the Town

would forego an increment of funds that could be invested in the local infrastructure, which was aging. On the other hand, voters could experience a reduction in the UUT bill. Councilmember Merk agreed that was preferable to just indicating that the Council was going to lower the tax by simply putting it on the ballot. Everyone would vote for a lower tax. He was much more comfortable with the combined Council taking a neutral position and letting the voters decide to lower or retain the current rate. Councilmember Driscoll agreed. He felt there were advantages in either position taken. The voters would be given an opportunity to choose how much government they wanted and what they wanted that government to do.

Councilmember Driscoll said as the arguments were drafted, it would have to be made clear how the funds would be distributed. Mayor Toben said the language in the ballot measure could be very simple. Ms. Sloan agreed. She said an additional resolution could be adopted that indicated that if the voters did not reduce the tax, then the Council preferred that the money would go to x, y, or z. All ballot measures invited people to write an argument for and an argument against.

Ms. Sloan confirmed that the ballot measure would be to lower the tax to 3.5—yes or no. “No” meant leaving it alone. There could be two questions, but ballot measures needed to be “yes” or “no.” She said she would draft the language.

(5) Extension of Cable Franchise Agreement with Comcast

Ms. Sloan reviewed her memo of 2/16/06 on the Cable Franchise Agreement and the recommendation to authorize the Resolution for Extension of a Franchise Agreement to June 30, 2006 to allow time for negotiations. Responding to Councilmember Driscoll, she said the Town was trying to coordinate with Woodside. There had also been a shift in the people the Town was dealing with at Comcast. She noted that Woodside would also be extending the agreement to June 30.

By motion and second, Resolution No. 2229-2006 Granting an Extension of the Cable Franchise with Comcast of California/Colorado/Florida/Oregon, Inc. was adopted by a vote of 4-0.

COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

(6) Green Building Practices

Ms. Lambert reviewed her memo of 2/15/06 on the green building program in Town, including ASCC comments on green building practices. She added that Carol Borck had been doing an excellent job in putting together handouts and writing articles for the website.

Mayor Toben said a modest move forward at this point was to create a new section in the staff reports that would cite the measures that the applicant intended to incorporate in the project and provide for some follow-up by the Building Official to see what had been done. He noted that the ASCC members he spoke with were enthusiastic about the prospect of incorporating more green building practices in projects.

Councilmember Merk said all five ASCC members were in support of a green building program. With respect to changing local building codes, he felt there were a lot of things that could be looked into. Additionally, on the 52 projects that had filled out the checklist, he questioned whether there was enough staff time to go back to these people and see what had been incorporated in the projects, costs associated with implementing green practices, etc. Ms. Lambert agreed it would take some time to gather the information, but the planning staff was excited about participating. She said a form letter might also be sent to the architects/owners asking about their experiences. There would also be follow up conversations. She did not feel it would be too burdensome.

Council thanked the planning staff for their efforts in the green building program.

(7) Employee Salary and Benefit Assessment

Ms. Howard reviewed her memo of 2/14/06 and recommendation to retain the services of a consultant to perform a classification and salary survey to determine appropriate classifications and salary ranges for the Town's existing positions. Responding to Councilmember Merk, she said other jurisdictions had become more creative in what they offered employees. Some had a 9-80 work schedule, which meant every other Friday, you got the day off. That was attractive to people. The Town's benefits might be similar to other jurisdictions, but the whole package was not that attractive. Councilmember Merk added that being such a small staff, there wasn't the same type of opportunity to move up or around. Referring to an ad for an assistant city manager for the City of Cotati, he said their salary range was \$6,787-\$8,249. The Town's was \$6,686-\$9,552, which was not that different.

Councilmember Driscoll said the Town had lost the Asst. Town Manager and Building Official. The former Town Administrator and Town Engineer had left 4-5 years ago. They all were now making a lot more than they were when they worked for the Town. He said the Town had to remain competitive in order to have quality staff. Councilmember Davis agreed and felt the information would be helpful. Mayor Toben said the Council would be interested to see the results of the survey.

(8) Status of Town Center Project

Ms. Howard said there would be a special meeting on March 1 to review the changes to the design. Councilmember Driscoll added that he had called the teachers who used Town Center spaces and informed them that the Town wanted to assist in transitioning to new spaces. They were apparently having difficulty finding space to rent in Town. He had spoken with Jim Pollock about space in their office building; they were considering it but were concerned about compatibility. He said he would be pursuing this issue. He added that he did not have a contact for the Children's Music teacher. Mayor Toben said he recalled that there had been some discussion about moving that class to Hansen Hall at The Sequoias, which he felt was a good idea. He said he would follow up with The Sequoias.

Mayor Toben said a schedule for some of the intermediate steps that didn't commit the Town financially in a serious way but were critical in maintaining momentum and satisfying ABAG, would also be discussed at the March 1 meeting. Ms. Howard said the schedule would be laid out so that Council could authorize certain things so the project could continue to move forward. There was some concern about delaying construction for another year. Mayor Toben said whatever the schedule was, it would permit a modular approach, so that the Town would not be overly obligated. Additionally, he said a new pledge had been received for \$500,000. That was a significant milestone in the early fundraising effort.

(9) Reports from Commission and Committee Liaisons

(a) Trails Committee

Councilmember Driscoll said the Trails Committee would be working with the Parks and Rec Committee on a route for organized running races through Town.

WRITTEN COMMUNICATIONS

(10) Town Council 2/10/06 Weekly Digest

(a) Draft EIR for Stanford Project on Sand Hill Road

Councilmember Merk wanted to ensure that the Planner's office was involved in the EIR review process.

Ms. Howard said she understood that Town Planner Mader would be drafting the Town's response. She said she would follow up.

(11) Town Council 2/17/06 Weekly Digest

(a) PV Ranch and Blue Oaks Trails

Referring to Ms. Lambert's memo of 2/15/06 on dogs on trails at PV Ranch and Blue Oaks, Councilmember Driscoll said he had spoken with a Board member at the Ranch. It was his understanding that the original agreement was that Coal Mine Ridge was going to be a nature preserve and relatively undisturbed. That had been the point of clustering the houses off of that ridge. As a consequence, it had been the interpretation throughout the years that that meant no dogs. Councilmember Davis said when the dog owners had raised this issue, the Council had promised the residents an opportunity to present their case. It had been proposed that the Trails Committee hold an open session to review the current restrictions and make a recommendation with respect to the use. Councilmember Driscoll said he would convey that direction to the Trails Committee who was prepared to look into the issue. Councilmember Merk suggested they compile some records for the Council to look at. Councilmembers discussed dog owners' use of these trails, off-leash enforcement, and options for dog owners.

(b) Fencing at New Town Center Baseball/Softball Field

Referring to David Denier's e-mail of 2/16/06, Councilmember Merk said there was a new backstop on the Priory baseball field off of Portola Road. It was very unobtrusive and worth looking into.

(c) Change of Time of ASCC and Planning Commission Meetings

Referring to Ms. Lambert's memo of 2/15/06 on the time change of commissions' meetings, Mayor Toben suggested not taking any action until Councilmember Derwin was present.

(d) Power Outages in Portola Valley

Mayor Toben referred to the letter of 2/10/06 from PG&E on power outages in Town. He said he initiated this report and was interested in learning if the Town was down on the priority list in terms of response to outages. After discussion, Council agreed to invite a PG&E representative to address the Council on responses to Town outages. Councilmember Driscoll felt data for the past five years should be included. Councilmember Merk suggested the discussion include the issue of a communication liaison for emergency situations. Councilmember Davis suggested asking the representative to provide information on what the Town/residents could do to help prevent outages. Mayor Toben said he would like to know how PG&E's response to outages in Town compared with Woodside and Redwood City and what the priorities were for responding.

ADJOURNMENT

The meeting adjourned at 9:52 p.m.

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Mayor

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Town Clerk