

TOWN COUNCIL MEETING NO. 745, MAY 14, 2008

ROLL CALL

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

Present: Councilmembers Driscoll, Merk, Toben and Wengert, and Mayor Derwin  
Absent: None  
Others: Town Planner Mader, Town Administrator Howard, Town Attorney Sloan, Public Works Director Young, Asst. Town Administrator McDougall, Admin. Services Officer Nerdahl, Planning Manager Lambert and Town Clerk Hanlon

ORAL COMMUNICATIONS

Chip Norris, Wayside Rd., asked that the Town help with a tree on his property that was dying from SOD.

CONSENT AGENDA

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

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

(3) Warrant List of 5/14/08 in the Amount of \$688,255.87.

REGULAR AGENDA

(1) Minutes of the Town Council Meeting of April 23, 2008 (Removed from consent agenda)

Councilmember Driscoll submitted a change to the minutes of the 4/23/08 meeting. By motion and second, the minutes were approved as amended by a vote of 5-0.

(2) Minutes of the Town Council Special Meeting of April 30, 2008 (Removed from consent agenda)

Councilmember Driscoll submitted changes to the minutes of the 4/30/08 special meeting. By motion and second, the minutes were approved as amended by a vote of 4-0, with Councilmember Wengert abstaining.

(4) Public Hearing: Adoption of 2007 California Building Code with Local Amendments

Ms. Sloan said when an ordinance was adopted by reference, such as the State building codes, a public hearing was also required at the second reading. Mayor Derwin opened the public hearing, and there were no comments.

Councilmember Merk moved second reading by title, waive further reading, and adoption of Ordinance No. 2008-373 Amending Section 15.04.010 [Definitions], Section 15.-4.020 [Amendments to the Building Code], and Section 15.04.030 [Additions to the Building Code] of Chapter 15.04 [Building Code] of Title 15 [Buildings and Construction] of the Portola Valley Municipal Code to Adopt an Updated Building Code. Councilmember Wengert seconded, and the motion carried 5-0.

(5) Public Hearing: Proposed Amendments to the Zoning Ordinance Regarding Nonconforming Uses

Town Planner Mader reviewed the staff report of 4/8/08 on the amendments to the nonconforming use provisions of the zoning ordinance. Responding to Councilmember Merk's question on Section 18.46.050.3.c, he said the Commission did not modify the earthquake fault setback provisions. That language had existed for a long time. He agreed that an independent appraiser approved by the Town would be used to determine the value as opposed to the assessor's appraisal records for the property. After discussion, Councilmembers agreed to remove the last sentence from Section 18.46.050.3.c.

Planning Commissioner McKitterick said Section 18.46.040 should read "...govern as if it were involuntarily damaged."

Councilmember Merk moved to introduce the ordinance by title, waive further reading. Councilmember Driscoll seconded, and the motion carried 5-0.

(6) Funding and Scheduling for Sausal Creek Daylighting Project, Phase 2

Mr. Young reviewed the staff report of 5/14/08 on phase 2 of the Sausal Creek daylighting project. Responding to Councilmember Merk, he said soft costs included geotechnical inspection, environmental review, plan review, construction management services, Town Geologist reviews, permit fees, etc. Councilmember Driscoll noted that the second phase was largely a planting program. Mr. Young said staff could manage that in-house. If the project was done now, the Town could use TBI's time because they were already here; their cost was not based on the entire scope. TBI might be needed one extra month. Responding to Councilmember Driscoll, he said the estimate shown for PWA was a worst-case scenario.

Responding to Councilmember Wengert, Mr. Young said the original planting plan could not be used because the ditch of phase 1 was already there. He described the work that would have to be torn out if the project was delayed, including: a) removing the aggregate paving to dig the hole to connect to the pipe; b) bringing in a crane for the pre-fab bridge; c) staging the bridge and boulders on the new meadow; d) excavating for keying in the boulders, etc.

Alex Von Feldt, Friends of Sausal Creek, said two grants had been applied for. The first for \$250,000 from the Land and Water Conservation Fund would be given out in August-September; recipients would receive notice in June-July. The second for \$30,000 from the Five Star Fund, would be decided in May. Most of the phase 2 activities weren't scheduled to happen until at least September. She was skeptical about getting grants based on the track record. Additionally, it was difficult to attribute what cost went to the creek and what cost went to the Town Center project. For the concrete, one bid attributed over 50% of the cost to the creek, and another bid attributed 30%. That was the same for the overlap. There would be landscaping in this part of the project, and there was a certain dollar amount to that. There had been estimates from \$30,000 to \$100,000. As far as reducing costs, she said she worked with Acterra to get the cost down to \$13,000. Even if Acterra couldn't help with the planting, the Friends of Sausal Creek along with the Conservation Committee and community groups could plant the plants. That represented a considerable savings. The target the Friends were working toward was \$1.2 million. Additionally, it was her understanding that the Town put in \$3 million out of the \$20 million Town Center project or 15%. The Town also donated to the Shady Trail. Fifteen percent of a \$1.2 million project would be about \$180,000. On whether to do it now or next year, there were risks for both approaches. If it was delayed, it would cost more and cause more disturbance. The Town Center would also look incomplete for a full year; it would be a ditch. It could be hydro seeded, but hydro seeding just brought weeds. If it was planted and mulched, it would be much better controlled. The risk of doing it now was that the Town would have to front the money because only a certain amount had been raised. The Town had agreed to front \$250,000 for the Land and Water Conservation Fund grant because that was a reimbursement grant. Overall, the Town had been generous in its donations, and the Town Center had reached its goal. It would go a long way to have some

sort of contribution and show of support so that the project could be done this year. She noted that Ed Wells had prepared a flier with a diagram and description of the project for use in fundraising. Mr. Wells described the attributes of the engineering design of the project and the reduction in liability the Town would have in the future. Ms. Von Feldt noted that there had been a Town-wide mailer and meetings at the Family Farm and Sequoias. Everyone enjoyed hearing about the project and was supportive.

Councilmember Driscoll said he strongly supported doing the project this year. The Town Center had been torn up for 3-4 years with people trying to deal with construction areas, temporary buildings, etc. He wanted to bring the project to a close as quickly as possible. He did not want to end up with a graded but unfinished project. The Town was fully capable of supporting this, and he felt the fundraisers would succeed with their efforts. There were a number of areas with this project to save money. The architect of this project had a tendency to build more costs into the project than were necessary. The Town Center architects had been very careful in managing costs. The creek project had been somewhat over-designed, and he thought the value engineering steps taken in the original project would be even more productive on this project. He wanted to move forward.

Councilmember Wengert said she understood that the Town would be taking on an exposure of \$750,000 to \$800,000, which was the gap between the funds raised and the estimated cost. Mayor Derwin thought it was more like \$600,000. Councilmember Driscoll said he thought it was \$500,000 because he felt the \$200,000 match would be matched. Councilmember Wengert said the Town would be taking on a liability that the Council said in the past it wasn't willing to do. If for some reason, the Town stepped in, people might feel they didn't have to donate and no more dollars would be raised. The Town would be on the hook for the remaining dollars. Councilmember Driscoll said the Town broke ground on the Town Center long before the \$20 million had been raised. The Council decided to move forward and identified a backup plan with the County loan. The Town also spotted the money up front and the project started. The creek committee hadn't been given any of those advantages; they seemed to be held to a higher standard by having to show the money first before the project started. The Town was well on the way and committed to a substantial amount before all the money was raised for the Town Center. He felt the Town should be willing to take on the same amount of risk for this project.

Councilmember Wengert said the Town Center project was driven by a number of factors that were very well considered over time. It was a reasonable risk to take in any major capital improvement project. This was a very specific project that was reviewed in ad hoc committees initially. The recommendation was that there was approval of the project but it would only proceed if all the funds were raised privately. That had already been changed somewhat with phase 1. Now, the Council had to decide whether to take on the responsibility for the remaining cost--whatever it was.

Councilmember Driscoll said he was very optimistic that they would raise the money. All the Council was being asked to do was to move forward before they finished their fundraising. As with phase 1, he felt they would raise the money before it was spent. He agreed the Town would be going out on a limb and that it was not on the same level of necessity as the Town Center. It was more of an amenity, but he preferred to think of it as an environmental necessity. One way or the other, these were numbers that weren't anywhere near outside of the Town's reach. At times, the Town had been out front much more than the reserves for the Town Center project. Here, it was well within the reserves on hand.

Councilmember Toben said back in 2005 when the Council committed \$3 million of reserves to the Town Center project, the community was up in arms about a commitment of that level for a project that many did not feel was appropriate to undertake. In the middle of 2005, the Council took the position that it would not commit at any point going forward additional general fund money to support elements of the Town Center project. He voted for that position and stood by it tonight. He wanted the project to succeed, but tonight it was \$800,000 short of an estimated \$1.5 million dollar project. There was also the risk of bids higher than what the Town hoped to receive. To take the position that the Town should go forward was a significant

break from a tradition of fiscal conservatism with respect to commitments of this magnitude. He could not support it. He supported phase 1 because he was satisfied that the funds that had been raised were sufficient to cover the actual cost. He noted that he had made an arithmetic mistake the night that was decided; he forgot the Town had already committed \$380,000 to design costs. It was actually to a point already where the Town was \$900,000 committed with only \$660,000 in the bank. The Town was already in the red. He was bothered by that but had to live with his mistake. If he had recognized that error, he might have voted differently on that night. He was not at all persuaded that there was any meaningful downside to waiting for one year while these funds were secured. He was not impressed by the argument that additional expenses might be incurred next year. The same argument was made for phase 1 about the driveway. This was different. With respect to the Town Center project, there were a number of off ramps that were available in the event the money couldn't be raised to do the full project. None of those had been used. Tonight, the Council was essentially being asked to give a green light to proceeding with the remainder of the project with \$500,000-\$800,000 in play. That was too much given the position the Council took in 2005. It was represented to the taxpayers of the community that the Council would not put general fund dollars in play. That was why he was unable to support this tonight.

Councilmember Merk said he was very much in favor of going ahead with this project--if for no other reason than to have the Town Center finished and complete. He did not want a partial construction project for another year. He was convinced that this community would step up to the plate. There was some risk to the Town, but it was very small. It was a risk the Council should take. Even with the most pessimistic view of the Town having to spend money, the Town would have a far superior Town Center project. He wanted to see this finished while the momentum was there. He also thought the Town would save a lot of money on landscaping.

Councilmember Wengert said it was a difficult position to be put in, and it was very unfortunate. She had the utmost respect for what the Friends of Sausal Creek had been doing. But, with all of the representations that had been made, she would have a difficult time responding to someone who said, "I thought you weren't going to commit general fund monies to this project." It was to be kept separate and funded separately. Going forward now, despite potential difficulties next year, would mean the Town was basically funding it. The Town might not have to spend that money, but there was clearly no assurance and the Town would be assuming all liability for most of it. On that basis alone, she could not support it tonight.

Mayor Derwin said she appreciated the concerns of Councilmembers Wengert and Toben. But, it was too important to put on hold. The creek was the heart of the Town Center project and reflected the values and principles of the Town. She had complete confidence in the Friends of Sausal Creek to raise the money. If they couldn't bring it all in, she would not be opposed to the Town contributing some money as it had for Shady Trail. She enthusiastically and wholeheartedly supported going forward with this.

Councilmember Merk moved to proceed with phase 2 of the creek project in this calendar year. Councilmember Driscoll seconded the motion.

Councilmember Driscoll said this was a very important issue, and he was unhappy with a 3-2 vote. He would like to find a way to get consensus. He felt this project had potential off ramps as well. A number of the contracts that would be given for the second phase of the creek could be withheld or not executed. If the Friends of Sausal Creek failed on financing, the Council was not necessarily committing the Town to \$1.5 million of expense, which might be brought down. As with the Town Center, he felt the Council should proceed towards the goal and rely on the citizenry to come to the rescue. They had done so in amazing fashion on the Town Center project, and he was confident they would do the same for this project.

Councilmember Merk said by going ahead with the project now, the fire would be kept under the Friends of Sausal Creek and the momentum would be kept. If the project was put off for a year, it would be harder to raise the funds. Councilmember Driscoll said TBI and Town staff needed clear direction from the Town.

They were very good at finding savings—and in some cases extraordinary savings. If they were told to hold off on this second phase, they might not find cost savings. They needed clear direction so that they could figure out how to get there.

Mayor Derwin called for a vote, and the motion carried 3-2 (Toben and Wengert).

(7) Consideration of Modification/Reduction to Tennis and All-sport Court Facilities

Councilmember Driscoll said in addition to the four site plans shown in the staff report dated 5/7/08, an additional plan had been received from the architect today. When the courts were laid out in mid-April, the surveyor's stakes were a lot farther under the oak than expected. A number of options were explored. It appeared that the tennis courts could be moved closer to the maintenance building. There was a corridor between the maintenance building and the tennis court, which was the principle access to the baseball field. The original design showed an open swale there and some planting. It was about an 80' pathway with a solid wall on one side and a chain link fence on the other. By moving the courts, the paved path would be about 7' and would not have vegetation. Additionally, the maintenance building would now have to have a gutter that would go into a drain at the end of the building. The all-sport court would be the uphill court, and there would be a grade change between the court of 6-12" so that it rose up and didn't affect the root ball of the oak. An arborist had been consulted to find out how to go about doing this. It would not have to be excavated as deeply as originally proposed. Additionally, by moving the parking lot that pre-existed on that site, paving was being removed from the footprint of this tree. What would be put back was less than what was there before. He suggested that the Council take no action tonight and let the ADT continue refining the plan. The Council concurred.

Kathy Feldman, Grove Dr., said unless you were involved in the tennis community, you didn't know all the rules and regulations that went into tennis courts. She was concerned about the sports court, which looked like it was set up for basketball. That might not be allowed in league play. She saw the oak tree on Saturday, it was gorgeous, and the Town needed to work around it. But, she wanted to make sure that the Council knew what it would mean to the people of the Town to have the three tennis courts back. She played on the old courts, which were never maintained, but it was all that the tennis players had. There were about 38 kids in Town on the team who had no place to practice. Alpine Swim and Tennis Club let them practice on their courts, but they were booted off if a member came along. The tuition at Alpine was \$20,000/year. Public courts were needed for the people in Portola Valley. She was on the Alpine Hills Tennis Committee for six years. She understood a tennis need when she saw one, and she saw one in Portola Valley. She supported the tennis courts and doing it right. She offered to help.

Councilmember Toben said he was the liaison to the Parks and Rec Committee and was very close to the discussion about recreational needs and desires from the tennis community, kids' basketball community, rollerblading community, etc. All those interests spoke up over the course of several years. All of that input was factored in in trying to produce an intricate design that would accommodate as much as possible on a limited amount of space. These were community courts and were never envisioned to be USTA standard courts. At no point in the discussion was a serious suggestion made that the Town would host tournaments or formal league play. Additionally, there had been a basketball court on the site before, and it was gone now. A lot went into producing this plan, and it was very delicately balanced.

(8) Conceptual Approval of Design of Phase 1 and Implementation of Phase 2 of the Town's Website

Ms. Howard reviewed the staff memo dated 5/14/08 on phase 1 and 2 of the website redesign project

Margaret Atmar, Two Fish West, discussed the phase 1 work completed to date. Phase 2 would be the design and site implementation. Using overheads, she discussed: 1) the project team; 2) redesign goals; 3) problems identified by the survey on the current website; 4) recommendations for the redesigned website,

as described in the Executive Summary; and 5) samples of menus and features. She said this had been a fun project and that Two Fish West would like to work with the Town to complete the website redesign. Responding to Councilmember Toben, she said 105 people responded to the community survey.

Responding to Councilmember Driscoll, Ms. Lambert said the Planning and Building Dept. had digitized finalized building permit plans. Councilmember Driscoll said he hoped there would be some archival capabilities so that someone could go back and look at a permit that was issued 10-15 years ago. Ms. Lambert said what kind of information the Town should make public had been discussed. People could come into the office and see digitized plans, but it was not accessible by the public at this point.

Gary Nielsen, Piñon, said the Council would probably need to set up some rules about what committees put on their web pages. Ms. Atmar said with a content management system, you could purchase a package that allowed for approval cycles. People could submit something for publishing, but it would need to be approved. Councilmember Wengert agreed there would need to be rules and monitoring.

Noting that he was not a technical person, Councilmember Merk said he was very disappointed in the survey form and was not happy that the design had been based on it. Personally, he had a problem with nebulous titles like "Our Town" and "Have you seen?" and "I want to..." When he went to a site, he wanted information and to be able to see a table of contents and index. He wanted access to the information instead of touchy-feely stuff. His greatest concern was who would be overseeing all of this. News items wouldn't appear automatically. Someone would have to decide if something was newsworthy. Putting out all this information was a great idea but hadn't been thought through in terms of how that information would be controlled. What went out had to be looked at by a responsible party in Town administration. Ms. Atmar said the main pages, news pages and calendars would be looked at by the Town administration. The committee pages would be their own pages. Responding to Councilmember Merk, Councilmember Wengert said the committee pages would be templated with standardized information. The intention was to report on events at the committee level—agendas, minutes, special events, meeting times—not editorial content. The PV forum could operate as that vehicle. Responding to Councilmember Merk, she said targeted e-mail announcements would occur when people signed up to be on an e-mail list like the post card list. It was a one-way communication from the Town Hall to residents—not back to the Town or among Councilmembers, etc. Targeted e-mail was also optional.

Councilmember Driscoll said he felt the Town should move ahead as quickly as possible. The current website had been archaic for some time.

Ms. Howard said if the Council was pleased with the approach, the next step would be to: a) bring back an agreement with Two Fish West to provide the next phase; or b) take this information and get proposals, which would add about two months to the process.

Councilmember Toben said he recalled the conversation six months ago about the design of the creek project. At that time, he recommended that that project be put to bid, but the Council decided not to. There had been some second-guessing about that decision. It had been a very expensive design project, and the Council had not always been satisfied with the way that had been conducted. He had some sensitivity about handing this job over to Two Fish even though he was impressed and satisfied with what he was hearing and seeing. It might be more prudent to invite a couple of competing providers to step up. Or, with the momentum going now, the Town might proceed with Two Fish.

Councilmember Wengert said she had direct involvement with this project. The process had been very positive to date. She thought there could be a competitive bid with a very strong end result. Despite the delay and momentum built up, she recommended bringing in one or two other bids to see what the costs would look like. She also thought Two Fish should be allowed to re-bid because the proposal had been put together very quickly to meet the Town's deadline.

Ms. Howard confirmed that the Council was not required to choose the lowest bid and that it was not a formal bid process. It was more to get an idea of range; it could also be used as a bargaining tool to bring costs down. Having 2-3 proposals provided an opportunity to see what was available and flesh out the actual proposals.

Councilmember Driscoll said the Town had used outside people for the last few years to manage the website, and he did not feel the Town had been well served. The good working relationship with Two Fish should not be underestimated. The Town was relatively, technically unsophisticated in the web design business. He was fine with going out and seeing what prices would be, but the good working relationship with this consultant needed to be considered. Responding to Councilmember Merk, he said he would prefer that the existing team evaluate proposals and make a recommendation. Council concurred.

(9) Solid Waste, Recyclables, and Yard Trimmings Franchise Agreement with GreenWaste Recovery, Inc.

Ms. McDougall reviewed the staff report of 5/14/08 on the ten-year franchise agreement with GreenWaste. She noted that rates for the Town had been distributed in a separate handout.

Responding to Councilmember Toben, Frank Weigel (GreenWaste) said GreenWaste went through the bidding process with the Town 5 years ago. That contract included a provision that the contract could be extended if the Town was happy with the service. Ms. Howard said this started out as an extension and the Town asked if GreenWaste would consider giving the Town a longer term. The Town was very happy with the service, and she did not think it would be in the Town's best interest to go through the expense and time of doing a formal RFP process.

Councilmember Wengert said she found the contract very fair and favorable and liked the enhanced services that were included.

Jon Silver said on garbage day, he found ground pieces of glass in his driveway. He hoped that that improved. Mr. Weigel said the newer trucks would help with that situation. Councilmember Merk said he was usually there at the time of pickup. When they drove away, there was a small pile of stuff that fell from underneath the truck. In front of each house, there was a little pile. Mr. Weigel said he would look into it.

Councilmember Merk moved approval of resolution Approving and Authorizing Execution of the Franchise Agreement Between the Town and GreenWaste Recovery, Inc. for Collection of Garbage, Recyclables and Compostable Materials. He thanked GreenWaste for helping the Town on compliance with AB 939 and said he appreciated the service. Responding to Annaloy Nickum, Mr. Weigel said new literature would be distributed to refresh people's memories of what could be recycled.

Councilmember Driscoll seconded the motion. He added that he was very pleased with the service. Mayor Derwin called for a vote, and Resolution No 2396-2008 was approved by a vote of 5-0.

COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

(10) Reconsideration of Previous Decision on the Oak Tree at Ford Field

Ms. Lambert reviewed the staff report of 5/14/08 on the home dugout coast live oak at Ford Field. She noted that an e-mail from Dieter Walz and a letter from Adaline Jessup had also been received.

Erica Hughes, Chair—Parks and Rec, said the Committee had not formally voted on this. The majority of the Committee felt that the tree was too great a risk. The Committee's priority was the safety of the people using the fields and especially the children. The Committee would like to see the tree removed.

Annaloy Nickum, Alpine Rd., said when the decision first was made, she went out and looked at the tree. She was not an arborist, but she was a landscape consultant. In spite of its structural problems, it had a lot of vigor in its crown. She appreciated the efforts people in Town made to preserve trees and the efforts made to protect the oak tree at Town Center. She was heartened by the decision at the April 9 Council meeting to thin the crown and support the tree. She understood that part of that involved moving the dugout so that it was not underneath the tree at all, and that the stand could be adjusted and shifted as well. Basically, any activity would be removed from underneath the tree. Pursuing the relocation of the dugout and the shifting of the viewing stand would be moving towards a win win situation. She did not think that all of the options had been explored to save the tree.

Jon Silver discussed his service on the Council and County Planning Commission. When he read the arborists' reports before the 4/9/08 meeting, he was horrified. If the only way to keep children safe was to cut down the tree, he could support that. When it was discussed, he commented that it would be easy to put a dugout to the left of the tree, and the bleachers could be moved as well. The old dugout could be left and fenced off. None of this was in the staff report. Referring to his letter dated 5/14/08, he asked what had been done in the last five weeks. The Council voted for an action on 4/9/08. He did not think the location of the supporting pole was enough to hold up what had been discussed. Putting kids back in the old dugout shouldn't even be on the table. The Council had come up with a win win solution before. He suggested having a site meeting for interested parties/stakeholders to work things out. If it couldn't be worked out in a way that was good for baseball, he would endorse taking the tree down. But, he did not think it needed to come to that. Cutting the tree down and keeping kids safe showed that the Town valued their safety. But, doing something a little different that protected the environment and allowed the tree that had had many close calls with death to survive, showed what the Town cared about.

Susan Thomas, Cervantes, said 25 years ago her son had come to a Council meeting and talked about how important this tree was and how the kids were all on it. She discussed the card she made with a picture of the tree on it. The tree was a landmark. It was hard to give up something that was so important. She wanted the Town to do whatever it could to save the tree.

Councilmember Driscoll said the tree was apparently struck by lightning in the early '50s. At that time, it was so severely burned that people thought it was dead. He understood that the tree was approximately the size of the other tree in the big meadow at the time. It was 90% killed by the lightning strike and thoroughly burned. It was called "Resurrection Tree" because in the following year it came back relatively vigorously. In 1984 when they were doing construction work on Ford Field, the committee responsible for the baseball field wanted the Council to take the tree out. In 1984, McClenahan's recommended its removal. Twenty-five years later, the things he claimed in his letter were going to happen--didn't. He wanted to be careful about drawing the death knell on this tree, which was among one of the most vigorous in Town. In 1984, the Council spent \$45 to get a representative from the City of San Mateo to come out and give an unbiased opinion of the tree. McClenahan's would make more money taking it out than repairing it. The County rep felt that with proper maintenance and some pruning, the tree was fine. As a consequence, the Council decided not to take it down. About every 25 years, this tree was written off. The tree was substantially older than anyone in the room and looked a lot better. He wanted to go the extra mile and, if necessary, form a subcommittee of Parks and Rec and Conservation Committee people to try to find a solution. It was easy to take the tree down. Since the Town would probably end up redesigning and rebuilding the backstop and field in the next couple of years, this was an opportunity to find a creative solution to this problem.

Councilmember Wengert said she was not a tree killer and had made her priorities very clear over the years in terms of her love of the outdoors and preserving what could be preserved. Despite the emotional appeals, the Town was in a very difficult position--but one that was clear 5 weeks ago. Two things had changed since then. First, the assumption she made that evening was that the Town would be able to trim the tree to a point where the dugout could be safely reopened. The other assumption was that the support



could be included in the existing fence so that it wouldn't create an additional hazard. At that meeting, she also spoke out against trying to take heroic efforts. Six arborists had reported it was in unsafe condition and would create an extensive liability for the Town. A tree in San Francisco fell and killed a person recently. They didn't have the knowledge the Town had on this tree. There were many things the Town could do to honor the tree, which should be done. But, knowing all that was presented from the experts and a unanimous verdict from all of them, she could not support keeping the tree up.

Jon Silver said he did not think that anyone contemplated reopening the dugout with or without a trimmed tree. The arborists who talked about trimming the tree noted that he could not guarantee that it was safe. He [Silver] also did not think the Town needed to wait for a whole redesign of the field to relocate the dugout in a safe place. It was at least worth a field trip to look at. He thought there was a way to achieve safety with this tree.

Annaloy Nickum hoped that there was serious consideration given to Councilmember Driscoll's suggestion about forming a subcommittee of the Conservation Committee and Parks and Rec and having a field trip to see if the dugout could be shifted. The tree was owed that before the decision was made to take it down.

Councilmember Toben said he had the highest respect for the values expressed in comments. But, he concurred with Councilmember Wengert. The difficulty was that the arborists indicated the tree posed a peril to the dugout and all proximate users. The intensity of the use on that site in the proximity of that tree—whether the dugout was to the right or left—was something that the Town would never be able to control. He was surprised to hear the argument that because the tree hadn't fallen down yet, it was not going to fall down. That was similar to the argument that the old Town Center should stay because there hadn't been an earthquake. Some day, there would be an earthquake, and some day that tree would fall down. He could not support the perspective that everything possible must be done to keep the tree. He was also strongly in favor of honoring this tree in some way. That was very important for the Town to do, and the community was entitled to that. This was a significant problem that the Town needed to come to grips with.

Councilmember Merk said he hadn't heard any arborist say that moving the dugout was not an option. He thought the dugout should be moved and then sequester the area under the tree. The Town should look for an arborist who had a welder or metalworker on their staff that could build a support that could come down in the fence and not create an additional hazard. A few yards away, there were 20' cliffs into the creek. Someone needed to watch the kids when they were there at all times. If the area under the tree was sequestered, that was one more rule of the baseball field: you didn't go inside the fence around the tree. The problem with just looking at the arborists' reports was that all arborists had to pay their insurance, all wanted to keep their rates low, and none of them wanted to be sued. Any arborist could look at any tree and say it would fall down. It might not fall down for 400 years, but it would fall down and someone might be under it. The arborists would want to take it down now so that they wouldn't be sued. He was pleased that the Conservation Committee 20 years ago went to the City of San Mateo and got an arborist who didn't have a special interest. At the least, he would like to try doing that again—even if it cost \$450 dollars instead of \$45. He also liked the idea of forming a subcommittee or having a field trip with the interested parties so that everyone could look at this and discuss it in the field. He supported Councilmember Driscoll's approach to this.

Responding to Mayor Derwin, Ms. Sloan said if the Town found an arborist who said the tree wasn't hazardous, it would not affect the Town's liability very much. If you were on notice that there was a dangerous condition and something happened, you were liable, and there was no immunity for that once you're on notice. If you had six reports, you were on notice, even if one person disagreed with that. Councilmember Driscoll pointed out that the Town had been on notice since February 3, 1984. Up on Alpine ridge, a healthy looking, unblemished oak crashed onto Toyon Trail last Sunday. Trees fell.

Mayor Derwin said this was a tree that was right next to a baseball field that six arborists declared hazardous. Her concern was public safety and the liability issue. She also wasn't a tree killer, but this was really difficult. She liked the idea of having a subcommittee. But whatever was done, that tree would have to be fenced. That would be an eyesore. Kids were climbing in and on the tree right now, and she thought it should be fenced now. If a subcommittee was formed, she would like Parks and Rec to be involved. But, she questioned where the Town would end up. It might just prolong it.

Mr. Silver said there had been a hazard there for many years. The hazard had been partially mitigated by closing the dugout but not completely. That hazard needed to be totally mitigated ASAP. Forming a subcommittee or referring this to committees could take months, which was not acceptable. The Council needed to keep control of it and involve the interested parties. He suggested continuing this to the next meeting, have a subcommittee of the Council take charge of facilitating a meeting of the stakeholders, including Parks and Rec members and Conservation Committee members, and try to hammer out something. Maybe a safety fence would turn out to be such an eyesore that the tree should be taken down. But, maybe it wouldn't. The fence at Little People's Park was not high enough, but it was beautiful. There might be a way to do this, but speed was of the essence. This could be solved in two weeks. In the meantime, staff could install a temporary fence to keep people out of the fall zone.

Susan Thomas said she would be happy to pay for the fence and anything that needed to be done within reason.

Annaloy Nickum said a field trip to see the tree near the tennis courts solved the problem. Out in the field, you could see what could be done. What seemed like a huge problem had been resolved beautifully. She envisioned the same thing happening here with a similar type of field trip. People could see where the dugout and/or viewing stand could be moved, etc. Those things couldn't be decided until you were actually out there.

Councilmember Driscoll moved to form a group to study this for the next two weeks and come back with a recommendation. Councilmember Merk seconded. Councilmember Driscoll said the focus should be on trying to find a solution that saved the tree, reduced the Town's liability, and didn't compromise the baseball use. If a solution couldn't be found, he would go along with the decision. Baseball people should be included. As long as there was a common interest, a better solution was preferable to an easy solution.

Lindsey Bowen, Portola Road, said forming a group sounded nice. But, immediate steps should be taken to isolate the tree. He suggested the arborist do the trimming first so that people could see what it would look like. Mayor Derwin said trimming a tree before it was chopped down was a waste of money. Councilmember Merk suggested just dropping the limbs that needed to be cut and moving them to the side of the field. That would allow people to see what the tree would look like trimmed. They could come back and clean up the trimming or remove the tree. Mr. Silver suggested having one of the arborists there to explain how the tree would be trimmed. Ms. Howard noted that she did not think any tree work could be done on such short notice. Ms. Lambert added that the Town was using Mayne because they could do the support.

Councilmember Driscoll amended his motion to include having an arborist present for the meeting. Councilmember Merk amended his second. Councilmember Toben said he appreciated the perspective and commitment that Councilmembers Driscoll and Merk brought to this issue. With the understanding that a decision would be made in two weeks, he could support the motion.

Mayor Derwin called for a vote, and the motion carried 4-1 (Wengert).

(11) Approval of Charter and Appointment of Members to Ad-hoc Triangle Park Committee

Erica Hughes, Co-chair--Parks and Rec, reviewed her memo of 5/14/08 and recommendation to form a committee to study the renovation of Triangle Park. Responding to Mayor Derwin, she said three meetings one week apart starting the week of May 26 were proposed. Councilmember Driscoll pointed out that this was a very well developed ad hoc committee proposal.

Mayor Derwin appointed the list of members to the Ad-hoc Triangle Park Committee. Council unanimously concurred. By motion and second, the charter was approved by a vote of 5-0.

(12) Status of Town Center Project

Ms. Howard said the softball field was now open and people seemed to be enjoying it. Unfortunately, dog owners were not picking up after their dogs. She described work being done on the library, town hall, community hall and maintenance building. Responding to Councilmember Toben, she said staff was hoping to move in the middle of July. The furnishings and shelving for the library had been ordered, and the library hoped to move in in August. Responding to Councilmember Driscoll, she said most of the money for the shelving would come out of Fund 25, which was the restricted library fund money from the County. She had to hold back about \$35,000 because the Town was responsible for the moving cost. The rest of the money would come out of the soft costs. There was close to \$200,000 in new computers, furniture, etc. The JPA would cover \$127,000 of that; \$120,000 would be coming from the Friends of the Library.

Councilmember Driscoll said Councilmember Merk pointed out at the last meeting that 3 years ago when furniture was bought for the library, the library had been asked to make sure it would be used in the new library. Apparently, they were discarding that furniture. Ms. Howard said the only thing the Town purchased was a \$35,000 checkout desk. When they moved it, they cut it in half because it wouldn't fit in the temporary location.

Councilmember Driscoll noted that the architects were bidding to build a town center similar to Portola Valley's in Newport Beach, CA. It would be 90,000 sf on 17 acres. They asked for a letter of recommendation and support. He was happy to do that.

Councilmember Driscoll said C. R. Hodgson pointed out that in order to get the sprinklers and water hooked up in the buildings at the time of occupancy while the creek was under construction, the utilities had to be moved to the top of the bridge that was still being constructed. Mr. Hodgson would be asking Mr. Young to accelerate the emergency hose scheme with the two hydrants.

(13) Reports from Commission and Committee Liaisons

(a) Planning Commission

Councilmember Toben said the Commission reviewed their budget. There was a lot of conversation about the Housing Element work that had to be done by the end of the next fiscal year. There were substantial challenges ahead in working out the numbers. The budget passed by a 4-1 vote. Chair McKitterick was concerned about the lack of specificity in some of the budget. The proposed budget for planning would be in the same ballpark as the final planning budget this year. The Commission also discussed the draft Sustainability Element.

(b) Trails Committee

Councilmember Toben said the Committee discussed the trail construction project on the Herb Dengler preserve. Ms. Sloan said there was a lot of information needed for the easement document.

Councilmember Toben noted that the Committee wanted to name the trail, the Joan Targ Trail. Ms. Sloan said the Targs wanted only that part that they were offering to the Town to be called the Joan Targ Trail.

On the C-1 Trail, Ms. Sloan said negotiations with Stanford to build the trail fell apart because of indemnification issues. The fallback position was that Stanford would give the Town the money to build the trail. There had been a change in attorneys for Stanford, and her partner was trying to find out who the new lawyer was in order to get it moving. Her office was also trying to get the money that was owed to the Town. Responding to Councilmember Toben, she said Ed Davis was working with Larry Horton. Councilmember Driscoll asked Ms. Sloan to provide a written memo on the status of the C-1 trail and distribute a copy to the Trails Committee.

Councilmember Toben said the Committee also discussed scoring driveways to provide for safe crossing by horses. There was a question about whether the Town should bill homeowners who didn't do the work themselves for \$150 per driveway. Mr. Young did not support that approach. Homeowners would be encouraged to do it themselves by a certain date.

The Committee also discussed: 1) relocation of the crosswalk in front of the Schoolhouse; and 2) the perimeter trail. The Committee understood that the perimeter trail would serve the horse community. There was a lot of discussion about what kind of fencing should be put in place to protect equestrians from errant soccer balls, etc. Lastly, the Committee expressed great satisfaction with the staff. It was evident that this public works staff had done a tremendous job on the trails.

(c) Traffic Committee

Councilmember Merk said the Committee continued its discussion of sight distance in the Mapache/Cervantes/Westridge area. Residents reported an accident where teenagers lost control of a vehicle that ended up in their front yard. Lt. Courtney said there were two options: physical barriers/speed bumps or more enforcement. Mayor Derwin noted that there had been some enforcement.

(d) Community Events Committee

Councilmember Merk said the Committee was working hard on the picnic and Blues and BBQ. They were hoping to go on a walking tour of the Town Center to figure out where things could be put.

(e) Emergency Preparedness Committee

Councilmember Merk said there was a joint meeting with Public Works at the Ranch regarding laying out emergency pipes to cross a fault rupture.

(f) ASCC

Councilmember Wengert said two small additions had been reviewed and well received. The ASCC also discussed plan inspections.

(g) Mayor's Events

Mayor Derwin said she attended an event with Stanford called "Walk the Farm." One of the foremost experts on Searsville Dam spoke. She did not participate in the full 20-mile walk.

(h) Library

Mayor Derwin said Vicky Johnson had died having resigned from the JPA just a month ago. The JPA would

be looking at candidates for director. The JPA discussed the \$27 million budget. There was also some discussion about helping libraries that wanted to do major renovations.

(i) School District

Mayor Derwin said she would be participating in another interview panel at Corte Madera School for a new principal.

(j) ASCC/Planning Commission/BEET Group

Councilmember Toben said the group produced a recommendation at their last meeting to take a three-prong approach with regard to the housing stock. There would be aggressive public education and outreach, which the SURE Coordinator would help execute later this year. With respect to existing housing stock, the notion was to require an energy analysis be done at the point of sale. Every home would come with a report card on energy efficiency. That would be an opportunity to get leverage and traction and induce improvements in energy performance in existing housing. For major remodels and new home construction, the GeenPoint Rating checklist would be used. At the meeting, it was suggested to test these ideas out with the realtors. Three realtors attended a meeting today, and there was not much enthusiasm for the point of sale concept. The California Association of Realtors had just issued a bulletin that they would vigorously oppose any new regulation that affected point of sale. But, it might be possible to use an energy audit as a point of negotiation in a sale. He felt more could be gained with very aggressive public education with respect to how much money you could save by improvement in performance while you were still in the house.

WRITTEN COMMUNICATIONS

(14) Town Council 4/25/08 Weekly Digest

(a) Ethics Training

Councilmember Merk said he attended the ethics training in San Jose put on by Santa Clara County that was very dry. Two things that came up: 1) a person was not required to identify him/herself at meetings; and 2) when the person filling out a form 700 got someone else to give a gift, that was a reportable interest. There might be people in Town who were required to file the form who had been working on fundraising. Ms. Sloan said she would look into it. Additionally, if someone refused to give his or her name and address, the Council couldn't refuse to listen. Almost everyone was fine with giving his or her name and address.

(b) Town Prescription Drug Disposal Day

Referring to Ms. McDougall's thank you letter to the Sheriff, Councilmember Merk suggested having this be a part of each clean-up day.

(15) Town Council 5/2/08 Weekly Digest

(a) State Fire Hazard Maps for the Town

Referring to the Mayor's letter to the State Fire Chief, Ms. Howard said WFPD's fire marshal reposted her map and comments to the State. A meeting was being set up with WFPD. Ms. Lambert added that the Cal Fire map on the website now included very high fire risk designations in the Santa Maria/Wayside/Hayfields area, Westridge, Alpine Hills, and the Ranch. Councilmembers discussed earlier understandings of what the State would consider and WFPD's actions. Ms. Lambert said she requested a copy of WFPD's letter to the State.

(16) Town Council 5/9/08 Weekly Digest

(a) Holiday Party Honoree

Referring to staff's memo of 5/9/08, Ms. Howard asked for suggestions.

ADJOURNMENT

The meeting adjourned at 11:23 p.m.

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Mayor

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Town Clerk