

TOWN COUNCIL MEETING NO. 770, MAY 27, 2009

ROLL CALL

Councilmember Derwin called the meeting to order at 8:02 p.m. and led the Pledge of Allegiance. Ms. Howard called the roll:

Present: Councilmembers Derwin, Driscoll and Merk  
Absent: Vice Mayor Toben and Mayor Wengert  
Others: Acting Town Attorney Siegel, Town Manager Howard, Deputy Building Official Fitzer, Planning Manager Lambert, Asst. Town Manger McDougall and Town Clerk Hanlon

ORAL COMMUNICATIONS

Mr. Siegel said there was nothing in the Town's code, State law or Roberts Rules that indicated who should chair a meeting when the Mayor and Vice Mayor were away. In an emergency, it passed from the Mayor to the Vice Mayor and then to the past Mayor. Councilmembers Driscoll and Merk said they had no objections to Councilmember Derwin chairing the meeting.

CONSENT AGENDA

By motion of Councilmember Driscoll, seconded by Councilmember Merk, the item listed below was approved with the following roll call vote:

Ayes: Councilmembers Derwin, Driscoll and Merk  
Noes: None

(2) Warrant List of May 27, 2009, in the amount of \$416,195.10.

REGULAR AGENDA

(1) Minutes of the Town Council meeting of May 13, 2009 (Removed from Consent Agenda)

Councilmember Merk submitted a change to the minutes of the 5/13/09 meeting. By motion and second, the minutes were approved as amended by a vote of 3-0.

(3) Second Reading and Adoption of Ordinance Relating to Fire Ignition-resistant Material and Construction Methods

Ms. Lambert reviewed the staff report of 5/27/09 on changes to the proposed ordinance recommended by the Council at the 5/13/09 meeting. Responding to Councilmember Merk, she confirmed that if a project had received ASCC approval, it would not have to comply with the new ordinance.

Virginia Bacon, Golden Oak Dr., said the Council reduced the threshold when sprinklers would be required from 75% to 50% of floor area. She did not think the time period used for the study was representative of the housing stock in Town. Fifty percent was arbitrary and not indicative of what would happen in the future. The last six months' figures used in the study were particularly dire because of the economic circumstances; only two homes sold in that period in Town. Fifty percent would have a big impact on people with smaller homes. The requirement for sprinklers at 50% and having to put in a new water line could add \$8,000-\$10,000 to the cost. There was also the cost for the landscaping, driveway and all the rest that went along with that. She felt the whole issue had been overblown and was much too emotional. The Town needed to focus on the fact that there was a serious fire situation. But, people should be encouraged voluntarily to

realize that it was in their best interest to make a change rather than to mandate it and perhaps cause a lot of financial hardship. Putting in a 50% threshold would result in a lot of 49% projects. It was not a positive thing to put in more regulations when it wasn't necessary. It would take time to adopt different approaches for materials used in homes. That was a natural progression that would take place as people realized that they wanted different features in their home or had different needs. She preferred 75% over 50%.

Responding, Mr. Fitzer said the 75% that currently existed was based on valuation whereas the proposed ordinance was based on 50% of the affected floor area. He said re-fixturing a kitchen or bathroom under the new rules would not necessarily include structural modification or require sprinklers. While the 50% number might appear onerous, the new methodology would allow people to freshen up their homes without worrying about an additional \$15,000 for sprinklers.

Ted Walker, Grove Dr., said he wanted to build a workshop in his backyard. A local sprinkler system company gave him a quote of \$3+/square foot to do a sprinkler system. That didn't include an upgrade of his water line to 1 inch, which would cut through his driveway. He preferred 75%. A retrofit to an existing home would be very expensive. Referring to Section 15.04.020.B.1.b (p. 2), Mr. Fitzer confirmed for Mr. Walker that the language had been in effect since the Town adopted the County's standard of care for automatic fire sprinklers. The Fire District routinely approved a residential system for the residence and ancillary buildings as well. If the piping was exposed, the standard of care was that it needed to be iron-tight or somehow protected from damage or fire. There was no requirement for a second meter or pressure tank if there was sufficient flow from the street. He was not aware of any place in Town where there was less than 45 psi, which a sprinkler system could work off of. The pipe might have to be upsized because of low pressure or distance. Responding to Mr. Walker, he confirmed that the standard of care was based on occupancy classification.

Pierre Fischer, Valley Oak, said if the ordinance was adopted, residents would need to be educated. Citing some of the technical language, he said there were a lot of questions about what was really allowed. Additionally, quite a few of the materials that were supposed to be used were not allowed at the Ranch. He found a website where wildland-urban interface products were listed and was surprised that there was no exterior glass product available. People would need some help figuring out what products they could use.

Ms. Bacon said she understood the change from valuation to square footage, and she still believed that 75% based on square footage was the right number. Additionally, she was concerned about new materials conflicting with the old materials. It would be a hodgepodge and wouldn't be beneficial to the look of the Town. She also thought 15% for nonstructural repairs was too low for the exception. She suggested 25% or having a study to help determine where it made sense.

Gayle Collat, Holden Ct., said the Council was encouraging people to upgrade their homes and make them safer. But by adding all these extra costs, it would actually slow down the process. She felt there should be exceptions to the rule.

Mr. Fitzer said he understood concerns about dissimilar materials and aesthetics. But, in going through the Cal Fire product list, he was amazed at the number of materials that did appear if they were treated. If you wanted to mimic the architectural style for an addition or repair, you could have the lumber pressure treated with a fire retardant that met the standard of care in Chapter 7A. For an additional cost and some time delay, materials could be specially ordered and treated. With respect to the comment about the Ranch and their architectural standards, he agreed it would be challenging because the original construction used untreated Douglas fir and open decks that took advantage of the views. The code did not require decks be enclosed. But, if you rebuilt or modified the deck, appropriate materials would need to be used. It could be fire treated. It was a challenge for the architectural community and the property owners to come up with something that satisfied the homeowners' association as well as the residents. In terms of exceptions/variances, he said the ordinance did not contain provisions for variances. Under the municipal

code, anything could be appealed, and the court of appeal was the Town Council. He agreed there would be an educational period for residents.

Dimita Postich, Granada Ct., said he built his house 37 years ago. He saw more and more restrictive action by the Council or Planning Commission that was not in a direction that he wanted to see. It was in a direction of restriction rather than stimulation. In this economic situation today, it should be looked at differently. Rather than being an ordinance, it should be advisory for everybody who wanted to do something. Residents should be allowed to contribute to this whole thing. If you ran your sprinkler system for the lawn at the same time as a house sprinkler, the pressure went down and it was worthless. If the city wanted to help, it should help the infrastructure. He lived on top of a hill. Water disappeared any time the power went out because someone decided the water had to be pumped up to his house rather than take it from the reservoir above his house. *[inaudible]*

With regard to fire resistant material at the Ranch, Councilmember Driscoll said it was characteristic of PUDs that they implement certain design guidelines. They had to adapt if State, federal or local laws changed subsequently. The Ranch might have to loosen up a little bit in order to comply with fire safety regulations. Additionally, he felt there should be a variance procedure. It was difficult to come up with relatively simple rules/numbers that would capture the true risk associated with certain issues. Ms. Bacon used the word "arbitrary" in her comments. Any number picked was arbitrary, but an appropriate number needed to be found that captured the cases that needed to be captured. He felt 75% of cost versus 50% of area was an important change. A house built in 1957 that was remodeled could be 10% of the area but cost 75% of the cost that went into the original house. If that law had been very carefully interpreted, he suspected that almost all remodels would have tripped that threshold on houses that were more than 30-40 years old. He felt it made much more sense to have it based on area. While it would be nice if it was voluntary, voluntary usually meant ignored. He added that the instigation for this was the Cal Fire wildfire issue and making houses ignition resistant to wildfires as much as possible. There had been some testimony that the house needed to resist 2-3 minutes if a wildfire came through. Sprinklers were a different issue; they were designed to prevent a house from becoming engulfed in flames due to a fire inside the house. He did not know if sprinklers were a good preventive measure in areas that were wildfire prone. Responding, Mr. Fitzer said the Town's sprinkler ordinance was in response to the Oakland Hills wildfire. The idea was to provide, for example, an escape window for the residents. They were designed so that all the heads did not go off simultaneously. The sprinkler ordinance was tied into the ignition-resistant ordinance because a fire could originate on a grassy slope or in the home. The idea was to reduce the fuel regardless of the source. Responding to Councilmember Driscoll, he said under Chapter 7A, exterior finishes were regulated to resist that 3-5 minute timeframe. Councilmember Driscoll felt fire resistant material and sprinklers were two different issues. The Town could adopt Chapter 7A for external fire-resistant materials and leave the sprinkler ordinance the way it was right now. Mr. Fitzer said sprinklers were included because the Council decided to tie those in; the methodology in how the threshold was established had been changed accordingly. Councilmember Driscoll said a lot of the concerns from residents were with the sprinkler issue whereas the reason for adopting this ordinance was the wildfire issue. He thought the two issues might be separated.

Councilmember Merk agreed the two issues were to some extent different, but he was glad to see them addressed together because they were intertwined. If a wildland-urban interface fire was ravaging through Town, the fire department would be using so much water, the sprinklers wouldn't work or work optimally. Sprinklers were needed when the house caught on fire individually. That protected everyone else in Town. Every time a fire was suppressed, everyone in Town was protected from a wildland spread fire. The change from 75% to 50% seemed onerous, but he felt it was less onerous than the current 75% based on value. If you remodeled your kitchen and put in modern appliances, the kitchen was suddenly worth more than the rest of a house that was built in 1955. If you remodeled your kitchen and a bathroom, that would be less than 50% of the square footage, and you would not be required to comply. The Council had chosen not to accept the Cal Fire map but wanted to adopt Chapter 7A. The Deputy Building Official indicated that there

were many products out there. As more and more communities in California went through this process, more and more fire-safe products would come on the market. The whole point of this was to protect everyone from having their house catch on fire and from houses burning down because of the wildland-urban interface hazard in Town.

Councilmember Derwin concurred. The Council rejected the Cal Fire map and decided to make the Town fire safe. It would be difficult, and it was not a perfect ordinance. There were all sorts of conflicts: to put in solar panels, you had to cut down trees; if you painted your roof white, that went against the notion of buildings being subservient to the land. The world was different than it was 40 years ago. The fires were coming earlier and hotter, there was a drought pattern, and the Fire Marshal expected more and more fires earlier and earlier in the next 10-20 years. She felt the new methodology was more generous for residents than basing it on the value. Fifty percent was workable, and it only kicked in when work was being done. If you wanted to remodel more than 50% of your home or build a new home, you would have to build the extra expenses in. This was the price of living in Portola Valley. She agreed it would be good to have a clear variance path. With respect to sprinklers, she could be persuaded either way.

Councilmember Driscoll said if a room sprinkler could put a fire out so that it didn't spread to the neighboring house, that was a good reason for sprinklers. He was more comfortable including sprinklers. Additionally, if the house was greater than 20+ years, he suspected that the 75% rule was tougher than the 50% rule. Councilmember Merk added that the Council wanted to get this moving so that it wouldn't take 150 years to get to 1,700 households. Councilmember Derwin agreed. This was about public safety and making as many houses fire safe as possible.

Merijane Lee, Meadowood Dr., said she had been affected by the Oakland Hills fire. They implemented a very severe weed abatement program, undergrounded all the utilities, and prohibited wood shake roofs. She thought the Town should be doing all of those things besides looking at sprinklers and siding. Councilmember Driscoll noted that weed abatement and roofing requirements had been addressed a few years ago. Councilmember Derwin added that undergrounding was also being looked at but was very expensive.

With respect to including a variance procedure, Mr. Fitzer said in Chapter 7A and the ordinance (p. 5), it stated, "The provisions of this ordinance may be modified for site-specific conditions in accordance with Appendix Chapter 1, Section 104.10. For purposes of granting modifications, a fire protection plan shall be submitted in accordance with the California Fire Code, Chapter 47." That was not a variance procedure, but it allowed for unique situations. There would have to be supportive documentation or evidence by a qualified professional stating that there was a fire mitigation plan that addressed fuel loads, etc. Responding to Councilmember Driscoll, he said he would be reluctant to grant an exception/variance based on economic hardship. A qualified professional would need to state what the threat/hazard was and what would be done to mitigate that and meet the standard of care. If someone wanted to appeal the requirements based on economic hardship, staff would refer that to the Council. Councilmember Driscoll said that was a sufficient appeal process. Until a fire happened here, people wouldn't recognize what the risk was. The bar needed to be set high. With the exception of the roofing ordinance, he did not think the Town had really addressed the issue for the past 16 years.

Mr. Siegel said he felt the ability for someone to obtain a variance would be severely constrained—especially for economic hardship. If the majority of the Council felt there should be a formalized process, the Council should delay adopting the ordinance or adopt the ordinance and then amend it with a variance section.

Responding to Councilmember Driscoll, Mr. Fitzer said he didn't know what the cost would be of getting a fire protection plan by a consultant. Councilmember Driscoll said he did not think it would be too difficult to make the case that a house had escape routes, trees had been cleared, and that there was a fire protection

plan. As an appeal body, the Council would not make someone do something for arbitrary reasons. He felt the language provided sufficient opportunity for appeal.

Councilmember Merk moved second reading of title, waive further reading, and adoption of Ordinance No. 2009-377 Amending Section 15.04.010 [Definitions] and Section 15.04.020 [Amendments to the Building Code] of Chapter 15.04 [Building Code] of Title 15 [Buildings and Construction] of the Portola Valley Municipal Code. Councilmember Driscoll seconded, and the motion carried 3-0.

#### COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

##### (4) Appointment to Cultural Arts Committee

After discussion, Council agreed to continue this item until the Mayor could make the appointment.

##### (5) Planning Department Activity Report

Ms. Lambert reviewed the staff report of 5/27/09 and discussed: a) Planning Department staff; b) special projects; c) permit activity; and d) permit processing.

Councilmember Merk said he never heard any complaints about the Planning Department. It was also important for people to remember that the projects that came to the Town were far more complicated than in other cities; most people understood that it would take longer than it might somewhere else. He was surprised to learn about the amount of time it took the consultants to turn around plans. He suggested staff investigate. Ms. Lambert said as things had slowed down, the time had probably shortened considerably. She noted that Kutzmann recently agreed to shorten their turnaround for initial and revised plan checks.

Councilmember Driscoll said the complaints he heard were generically about the process; people didn't understand the amount of work that went into plan checking, code enforcement, etc. In general, people felt they got a better house after going through the process and commented that staff had been very helpful.

Councilmember Driscoll said 15 plan sets represented a lot of trees. He asked when people would be able to submit plans electronically for distribution electronically. Responding, Ms. Lambert said the cost was prohibitive, but it was being discussed. Mr. Siegel said the industry was having trouble coming up with standards about modifying plans electronically. There was great concern that if something was modified in the process, everyone needed to be able to look at the same document. Councilmember Driscoll said the designers were doing everything electronically. He hoped that the Town would move in the direction of reducing the use of paper in the permitting process. Ms. Lambert described the system used by the Los Altos Planning Commission.

##### (6) Not-for-profit Agency Funding Requests

Ms. Howard reviewed the staff report of 5/27/09 on requests from not-for-profit agencies for funding. Responding to Councilmember Merk, she confirmed that CERPP had not forwarded a letter. Councilmember Merk noted that CERPP wanted to redo their website, which was the best way to communicate with Town residents. That would be an expensive project.

Councilmember Driscoll said he preferred to make donations that were no larger than those made last year to the same organizations with the exception of the Shelter Network because they had not submitted a request. Councilmember Merk concurred.

Councilmember Derwin suggested giving the San Francisquito Watershed more than \$4,000 because they saved the Town at least \$50,000 on the planting of the creek bed. They also did a lot of restoration projects

in Town. There was also some discussion of working with them on green-ups. She suggested \$5,000. Councilmember Merk said he could support that.

After discussion, Councilmember Driscoll moved: a) \$5,000 to CERPP; b) \$2,500 to Sustainable San Mateo County; c) \$1,300 to Peninsula Conflict Resolution Center; and d) \$4,500 to San Francisquito Creek for a total of \$16,300. Councilmember Merk seconded, and the motion carried 3-0.

(7) Request for Authorization to Purchase a Toyota Prius for Use by the Deputy Building Official

Ms. Howard reviewed the staff report of 5/27/09 and recommendation to purchase a Prius for use by the Deputy Building Official and other staff members. The funding would come from this year's budget from identified savings on some other items. Responding to Councilmember Driscoll, she said the electric vehicle purchased by the Town was barely roadworthy and not good in the rain. Ms. McDougall added that staff was hoping for a utility vehicle that could be used for a lot of different things—such as the field trip to the GreenWaste facility. It should serve as a passenger vehicle as well as for inspections. Ms. Howard said the Prius had the best gas mileage and was more functional to fit equipment needed for inspections. She did not think it could be budgeted in the next couple of years. Responding to Councilmember Driscoll, she named the five vehicles the Town presently owned. She said the intent here was to buy a fuel-efficient vehicle.

Councilmember Driscoll said the Town was facing a budget shortfall that could be worse if the UUT wasn't renewed. He felt buying a vehicle at this time would send a bad message to the residents. If the Town bought a car, it should be a Prius-like car. But, he preferred to discuss this in May of 2010 after the UUT was passed, and there was clearer visibility of what the impacts of the State budget were.

Councilmember Merk said he was impressed by the numbers laid out in the report for reimbursing the Building Official to use his personal car. A new car would have to have maintenance. But, over a 10-year period, there shouldn't be any huge expenses. If it would pay for itself in that amount of time, there would probably be something better on the market in that time. Additionally, there was money in this year's budget. But, he was not 100% sure that it was absolutely necessary.

Councilmember Driscoll said the available money this year would not go away on July 1. Any surplus could be carried over to next year—especially if tax revenues were down. He did not think it would be sensible to buy the car now. When the campaign for not renewing the UUT started next November, the Council would hear about this new car. Councilmember Derwin concurred. She was nervous about the UUT and the property tax question. All the arguments for buying the car were sound, but it was the right idea at the wrong time. After discussion, Council concurred the purchase should be deferred.

(8) Status of Town Center Project

Ms. Howard said the goal was to get everything done by the end of June. The striping on the tennis courts would need to be redone, so it would be another 1½ weeks before they could go online. The new fence between the Town property and the Church was almost complete. The remainder of the planting started today and was almost done; all the sprinkler systems had been checked. Out of the 31 contracts, 13 were closed out. The dashboard was 95% operational. The signage should be completed by the picnic. The donor bench would take another 7 weeks. The restrooms were open. The remaining sunscreens would be done by the end of June.

Councilmember Driscoll said Mr. Young asked that the Council confirm that he [Driscoll] still had the authority to authorize up to \$25,000. There was some concern that there were not enough Council meetings between now and June 30 to finish the smaller contracts—including finishing the wiring for the EOC. Councilmember Merk said he recalled that the Council gave Councilmember Driscoll that authority

through the end of the fiscal year.

Responding to Councilmember Merk, Councilmember Driscoll said Mr. Young said Mr. Strain would forgive some of the charges for extra services to compensate for the cost of replacing the toilets. Responding to Councilmember Merk, he said \$55,000 from both the electrical contractor and the concrete contractor had been withheld until the lighting issues were resolved.

Councilmember Merk asked for an update on the cost of fundraising.

(9) Reports from Commission and Committee Liaisons

(a) Emergency Preparedness Committee

Councilmember Driscoll said the Committee was very concerned that the EOC seemed to be one of the last projects to be completed. A donor specifically earmarked \$100,000 for outfitting the EOC. He said he asked Mr. Young to accelerate it. There was an exercise coming up in mid-June, and it was hoped it could be done by then.

(b) Traffic Committee

Councilmember Driscoll said the Committee was working on a complaint about speeding on Willowbrook, which was used by contractors as a shortcut.

(c) Cable and Undergrounding Committee

Councilmember Merk said the Committee sent a report to the Council, which was not received by everyone on the Council. They felt abandoned and frustrated. Ms. Howard said she met with the Mayor, Vice Mayor Toben and two members of the Committee to discuss developing a comprehensive plan for undergrounding that would include funding, outreach, and a way to move forward. She felt the meeting had been productive and was surprised that the Committee members felt that it wasn't. They had been informed that she and Mr. Young would be very busy the next couple of months but that staff would attend their first meeting in September and work with them to bring something back to the Council. Their report was a memo that needed to be fleshed out. Councilmember Merk said the three-page report was addressed to the Town Council and was fairly comprehensive. They had done a lot of mapping of Portola and Alpine Roads of every pole and wire crossing the street. The Council should have made the determination of what should be done with it rather than a minority of the Council. Ms. Howard said the Mayor and Vice Mayor felt what had been done was the best way to approach the memo. Councilmember Driscoll said any committee's memo should at a minimum be placed in the digest. Responding to Councilmember Derwin, Ms. Howard said in some instances, staff worked with a committee to flesh out a memo so that it didn't come to the Council in a void.

(d) League of California Cities, Peninsula Division

Councilmember Derwin said she and Mayor Wengert attended the meeting in which the state of affairs in Sacramento was addressed. As of last week, the State was not going to "borrow" the 8% previously proposed from cities/towns. The State budget deficit was \$24 billion. The League had a "Save Your City" website where you could comment about your city's issues.

(e) Conservation Committee

Councilmember Derwin said the Committee discussed the biometric mapping. They were hoping that the document could be less overwhelming, more informative and less regulatory. They also felt it needed some

fine-tuning, and they would be providing written comments. Responding to Councilmember Derwin, Ms. Lambert said the document was a planning tool and would be part of the Safety Element. Councilmember Derwin said there was also a field trip to inspect the dogwoods and redwoods that could eclipse the solar panels at the Town Center at certain times of the year; pruning would be done as necessary. The Committee also discussed the Town's Open Space Element. They submitted a memo in March on the definition of open space, which not all Councilmembers received. The Committee felt the definition of open space was very important for the voters as they thought about the UUT issue. They wanted to ensure that their document reached each Councilmember so the Council could decide whether to put in on an agenda. She asked that the document be included in the next digest. Ms. Howard noted that she had tried to set up a meeting with the Committee Chair to discuss the memo and when the issue would be adgenized.

#### WRITTEN COMMUNICATIONS

- (10) Town Council 5/15/09 Weekly Digest: None
- (11) Town Council 5/22/09 Weekly Digest
  - (a) Correspondence from/to Conservation Committee

Councilmember Merk said there were two examples of two people on the Council determining what information came to the full Council. The memo from the Conservation Committee was addressed to the Portola Valley Town Council. This was a major problem in terms of the Brown Act or perhaps Municipal Code. It was unacceptable that less than a quorum of the Council could make a decision for the Council. Councilmember Driscoll said he did not think there had been any attempt to obscure, obstruct or slow down issues. This discussion would serve as a reminder to the Mayor and Vice Mayor to be careful about how communications were handled. Referring to the Mayor's letter to the Conservation Committee, Councilmember Merk said she talked about "opening a productive discussion." The first step in opening a productive discussion was to have the Council decide what the direction should be. In this case, two members and staff were making a decision for the rest of the Council; that was improper. Councilmember Merk requested a written opinion from Counsel.

Councilmember Driscoll said there were two separate issues: 1) whether Councilmembers were receiving communication directed to them; and 2) agendizing an action. It was the Mayor's prerogative to agendize an action. He agreed that all communication to the Council should be in the digest. The issue of the definition of open space should be agendized because it impacted a lot of other things—not the least of which was Spring Down. He added that care should be taken not to try to redefine the terms under which funds had been given to the Town for open space years ago. Ms. Howard agreed noting that it needed to be clear and consistent with the definition used to collect the money through the UUT. Councilmember Driscoll noted that the Open Space Acquisition Committee had some questions about the Committee's charter and whether they should be acquiring open space or acquiring property to make into open space.

- (b) Improvements to Ford Field

Referring to Ms. McDougall's email of 5/22/09, Councilmember Driscoll said this was the kind of outreach the Town needed to do.

ADJOURNMENT: 10:00 p.m.

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Mayor

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Town Clerk