

TOWN COUNCIL MEETING NO. 776, SEPTEMBER 9, 2009

ROLL CALL

Mayor Wengert called the meeting to order at 7:30 p.m. and led the Pledge of Allegiance. Ms. Howard called the roll:

Present: Councilmembers Derwin, Driscoll, Merk and Toben, and Mayor Wengert
Absent: None
Others: Town Manager Howard, Asst. Town Attorney Prince, and Town Clerk Hanlon

ORAL COMMUNICATIONS: None

CONSENT AGENDA

By motion of Councilmember Driscoll, seconded by Councilmember Toben, the items listed below were approved with the following roll call vote:

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

- (2) Warrant List of August 26, 2009, in the amount of \$90,738.03.
- (3) Warrant List of September 9, 2009, in the amount of \$287,787.03.
- (4) Annual Report of Fiscal Year Ending June 30, 2009, Budget and Interfund Transfers, per Admin. Services Officer's memo of 9/9/09.
- (5) Ordinance No. 2009-381 Amending Chapter 2.28 [City Holidays] of Title 2 [Administration and Personnel] of the Portola Valley Municipal Code, per Town Clerk's memo of 9/2/09.
- (6) Resolution No. 2465-2009 Authorizing the Town Manager to Execute the "Master Agreement Administering Agency-State Agreement for Federal Projects" and Further Authorizing Execution of Additional Administrative Documents Relating to Reimbursement of the "2009 Resurfacing Project" – Federal Project #ESPL-5390(004)," per Public Works Director's memo of 9/9/09.

REGULAR AGENDA

- (1) Minutes of the Town Council Meeting of 8/12/09 (Removed from Consent Agenda)

Councilmember Derwin [*inaudible*] requested that all letters relating to the flow of information to Councilmembers (agenda item #15b, Council Digest of 8/7/09) be referenced in the minutes. After discussion, she suggested adding "...and correspondence from Mr. Silver dated 8/5/09 and 8/6/09 to the first sentence. Councilmember Merk said those letters were not discussed at the meeting.

Mayor Wengert and Councilmember Merk submitted additional changes to the minutes. Councilmember Derwin moved to approve the minutes of the 8/12/09 meeting as amended, including the addition of a reference to Mr. Silver's correspondence to item #15b. Councilmember Driscoll seconded the motion. Councilmember Merk reiterated that it was not clear that the two letters related to agenda item #15b were pulled at the same time for discussion; generally, items were pulled one at a time. The letters all addressed the same subject, but they were not discussed at the meeting. It was unfair to change the minutes to imply

that they were. Councilmember Derwin commented [*inaudible*].

Mayor Wengert called for the question, and the motion to approve the minutes as amended carried 3-1 (Merk), with Councilmember Toben abstaining.

(7) Approval of Agreement with Shelterbelt Builders, Inc., for Native Landscape Maintenance at Town Center [7:40 p.m.]

Ms. Howard said Town Center landscape maintenance was included in the 2009/10 budget. The Conservation Committee as well as the Friends of Sausal Creek recommended hand weeding next year.

Alex Von Feldt, Conservation Committee, reviewed her memo of 8/24/09 on maintenance of the new native planting areas at the Town Center. She noted that another bid had been received that was higher than Shelterbelt. Responding to Mayor Wengert, she said it was hard to know what effort would be required on a long-term basis. Different parts of the site were treated with herbicide, etc. The general feeling was that the first two years would be the worst. Marge DeStaebler felt it would need to be maintained for 5 years. After two years, staff and volunteers might be able to do the work themselves.

Mayor Wengert asked for public comment, and there was none.

Councilmember Derwin moved to approve the agreement between the Town and Shelterbelt Builders, Inc., for native landscape maintenance through June 2010. Councilmember Toben seconded, and the motion carried 5-0.

(8) Response to June 4, 2009, Grand Jury Report [7:45 p.m.]

Ms. Prince reviewed Town Attorney Sloan's memo of 8/24/09 on the response to the 6/4/09 Grand Jury Report.

Councilmember Merk said the Grand Jury report related more to emergency personnel (e.g., firefighters and police) and did not apply to Portola Valley. He felt the response as drafted was fine and didn't push the Town to do anything that was unreasonable or unnecessary.

Councilmember Driscoll said the Town contracted with San Mateo County for services, and he would like the Town to receive the Sheriff's response to the report. Responding, Ms. Howard said the report did not pertain to the County—just the cities. Ms. Prince confirmed that the report did not include the County Sheriff's office. Ms. Howard noted that the County Manager's response addressed the overall problem that cities faced. Responding to Councilmember Driscoll, she confirmed that the Woodside Fire Protection District did not have to respond to the report.

Councilmember Derwin said the Town's response to the report did not address the Town's relationship with the County Sheriff. She suggested referencing that in the response. Responding, Councilmember Toben said the Town was being asked to respond to the Grand Jury report. Councilmember Derwin said the Town shared the Sheriff with Woodside, and it was very expensive. Mayor Wengert suggested the issue be addressed separately outside the scope of the Grand Jury report. It was a large part of the budget, and the Town had no control over it.

Councilmember Driscoll moved to accept the response to the Grand Jury report as set forth in the Town Attorney's memo of 8/24/09. Councilmember Toben seconded, and the motion carried 5-0.

COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

(9) Council Correspondence: Review and Revise Email Policy [7:50 p.m.]

Ms. Prince reviewed Town Attorney Sloan's memo of 8/28/09 on Council correspondence and email policy.

Councilmember Toben said the Town Attorney proposed seven topics for discussion. He suggested discussing the current policy set forth in the Town Attorney's memo of 11/29/01 and what amendments should be incorporated to bring the policy up to date and into compliance with the Council's intentions. Councilmember Merk said it would be simple to go through the seven topics and let those decisions be folded into the current policy. After discussion, Council agreed to begin with a discussion of topics 2 through 7 in the Town Attorney's 8/28/09 memo. Ms. Prince said Council could discuss topic #1 at the end of the discussion and determine if setting the guidelines in a resolution was appropriate.

Mayor Wengert asked for comments from the public.

Jon Silver [*inaudible*], Portola Road, said he did not recall any specific comments about his letters on the issue during the Council meeting of 8/12/09. Referring to the Town Attorney's memo of 7/7/09, he said she referred to the fact that the Government Code required that materials addressed to the legislative body be made public "without delay." The current policy did not specifically say materials had to be made available to Councilmembers without delay, but it was understood. In his day, things that came to the Council were simply copied and put in Councilmembers' boxes. The only delay would be if there was a power failure or the copy machine was broken. Some time in the '90s, Alex McIntyre instituted the digest system for correspondence to the Council. The assumption in the Town Attorney's memo of 7/7/09 was that all correspondence to the Council would be forwarded promptly. Obviously, if something could be misunderstood, it might be, and he recommended amending the policy in that respect. Also, the policy adopted in November 2001 stated that email addressed to the Council or to a single Councilmember should be forwarded to all the Council and a printed copy retained. The memo from the Cable and Undergrounding Committee was addressed to the Council--with a cover email addressed to the Council--requesting that the issue be agendaized. As policy, that should have been copied to everyone. Going forward, it should go to everyone—even if it was addressed to one councilmember; that was in accordance with current policy.

Bill Lane, Westridge, said over the years, he had sponsored legislative interns on both sides of the aisle. Those interns frequently ended up in the mailroom. Very often, the interns were usually designated to the lowest priority, which was email—largely because of the volume. He agreed that what went to one should go to all if that was the intent. The Council, as well as the administrator of the Town, needed to be uniformly informed before a vote was taken or there was serious discussion. It was a real challenge and would get more complicated. He urged that all Councilmembers have the same and equal access to information on any issue that came up for a vote.

Paul Heiple, Chair-Conservation Committee, said one of the Committee's reports had been delayed. The Committee felt that anything addressed to the Council should go to all Councilmembers and be delivered in a timely manner. This was something the committees were entitled to.

Referring to discussion topic #2 in Ms. Sloan's 8/28/09 memo, Mayor Wengert said a number of pieces of mail came addressed to the Mayor, Vice Mayor, or some subset of the group. A judgment was applied as to its relevance and whether it should be included in the packet. The question was whether to include the voluminous amount of hard mail coming from outside groups, organizations, etc. Typically, the staff went through the incoming mail and made a determination on those items that were appropriate to go in the digest. As Mayor, she saw a large volume of the information.

Councilmember Merk said he raised the issue because of the items that were addressed to the Town

Council—meaning all Councilmembers. An easy way to deal with the problem Mayor Wengert just brought up was to set a limit. If it was addressed to a majority of the Council or more, all Councilmembers should see it. If it was addressed to one or two Councilmembers from some group asking for the Town to do a resolution or give money, it did not need to go to the full Council. For example, if he got an email complaining about inappropriate personal use of the Town website, no one else needed to see that; he could respond by saying, “Get over it.”

Responding to Councilmember Driscoll, Ms. Howard said correspondence between a Councilmember and someone else or a Councilmember and a staff member was not forwarded to the full Council. If it triggered the third Councilmember, it was automatically printed and went into the digest—assuming that it was sent to a staff member. Councilmember Toben noted that the policy (11/ 29/01, p. 3) said that any email addressed to a single Councilmember should be forwarded to all the Council. Mayor Wengert said the volume would be overwhelming. Councilmember Derwin pointed out that the policy said “email sent to Town Hall, which is addressed to the Council, or to a single Councilmember....” Ms. Howard confirmed that that part of the policy applied to correspondence sent to the Town Hall email address—not personal email addresses.

Jon Silver said spam and junk mail shouldn't be forwarded to everyone. A memo from a committee or a letter from a resident should go to all the Councilmembers. Responding to Councilmember Toben, he agreed there might be some cases where judgment was required.

Referring to discussion topic #3 (8/28/09 memo), Mayor Wengert said the time within which correspondence to the Council or a single Councilmember at Town Hall should be forwarded to all the Council was a key question. Councilmember Driscoll agreed that the words “without delay” should occur somewhere in the policy. This was a period of great technological change. If someone called him on his cell phone and left a voice mail, he received a word-for-word transcription of what they said. He also received text messages about Town subjects. The policy needed to be kept relatively flexible. If it concerned Town business and was directed to Councilmembers, it should be forwarded. He did not want to get too specific about “without delay.” Fifty years from now, “without delay” might be measured in nanoseconds. No one would describe holding a memo for two months as “without delay.” He suggested “...in the next digest.”

Councilmember Merk felt the subsequent digest was an appropriate time period. He was still concerned about the term “single Councilmember.” It could become overwhelming to anyone on the Council. It should be “the majority of the Council” or “the Council.” Mayor Wengert suggested for the guidelines (11/29/01, p. 3, #3), “Any email to Town Hall which is addressed to the Council or to a majority of the Councilmembers shall be forwarded to all the Council in the next digest and a copy printed and retained.” Councilmember Driscoll said it should be left to a Councilmember's discretion to determine if the rest of the Council should get correspondence addressed only to him/her.

Councilmember Driscoll suggested that the document include text messaging, etc. He suggested an opening sentence that indicated, “Email includes other forms of text-based communication.” Referring to the 11/29/01 memo, Mayor Wengert said “writing” was defined in the Public Records Act as any “means of recording upon any form of communication or representation, regardless of physical form or characteristics.” She felt email, tweeting, and texting would all come under that definition. Responding to Ms. Prince, Councilmember Driscoll said he received text messages on his personal phone that could be forwarded to his email account. He assumed that when Councilmembers received email through a personal account, it would be treated as Town email. Mayor Wengert said she felt that anything she wrote about Town business—whether it was on her personal account or her portolavalley.net account—was part of the public record and could be made public. You surrendered your right to privacy if there was some reason that that needed to be part of the public record. Complete segregation might not always be possible depending on the device.

Councilmember Toben said on occasion, he got an unsolicited email from a resident who was upset about

something that he could fix by making a call to the Town Manager. That individual had no expectation that their privacy would be dissolved because he would be publishing that email to the world. Councilmember Driscoll said it was critical to not appear to be a silent agent for a person in Town. Councilmembers discussed the need to exercise judgment, the ability to resolve “small” problems, the need for flexibility in any system, and behavioral versus Town issues.

Mr. Silver said there were things he might put in an email that were comparable to a phone call with one member of the Town government that might be said colloquially. If it was something he wanted everyone to see, he would say it more carefully. It was nice not to always have to be that careful. That lubricated social interactions and human communication. At the same time, if there was a question, things should be shared with the full group so that a decision was made based on the same information. There needed to be some judgment.

Bill Lane, Westridge said the number of re-elections that had occurred in Town was testimony to the caliber of people that had been elected to the Council over the years. No Councilmember would want to vote on an issue if he/she had information that was not available to other members of the Council. Those re-elections were based on performance and a feeling of confidence by a majority of the voters and other members of the Council if there had not been a vote. If you analyzed all the coverage given to the four communities *The Almanac* covered, the Town’s Councilmembers had an outstanding record of affirmative and very positive commitment to not wanting to have information that was not available to other members of the Council.

Councilmember Driscoll said when the resolution was drafted, there should be a preamble that said the Town of Portola Valley worked on an open exchange of information and that all Councilmembers had to make judgments whether something was meant to be private or should be public.

Referring to discussion topic #4 (8/28/09 memo, p. 1), Councilmember Driscoll said a request in correspondence to have something agendaized was a formal request, which needed to err on the side of openness and should be a judgment of the Council. On the other hand, if someone was commenting on information previously known, it could be discussed individually. Councilmember Merk said he saw no difference between those two. If someone sent something addressed to the Council with information, it should go to the entire Council—as with discussion topic #3. Mayor Wengert said that took care of topic #5 as well.

With respect to topic #6, Ms. Howard said the question was whether to put correspondence that pertained to an agenda item in the digest or wait and put it in the packet. Councilmember Toben said another question was whether stacks of emails on an issue should be bundled and presented with the item or forwarded in dribs and drabs. Councilmember Merk said getting correspondence in dribs and drabs gave an idea of what was going on in the community; it was more of a pulse of what was going on in the Town. Mayor Wengert asked if there should be a distinction between correspondence that came from committees versus public comment on an issue. It could benefit the Council to have it aggregated for the staff report. Councilmember Driscoll said in the case where there was a huge amount of correspondence, it needed to be received in a timely manner. Councilmember Derwin said if it was a hot issue, correspondence was often addressed to the Mayor. Councilmember Toben said sometimes it went to the Councilmember who was close to the issue. Ms. Howard noted that staff did not receive those emails unless they were forwarded by the Councilmember. Councilmembers Toben and Driscoll agreed that Councilmembers should err on the side of openness and ask staff to put correspondence in the digest.

Mayor Wengert said if it was a topic that was clearly under discussion--like the noise ordinance--it should be circulated. But, if it was unrelated to anything that had previously appeared on the radar, she did not think it needed to be forwarded to the full Council. It was a matter of judgment. Councilmember Driscoll said Councilmembers should err on the side of openness. For agendaized items, the current policy was to place copies of recently received correspondence at Councilmembers’ places on the table. He supported that.

Mayor Wengert concurred.

With respect to topic #7, Councilmember Driscoll reiterated that if Councilmembers received Town business email at their personal address, it should be the Councilmember's judgment as to whether it needed to be forwarded to all the Council. It was the same criteria as the others.

Councilmember Merk noted that this was broader than an email policy—it was a “correspondence” policy for written communication. Ms. Prince said she would revise the policy and draft a resolution per the Council's comments.

(10) Proposed Change to Conservation Committee Charter [8:40: p.m.]

Paul Heiple reviewed his memo of 8/31/09 requesting the charter be amended to reduce the number of members from ten to nine to comply with the new Committee Handbook.

Councilmember Toben moved approval of the request to amend the charter to change the membership from ten to nine members. Councilmember Merk seconded, and the motion carried 5-0.

(11) Reports from Commission and Committee Liaisons [8:42 p.m.]

(a) Trails and Paths Committee

Councilmember Derwin said the Committee discussed the Dengler Trail and questioned where all the money had gone. Mr. Young explained where the donations came from and how much the trail cost; he would bring a breakdown to the next Trails Committee meeting. The Committee also discussed the Spring Down property and having a multi-use trail; they would be taking a field trip. Mr. Young also gave an update on the C1 trail. The Committee urged the Council to do something to make sure the trail was completed before the expiration date. The Committee also wanted to know if the lawsuit would be settled before the expiration date. Mayor Wengert said a meeting had been held with Stanford in August. When the lawsuit would be resolved was unknown. However, contractual changes had been negotiated, and Stanford would be making a decision whether or not to proceed in advance of having the court case resolved.

Councilmember Derwin said the Committee also discussed the policy of letting fallen trees remain where they fell. Because so many had fallen on Toyon Trail, the Committee decided to ask staff to do some chainsaw work.

(b) Emergency Preparedness Committee

Councilmember Driscoll said the Committee had some concern that some of the agencies involved in emergency preparedness were not involved with the Committee. He, Ms. Howard and Ms. McDougall met with the Fire Chief, who would be attending the Committee meetings. A representative of the Sheriff's Office would also be asked to attend.

(c) School District

Councilmember Driscoll said the District was considering putting a cell tower on top of the administration building at Corte Madera School. This was not part of their educational mission, and the cell provider would have to get approval from the Town to do this. There were a number of people at the meeting who were extremely anxious about radiation. A number of engineers who were parents of children at school were able to answer questions quite well. Additionally, it came as a surprise to a number of people that there were already cell towers in Town at the Priory. He felt the issue would be quite controversial. He noted that Ms. Lambert's memo to the Council was dated 9/2/09 and was in the digest.

(d) Planning Commission

Councilmember Merk said the Planning Commission approved a geologic map modification on Ramoso. There was also a preliminary review of a request to re-issue an expired CUP for a cell tower at the Priory. A 10-year review period versus 5-year was recommended. There was also a request from the Fogarty Winery for a change to their CUP to simply and define accessory uses. The CUP allowed tasting from Thursday thru Sunday, but for the last 6-8 months they had been having tasting from Wednesday through Sunday. Ms. Von Feldt noted that they also wanted to extend parties from the current 8 p.m. deadline to 10 p.m.

(e) Teen Committee

Councilmember Merk said the Committee was pursuing video taping oral histories. There was also a proposal in the digest from the Committee Chair for a mentorship program for local high school students.

(f) Conservation Committee

Councilmember Merk said the Committee was planning a Town workshop using staff from Jasper Ridge on living with wildlife. They also discussed: 1) fuel reduction and having the Town request homeowners to consider removal of non-native and high fuel trees—such as eucalyptus and Monterey pines; 2) plans for Ford Field park; 3) working with staff and MROSD to have PG&E make a distinction between natives and non-natives when trimming trees in the right-of-way; 4) a 1-year anniversary party of the Sausal Creek project; and 5) watering Town Center trees as discussed in a memo dated 8/30/09 in the digest from Brad Peyton.

(g) ASCC

Councilmember Toben said the ASCC was closer to approving a large project in Blue Oaks, which was controversial.

(h) Airport Roundtable

Councilmember Toben said a resident of Woodside was peppering Rep. Anna Eshoo and an FAA regional administrator with questions about noise patterns. The Woodside representative of the Roundtable felt he needed to bring this back to the roundtable. At the same time, the representative from Atherton was getting a very vocal complaint from a resident. Councilmember Toben said he signed onto their letter requesting data to find out what was going on. There remained a certain resistance to the notion that people could complain.

(i) Parks and Rec Committee

Mayor Wengert said the Committee discussed the definition of open space as requested by the Council. They preferred to relay their findings orally to the Council through her report. The Committee endorsed the material that the Conservation Committee had prepared and felt it was excellent. However, they wanted to include recreational uses in the definition. With the exception of one Committee member, the Committee members present supported integrating the definition prepared by the Conservation Committee with recreational uses as defined in the General Plan. Responding to Councilmember Derwin, she said the Committee did not want to define all recreational uses; a reference had been made to recreational uses as defined in the General Plan. Councilmember Merk noted that all the other Committees were putting their input in writing. He asked that the minutes reflect in detail the oral report.

Mayor Wengert said the Committee also received a report on what transpired during the Council's discussion of field user fees. They understood that they were being asked to do further work and hoped to

complete that work in October. Responding to Councilmember Driscoll, she said two adult league representatives were present who advocated lower fees for adult leagues. The Committee would also be working on tennis court use/policy.

(j) Community Events Committee

Mayor Wengert said the Committee was in high gear for the Blues and BBQ event. Numbers appeared to be down, and tickets would be available at the door. Councilmember Driscoll noted that he had been asked to give a tour of the Town Center to an interfaith group at 3:00 p.m.

WRITTEN COMMUNICATIONS [9:05 p.m.]

(12) Town Council 8/14/09 Weekly Digest

(a) League of Women Voters "Bay Area Monitor"

Councilmember Derwin said there was an excellent article on graywater.

(13) Town Council 8/21/09 Weekly Digest

(a) John Goodrich Letter Re Noise Ordinance

Referring to the letter of 8/16/09, Councilmember Driscoll said Mr. Goodrich raised some concerns about the lack of specificity in the Noise Ordinance. He noted that in the ordinance, "domestic garden tools" meant power tools—not hoes or shovels--and asked staff to respond to the letter. [*inaudible*]

(b) San Mateo County Disaster Preparedness Day

Referring to the flyer, Councilmember Merk said this event received a good turnout and provided a lot of information.

(14) Town Council 8/28/09 Weekly Digest

(a) Referral of Revised Geologic and Ground Movement Potential Maps

Referring to Town Planner Mader's memo of 8/26/09, Councilmember Driscoll said the suggestion was to notify those people whose property were affected by the change and solicit some input before it was brought to a public hearing. The Town Planner, Town Geologist, and the Geologic Safety Committee members would explain the impacts and hopefully diffuse any anxiety. Town Planner Mader identified 20 properties that had small fault changes on the map. If the fault was expanded on a property, they would have to meet a higher standard of geologic investigation if they wanted to rebuild or develop the property. If Council approved, he suggested staff work with the Town Planner on the list of property owners and set a date for an informational meeting. He offered to be the Council liaison. Responding to Ms. Howard, he recommended setting up the meeting prior to referring the maps to the Planning Commission. Council concurred.

(b) Safe Routes to School

Referring to the memo of 8/26/09, Councilmember Derwin said she and Ms. de Garneau met with school representatives about the Safe Routes to School program. They were very interested in moving forward.

(15) Town Council 9/4/09 Weekly Digest

(a) Accounting for Town Center Project Donations

Councilmember Merk said he would like the Council to discuss his memo of 9/2/09 and his request for an accounting of Town Center project donations. Councilmember Driscoll said he understood that all the funds were received by the Silicon Valley Community Fund (SVCF) as opposed to the PVCF. Responding to Mayor Wengert, he said all monies addressed to the PVCF were deposited in the SVCF. PVCF asked the Council quarterly for funds to pay for their fundraising expenses. Ms. Howard confirmed that the Town paid for PVCF expenses.

Councilmember Merk said he had no idea how much came in and how much went out. Councilmember Driscoll said the request was reasonable and suggested asking SVCF for the information. Responding to Mayor Wengert, Ms. Howard said the Town received \$80,000 last month and that the account was still active. Councilmember Driscoll added that there was an outstanding pledge. Councilmembers and staff discussed the donation of stock and the standing order with a broker.

(b) Special Watering Needs of Trees at Town Center

Referring to Brad Peyton's memo of 8/30/09, Councilmember Derwin suggested the Town accept his offer to water the special trees. After discussion, Ms. Howard said she would need to: 1) identify the trees in question; and 2) work with the Conservation Committee. Councilmember Merk described the location of the trees of concern.

(c) Proposal for Mentorship Program

Councilmember Derwin referred to the proposal dated 9/2/09 from the Teen Committee Chair and said it was a wonderful idea. But, she wasn't sure what the Teen Committee Chair was asking the Council to do. Councilmember Merk said he thought the Chair wanted feedback on the concept. He also questioned whether they needed funding for the program. Mayor Wengert said the program was similar to the YMCA Youth Government Program, which she described. She supported the proposal. Councilmember Merk said he would communicate comments to the Committee.

ADJOURNMENT: 9:20 p.m.

Mayor

Town Clerk