

TOWN COUNCIL MEETING NO. 757, OCTOBER 22, 2008

ROLL CALL

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

Present: Councilmembers Driscoll, Merk and Toben and Vice Mayor Wengert
Absent: Mayor Derwin
Others: Town Attorney Sloan and Asst. Town Administrator McDougall

ORAL COMMUNICATIONS: None

PRESENTATION [8:02 p.m.]

(1) AT&T Appreciation to Town Staff for Completion of Phase 1 of New Network Infrastructure

Randy Okamura, AT&T San Mateo County Area Manager, said AT&T had been working with the Town to upgrade the network with Lightspeed. Portola Valley was complete, and the 10-day launch letter for advanced TV service had been sent to residents. He expressed appreciation to the staff for their assistance and presented a plaque and medallion. Councilmember Driscoll noted that the Cable Committee would have a meeting on Thursday and asked that Mr. Okamura attend.

CONSENT AGENDA: All items removed.

REGULAR AGENDA

(2) Minutes of the Town Council Special Meeting on October 8, 2008 (Removed from Consent Agenda)
[8:05 p.m.]

Councilmembers Merk and Vice Mayor Wengert submitted changes to the minutes of the 10/8/08 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 October 22, 2008 (Removed from Consent Agenda)

Responding to Councilmember Merk, Councilmember Driscoll said the Public Works Director indicated that additional base rock from Granite Rock Company (p. 3) was required because more had been used in some areas than anticipated.

By motion of Councilmember Toben, seconded by Councilmember Driscoll, the Warrant List of 10/22/08 in the amount of \$544,713.18 was approved with the following roll call vote:

Ayes: Councilmembers Driscoll and Toben and Vice Mayor Wengert
Noes: None
Abstain: Councilmember Merk.

(4) Amendment to Firearms Chapter of Title 9 [Public Peace, Morals and Welfare] of the Portola Valley Municipal Code [8:10 p.m.]

Ms. Sloan reviewed the staff report of 10/22/08 on the amendment to the Town's ordinance on firearms to

expand the definition of "firearm." She noted that the current ordinance on firearms had been distributed for reference. The current ordinance was adopted in 1969 and referenced the County ordinance. The ordinance had been rewritten to reflect the County's current ordinance. It included a broader definition of firearms for things like air guns and pellet guns. The exceptions for when firearms could be discharged were pretty much the same except for exception #3, which she read. Responding to Councilmember Merk, she said "target range" was not defined in the County ordinance. Someone calling it a target range was sufficient; someone could stick a piece of paper on a tree or a fence. Councilmember Driscoll suggested that the Town require notification and/or designation of target ranges to make it less casual. Councilmember Merk said he thought a target range was something that was designed and built with appropriate safety features. Councilmember Driscoll noted that the language indicated that ranges had to be properly constructed and supervised. He suggested adding to #3, "...and approved by the Town Council." Responding to Councilmember Merk, Councilmember Driscoll said "regularly established firing, shooting or target range" was defined in #3.

Ms. Sloan said outdoor ranges could be approved by the Town; the Town normally didn't get into what happened inside someone's house. Councilmember Merk said he asked the Sheriff about this but had not received a response. Responding to Vice Mayor Wengert, Councilmember Driscoll said staff could approve/register outdoor ranges. Vice Mayor Wengert said the idea was to avoid random acts, where someone decided to go out and shoot bottles.

Responding to Councilmember Merk, Ms. Sloan said she did not think a paint gun or nail gun was characterized as a "weapon." Vice Mayor Wengert suggested having an exception for construction-related devices.

Councilmember Toben said if the staff would be asked to certify or approve target ranges, they would need some parameters for what justified a "regularly established target range." He further questioned what "properly constructed" meant. Vice Mayor Wengert shared the concern about creating another ill-defined responsibility for staff that was subject to interpretation. Councilmember Merk suggested contacting the Sheriff's office for input; they might have some sort of standard.

Councilmember Toben said he was not concerned with the language as presented. If there was data from the County indicating that they had problems with the application of this language, he would be more concerned. He had not heard that there was a problem, and he was disinclined to create a solution to a problem that might not exist. He was comfortable supporting the language as it was written. But, he did not want the Town to adopt something that might be difficult to administer. Councilmember Driscoll said there could be a problem with random, casual use of firearms. If it became a problem, he would rather see an ordinance in place.

After discussion, Council agreed staff should do some more investigation and come back with another first reading of the ordinance.

Ms. Sloan noted that the Town had very little problem with this. The most important thing to Mayor Derwin was to broaden the definition of firearms. She did not know if it would solve the problem about the cat that was killed. Councilmember Driscoll said he assumed that if the perpetrator that attacked the cat was identified, there would be other regulations for animal cruelty that would apply. Ms. Sloan concurred. On the other hand, she did not think the Town should just adopt the County ordinance. Councilmember Merk agreed it was easier to find things when it was in the Town's code without having to go to the County code.

(5) Request for Clarification of Community Hall Use Policy Relative to Class Reunions [8:20 p.m.]

Ms. McDougall reviewed her memo of 10/22/08 and recommendation to allow use of the Community Hall and activity rooms for class reunions for only those K-12 schools that served the Portola Valley community.

Responding to Vice Mayor Wengert, she said Ms. Howard indicated that money changing hands between the organizers and attendees had always been a red flag in determining whether an event was “commercial.” Ms. McDougall said she felt that there was a difference between selling tickets for an event to, for example, sell real estate tapes for profit and selling tickets to recover costs of a community event. She said Ms. Howard was comfortable with that but wanted some clarification from the Council.

Councilmember Driscoll said he thought the money changing hands test was too strict. When the recipient was a 501(c)(3) and the money was a donation to a 501(c)(3) or was being used simply to defray costs of a non-profit or local group, that was not “commercial.” What was important was who the entity was and what the money would be used for—not whether money changed hands. During the Amory Lovins’s event a couple of weeks ago, the Friends of Sausal Creek would have liked to have been able to sell Mr. Lovins’s signed book to fundraise for the creek. They were told they were not able to do that. He thought the test should be whether it was a commercial/for-profit entity that was charging money in excess of costs. Responding to Councilmember Driscoll, Ms. Sloan confirmed that selling copies of Mr. Lovins’s book would not have been prohibited by the Hasso Plattner agreement.

Councilmember Merk said the MUR had been rented out to teachers who charged for classes and rented out to all kinds of organizations, 501(c)(3)s, private people, etc. Tickets were sold for all kinds of events. The key to this was “non-profit center.” There were times when a 501(c)(1),(2),(3),(4),(5),(6),(7), or (8), which were all non-profits, could operate as a profit center under certain circumstances. Money might be changing hands, but generally they were recovering costs. He was concerned with the existing language that said money couldn’t change hands. It should say, “money could not change hands for the benefit of a profit center” or “money that was not for a profit center could change hands.” For example, if the Portola Valley Garden Club asked people to donate \$2 or \$5 when they came to a meeting for refreshments, they couldn’t use the building. That was not anyone’s intention.

Ms. Sloan said the Hasso Plattner agreement basically said that the Community Hall had to be used exclusively for charitable and tax privilege purposes pursuant to German tax law--sports promotion, public health education, arts, culture and youth. There were exceptions for some private social gatherings. Using the funds for commercial purposes was prohibited. Her reading of that was that if some money changed hands but was still for charitable and tax privilege purposes, that was fine and would not be considered commercial.

Councilmember Toben said there were five different scenarios. First, non-profit entities (e.g., the Friends of Sausal Creek) who wanted to hold an event to recover costs for the event. With scenario two, the non-profit wanted to recover costs as well as generate revenue for their charitable purpose. With scenario three, an unincorporated entity (e.g., alumni of the Woodside class of '72) wanted to take advantage of the occasion to generate a lot of money. In that situation, they might be required to submit a budget with some sense there was a nexus between the budget and the revenue they intended to generate through the gate. With scenario four, an unincorporated entity (e.g., alumni of Woodside High School) was clearly out to raise money, which they claimed they planned to donate back to the high school. That was a gray area. With scenario five, some for-profit entity (e.g., partnership or private corporation) wanted to raise money for that kind of entity. He did not think the Town could support that. Ms. Sloan added that the Community Hall could be used from time to time for public festivities and could be let to third parties for private social gatherings. Using the funds for commercial purposes was prohibited, and she felt scenario five would be prohibited.

Vice Mayor Wengert said organizers of reunions probably didn’t have an official title; it could be four people from the class of '74 who wanted to organize the event. There was no corporation or entity. The only time it would be commercial would be if they contracted with somebody to operate it for the alumni. Her sense was that it was still a break-even proposition. There was no entity generating income for any purpose, and she was not troubled by that structure even if commercial entities such as caterers would be used.

Councilmember Driscoll said the simple test was: a) who the group was; and b) that the costs should not exceed a reasonable expectation of the costs of the event. The Town should be able to look at the numbers and see if they were plausible. Vice Mayor Wengert agreed the key should be whether they were charging in excess of costs or a reasonable estimate of costs. Councilmember Driscoll said he did not think it had to be a non-profit or formally organized group. The policy should be wordsmithed and made easier for staff to administer, eliminate loopholes, and avoid a lot of exceptions.

After discussion, Councilmember Driscoll moved to: 1) allow use of the Community Hall for the reunions requested by Woodside High School and Corte Madera; and 2) ask staff to clarify the policy for use of the Community Hall per the discussion. Councilmember Merk seconded, and the motion carried 4-0.

COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

(6) Status of Town Center Project [8:40 p.m.]

Ms. McDougall said the tennis courts should be completed by the middle of November, and the restrooms completed by the end of November. Boulders were being placed in the creek, and volunteers were being mobilized to start planting on November 1.

Councilmember Driscoll said the ADT discussed a number of issues at the meeting 1½ weeks ago. Mr. Young continued to get estimates for the pedestrian bridge that were much higher than anticipated. It appeared that the foundation for the pedestrian bridge had been over designed. Even when that was trimmed back, the cost was approaching \$100,000. It was felt that the pedestrian bridge could be eliminated. He used the plans to show how the paths could get people from the parking lot; drawings were being revised so that final material choices could be made. Some changes to path surfaces would be required for ADA compliance. Responding to Councilmember Merk, he discussed changes that would be made to lighting. Secondly, he said there had been some discussions with George Stern about a trade of land to accommodate the trail that went around the back of the property. The trail literally passed through one tree, and 3-4 feet from George Stern's property would be needed in that area. The El Mirador people built a trash enclosure and a gate that was about 4-5 feet on the Town's property. A swap would solve the problem, and he would be meeting with Mr. Stern tomorrow. Ms. Sloan said two easements or a lot line adjustment could be done fairly simply if it was the same amount of square footage.

Councilmember Driscoll said the fence was not yet complete to the Church property, and people were parking on the Church property and walking across. Both the Church and Mr. Stern were not happy about that. On the creek, there were numerous cases where it appeared that PWA had over designed the project. The most expensive form of erosion control netting over the banks at the entrance and exit of the culvert had been proposed. Holes in the netting would have to be cut in order to plant the plants. The netting apparently lasted 5 years, and substituting some of that netting with native grass was being explored. Placement of rocks, etc., was also being looked at. Additionally, Mr. Young suggested using some of the pavers that had been removed on the path going down to the library be used in place of concrete on the apron around the restroom building. Councilmember Driscoll said there was a small problem with the pump not working in the septic tank. The contractor had been brought back to fix it.

Responding to Councilmember Toben, Councilmember Driscoll said the grading at Spring Down had to accommodate a fair amount of excess fill, and the grade had been raised 3 feet. Mr. Young was attempting to put it back the way it was before the horse facility was built. Councilmembers discussed possible uses of the parcels being discussed within the community.

Councilmember Driscoll said John Richards, first Town Center architect in 1996, was interested in donating an upright piano for the Town Center Community Hall. Mr. Richards's mother was an internationally highly regarded music educator, and the piano was apparently high quality. He said Mr. Richards had been

pleased with the suggestion to have a plaque indicating that the piano had been donated in memory of his mother. The piano was on casters and could be put in the storage area when not in use and then rolled out to any of the rooms. Responding to Councilmember Merk, he said Mr. Richards indicated that the casters could be replaced easily and that it would cost about \$150 to move the piano from his house to the Town Center. Responding to Ms. McDougall, he said the existing piano should probably be researched to see what its history was. Responding to Vice Mayor Wengert, he said there used to be dramatic productions in the MUR in which the piano was occasionally used. He did not think there had been any musical productions in the last 15-20 years.

Vice Mayor Wengert said her only hesitation would be bringing the piano in and not using it. Councilmember Driscoll said he felt the quality of the existing piano might put a damper on the idea of music classes, etc. Having a better piano might facilitate broader use of the classrooms. Responding to Vice Mayor Wengert, Ms. McDougall said she had not yet had requests from music teachers to use the space. But, Parks and Rec was working on some outreach to try to get input from the community on what types of classes they would like. Councilmember Driscoll noted that the rooms were not designed for acoustics.

Councilmember Merk said if the Town accepted a good quality upright piano, it would need to be put on a steel base with casters attached to the base. That would be more expensive than just replacing the casters on it. He noted that with a piano, you could do a lot of things (e.g., chorale events, ballet classes, etc.). He suggested asking Parks and Rec for input.

Ms. Sloan suggested that someone who knew pianos look at the piano in terms of quality and also measure it. Councilmember Toben said his piano was being tuned in about a month by an expert who would be able to assess the quality of the piano.

Responding to Vice Mayor Wengert, Councilmember Driscoll said there might be a small cost associated with moving it, the casters/base would need to be looked at, and the piano would need to be tuned after it was moved and then periodically. Responding to Councilmember Merk, he confirmed that there was plenty of room in storage for the piano. He was somewhat concerned that it might be damaged unless it was covered and/or protected. Vice Mayor Wengert said how it would be used should be considered.

Council agreed to have the piano looked at and then bring staff's recommendation back to the Council.

(7) Reports from Commission and Committee Liaisons [9:00 p.m.]

(a) Parks and Rec

Councilmember Toben said the Committee discussed uses for the Spring Down parcel. The Council, at the last meeting, elected to hold off for about six months the community outreach on uses because there was a lot in the pipeline. The Committee discussed various ways that portions of the property might be used that was compatible with open space intentions; there could be a strong sentiment that nothing should happen on those parcels.

Responding to Councilmember Toben, Councilmember Driscoll confirmed that one of the sports courts would be raised to protect oak tree roots. Councilmember Toben said the Committee felt that was less desirable than having all three courts on the same level; there might be some liability issues. Councilmember Driscoll said a lot of fill would have to be brought in to raise all the courts 6-8 inches. The ADT had discussed the possibility of putting a fence between the raised court and the other two so that people couldn't step off that edge. It had not been discussed during the last several months. Councilmember Toben said there was a tennis advocate on the Committee who wrote a report on what the purpose of the tennis and sport courts should be, policies/questions on use of the courts, additional improvements and equipment needed, software for scheduling, etc. It would be agendaized at the November

Committee meeting for discussion. Additionally, the Committee had some discussion about the selection of teachers for the space available in the Community Hall. The art teacher, for example, wanted to offer seven different art classes, which would take up a lot of the available slots. There needed to be a process for determining what teachers received slots, criteria for terminating teachers, etc.

(b) Nature and Science Committee

Councilmember Toben said the Committee was unenthusiastic about Council's request to photograph their inventory and provide a complete catalogue. But, they would be documenting an existing inventory to provide greater detail and include photos by December 1. One of the Committee members would be working with Ms. Tryce to ensure that items in the display case would excite the interest of the children taking the classes. He noted that in addition to the cabinet, there was a very large bookshelf that stretched 15' that could be utilized. He felt the closet, cupboard space and counter space was adequate. He also thought that the archives that were not on display could be distributed to volunteers for storage until they were needed for classes.

Ms. McDougall noted that Ms. Tryce had been requested to: 1) remove the additional specimens recently brought in for display; 2) limit picture display to the corkboard; and 3) plan her curriculum for the next quarter so that appropriate archives could be brought in for a limited amount of time. Responding to Vice Mayor Wengert, Councilmember Toben said most Committee members understood that the artifacts belonged to the Town, that there were space constraints, and the Council had allocated a reasonable amount of space for dedicated use.

(c) Planning Commission

Councilmember Toben said Mr. Mader informed him that the Commission had approved a site development permit for a horse arena on Goya Road. Most of the discussion pertained to the final 50 memberships for Alpine Tennis and Swimming Club. The Commission discussed whether to require a sound wall be built to address a neighbor's concerns; ultimately, that was not required by a vote of 4-1. Councilmember Merk discussed his experience with Club noise. He did not know if a sound wall would resolve the problem.

(d) Trails Committee

Councilmember Driscoll said the Committee discussed mountain bikers using Coal Mine Ridge trails at 4-5 a.m. with headlamps. You could clearly see where bikes were using these trails. Staff had cleared some tree trunks, which made access and use easier. The Committee unanimously decided to ask staff to not clear trunks that crossed the pedestrian trails if pedestrians could easily step over them; keeping the tree trunks in place would make it more difficult for the mountain bicyclists. Additionally, the Committee had some questions about the trails on the Town Center property. Mr. Young would attend the next meeting to answer their questions. Responding to Councilmember Toben, he said it was his understanding that the perimeter trail was for equestrians and pedestrians and not for bicyclists. Councilmember Toben said he thought children might enjoy riding their bikes on the trail when the parents were playing softball. After discussion, Councilmembers agreed it should be discussed when the trails were constructed.

Councilmember Driscoll added that the Trails Committee asked that they be consulted when Parks and Rec decided where the hitching post should be placed at Triangle Park.

(e) Emergency Preparedness Committee

Councilmember Merk said there was a lack of a quorum at the last Committee meeting.

(f) Review of Town Committees

Vice Mayor Wengert said the first meeting of the ad hoc committee reviewing Town committees was well attended by staff and committee representatives. Bill Lane presented some historical perspective on how committees supported staff and functioned over the years. A facilitator from the Peninsula Conflict Resolution Center ran the meeting and did a terrific job. The discussion included things that worked well at the committee level, areas that needed some attention, composition of committees, size of committees, timing of meetings, terms for Chairs, Council liaisons, new committees, etc. There would be another meeting in November to start on recommendations. She felt it had been a very good initial outing.

(g) Noise Workshop

Councilmember Toben said the first workshop would be on Saturday, November 1, 2008, at 10 a.m. at the Schoolhouse.

WRITTEN COMMUNICATIONS

(8) Town Council 10/10/08 Weekly Digest [9:30 p.m.]

(a) Naming of Activity Rooms

Referring to Brad Peyton's letter of 10/9/08, Councilmember Toben said he liked the suggestion to name the activity rooms. Councilmembers discussed possible names and an appropriate process for choosing names. After discussion, Council asked staff to recommend names for the rooms.

(b) Northern California Solar Energy Association Award

Referring to the e-mail on the Town's receipt of a Top Three Award, Councilmember Driscoll said he would be happy to attend the event on October 29, 2008, in Berkeley, but only if the group waived the \$75 ticket price.

(c) Noise from AC Units

Referring to Waltraut Monroe's letter of 10/3/08, Councilmember Merk said noise from AC units was an issue in Town. If the AC units weren't on the original plans, the ASCC could not address it. Councilmember Driscoll suggested this might be a Design Guidelines issue rather than a Noise Ordinance issue. Responding to Vice Mayor Wengert, Councilmember Toben said there was nothing in the draft ordinance about noise from AC units. Councilmember Merk felt it should be addressed at the ASCC level as opposed to being in the ordinance; the Building Inspector could follow up. Councilmember Driscoll noted that at the Ranch, pool pumps had to be enclosed. He also felt it fell under the ASCC's purview. If installing AC required a building permit, the property owner could be informed at that point that it required ASCC approval. It should be added to the Design Guidelines and included in the ordinance as an item that required approval. After discussion, Ms. Sloan suggested getting input from the ASCC on how to address the issue. Council concurred.

(9) Town Council 10/17/08 Weekly Digest: None.

ADJOURNMENT

The meeting adjourned at 9:40 p.m.

Vice Mayor

Town Clerk