

TOWN COUNCIL MEETING NO. 681 OCTOBER 26, 2005

ROLL CALL

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

Present: Councilmembers G. Comstock, Driscoll, Merk and Toben, and Mayor Davis
Absent: None
Others: Town Planner Mader, Associate Planner Tehrani, Town Administrator Howard, Town Attorney Sloan, Planning Manager Lambert, and Asst. Town Administrator Powell.

ORAL COMMUNICATIONS

Elka Niclas, Minoca Road, said her neighbors had constructed a fence without her knowledge. She felt the Town should have contacted her so that she could voice her concerns. Mayor Davis noted that under the current rules, neighbors were only notified if there was major construction or modification and the fence was a part of that larger project. The proposed, new ordinance had a notification requirement on just fencing. Responding to Ms. Niclas, Ms. Lambert said she would look at the neighbor's fence to make sure it was in accordance with existing guidelines.

Bill Lane, Westridge Dr., said he had purchased copies of the USGS brochure on earthquakes and earthquake preparedness for Town residents. The Post Office was very willing to help with the distribution. Additionally, David Schwartz, USGS, was very familiar with the Town and what had been done over the years; he was willing to come to a public meeting and speak. Councilmember Comstock reiterated that the brochure did not deal with the difference between being on a fault and being a small distance away from that fault. He wanted to include a statement along with the brochure. Mr. Lane said Dr. Schwartz had indicated that being a few hundred feet from a fault could make a tremendous difference as evidenced in the 1906 and Loma Prieta earthquakes. Ms. Sloan suggested deferring the discussion until the status of the Town Center project was discussed.

CONSENT AGENDA

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

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

- (1) Minutes of Town Council Meeting of October 12, 2005.
- (2) Warrant List of October 26, 2005, in the amount of \$110,636.39.
- (3) Expenditure of California Law Enforcement Equipment Program (CLEEP), High Technology Grant Funding, per Asst. Town Administrator's memo of 10/18/05.

REGULAR AGENDA

- (4) PUBLIC HEARING: Zoning Ordinance Amendments Regarding Fences

Ms. Tehrani reviewed the staff memo of 10/19/05, noting that changes recommended by the Council at the last meeting had been incorporated in the proposed ordinance.

Responding to Councilmember Merk, Ms. Lambert said fence permits would be included with the rest of the application for a project. Referring to her memo of 10/19/05, she clarified that neighbors would be provided with a 6-day period for comment.

Mayor Davis opened the public hearing.

Responding to Carol Campbell, Crescent Ave., Ms. Tehrani explained that the fence ordinance was divided into three separate zoning districts. In 2-acre and larger districts, you were only allowed to have a horse fence. In the other two districts, you could have solid fences in the side and rear yards. They were discouraged in the proposed design guidelines, but some consideration had been given to privacy concerns in smaller districts. Responding to Ms. Campbell, she said replacement of a solid fence would have to comply with the regulations if the damaged section was more than 20% of the total length of fencing.

There were no additional comments, and the hearing was closed.

Councilmember Driscoll moved first reading of title, waive further reading, and introduction of an Ordinance Amending Title 18 [Zoning] of the Portola Valley Municipal Code by Amending Chapters 18.04 [Definitions] and Section 18.42.040 [Exceptions to Requirements – Fences and Walls] of Chapter 18.42 [Accessory Structures], Adding Chapter 18.43 [Fences] and Repealing Section 18.54.020.C [Measurement of Height]. Councilmember Toben seconded, and the motion carried 5-0.

Councilmembers concurred with the fence permit fee/deposit recommended in Ms. Lambert's memo of 10/19/05. Councilmember Merk said he felt the fee was very high for a fence, but it would involve a lot of staff time. Ms. Howard said staff would prepare a resolution.

(5) Presentation and Agreement with Peelle Technologies for a Document Imaging System for Town Hall

Ms. Howard said this item had been pulled from the agenda so that representatives from the company and others could attend a meeting to discuss technical questions. Mayor Davis and Councilmember Driscoll said they would attend the meeting. Councilmember Comstock suggested there be an analysis of the financial impact of document imaging to assuage public anxiety about spending money foolishly. Referring to the staff report of 10/17/05, Councilmember Merk said he would also like to know about current off-site storage of electronic material.

(6) Amendment to Animal Control Chapter of Municipal Code

Ms. Powell reviewed the staff memo of 10/12/05 on proposed revisions to the Animal Control Ordinance. Ms. Sloan added that the Peninsula Humane Society had indicated in their contract with the County that they would not provide services to any town or city that did not have an animal control ordinance that was in substantial conformance with the County ordinance. She said it was better to have the Town's ordinance consistent with the County's as much as possible.

Ms. Sloan said 90% of the changes was wordsmithing. The major changes were tightening up the definition of "dangerous animal," adding the definition of "vicious animal," and the hearing procedure. She said the County had been sympathetic to the Town's desire to modify the definition of "dangerous animal" in the Town's ordinance because the Town had a lot more wild animals. Additionally, she said staff recommended that the County run the hearings; the County also preferred to run the hearings. She said the County hearing officers were very experienced, understood animals, and could probably make a wiser decision than a hearing officer that didn't deal with animals. They would also probably be more neutral than hearing officers from the Town itself. Responding to Councilmember Toben, she said currently, hearings conducted by the Town would be conducted by the Mayor, one designee and the Town Administrator. She noted that there had never been a hearing.

Mayor Davis noted that the ordinance was 29 pages. He was concerned about the removal of the "without provocation" clause throughout. Secondly, a dog could be labeled dangerous, and another jurisdiction could label it as potentially dangerous. Once labeled "dangerous," the whole system was engaged without the ability to use judgment. Third, there were a number of fees (e.g., inspection fee, tags and microchips, health activities, etc.) but no fee schedule. The threshold might be so high that someone could not afford to have a "dangerous" dog.

With respect to provocation, Ms. Powell pointed out that in Section 6.04.100.D.1 (p. 10), the hearing officer was required to take into account whether an animal was provoked, tormented, teased, abused or assaulted. That applied to both dangerous and vicious designations. Ms. Sloan added that the County had had many discussions with the Peninsula Humane Society on this. They were looking for a process to handle complaints, which was the hearing. If someone found aggressive behavior and they felt threatened, they had a place to go and complain. The hearing officer would look at the mitigating circumstances. In her experience, the hearings were pretty formal and often took several hours. Responding to Ms. Sloan, Mayor Davis said he felt the language describing a "dangerous animal" was too Draconian. Ms. Sloan said an animal could not be labeled dangerous until the hearing officer made the determination. The designation had to be supported by evidence given at a hearing.

Ms. Howard noted that some communities in the County would go further than the County's ordinance and designate certain breeds as dangerous. That would not affect the Town. Responding to Mayor Davis, Ms. Sloan said if someone moved a pit bull to Town that had been labeled dangerous elsewhere, there would need to be a hearing where the dog now lived. The dog was not labeled dangerous until there was a hearing. The definition section contained the standards that the hearing officer would use to determine whether to give the animal a label of "dangerous."

Referring to Section 6.04.010, H.4, Councilmember Driscoll thought the intent was to prohibit a dangerous dog from moving to another jurisdiction to avoid enforcement. It should be rewritten to not allow one jurisdiction's rigid ruling that a whole breed being dangerous to propagate throughout the system. He suggested "...This does not include more restrictive jurisdictions that restricted entire breeds as dangerous." Ms. Powell suggested "...any individual animal that has been deemed by another governmental jurisdiction...."

Councilmember Comstock said the residents and pet owners would feel more comfortable having citizens of the Town sitting in judgment than to go to some impersonal, remote hearing.

Councilmember Driscoll felt someone familiar with the rural lifestyle of the Town should be part of the judging body. But, he was also persuaded by Ms. Sloan's comment that the people who did this at the County level were more knowledgeable and saw a lot more cases. He suggested a County officer and Councilmember be members of the hearing. Local as well as professional voices should be involved. Responding to Mayor Davis, he said he was not sure if he knew what provoked a dog or the behavior of dogs; a professional animal control officer would be a lot more knowledgeable about appropriate or bizarre behavior. He did, however, understand what a rural lifestyle was about and what kinds of challenges rural people ran into with their dogs and wild animals.

Councilmember Toben said a good portion of San Mateo County was quite rural. He agreed that the people who saw a lot of cases had special competence. He would not relish being faced with neighbors battling it out over a dog. He was very sympathetic to the notion that this responsibility should be delegated to an agency with more expertise than the Town could provide. This was not unlike the Public Health Department being called in to make decisions about whether a situation (e.g., septic system) posed a threat to public health. He also felt that having a hearing before an animal control officer who happened to reside in Redwood City didn't mean that the full story couldn't be told about circumstances in Town. A Councilmember could even appear as a witness and present a perspective/context as part of the body of evidence that the hearing officer considered.

Mayor Davis asked for public comments.

George Stern, Portola Road, said he had been through this procedure and listened to over 20 recorded procedures. He did not have much respect for the expertise of the animal control officers or the hearing officers. When they gave a decision, it was not with reasons. They gave a decision with definitions like the definition referred to on page 4. No one really wanted to see an animal injure a child or adult. A pit bull killing a child was very clear; you had a vicious or dangerous animal. Where it was difficult and reflected the lifestyle of Portola Valley was when dogs did dog things--like barking at pigs. Now, the owner would have a problem if a wild or domestic animal came onto the owner's property. All the language about trespass and mitigation didn't mean anything in an actual hearing. The animal control officers had very little experience determining whether an animal had done something that should make it be considered dangerous. Animals that were not inherently troublemakers were swept in with the rest. Hearings had taken place where the bigger dog was deemed dangerous because the little dog was littler. In his opinion, this was one of the most stupid ordinances in order to enhance the power of the Peninsula Humane Society under the guise of trying to toughen up the regulations that controlled really serious situations that should be taken care of. The Peninsula Humane Society ran a wonderful animal shelter and picked up the dead deer, but he did not think they were knowledgeable in making decisions about what happened among animals. If anything snarled at something else, they thought it was bad. He felt the only protection would be a hearing held by local people who wanted to preserve the quality of life. If this ordinance was passed, he would have to build a cyclone fence to keep his dog in. This ordinance delegated too much power to the Peninsula Humane Society which conducted itself in an arbitrary and capricious manner in terms of dangerous animal hearings.

Responding to Councilmember Toben, Ms. Sloan said the County was prepared to accept the Town's current hearing procedure. Councilmember Toben said if the current procedure was still the sense of the Council, he could support that. He just hoped that he was never asked to hear a case.

Councilmember Comstock said Mr. Stern objected to having the owner liable whether or not the incident occurred on or off his property. He thought it should just pertain if the animal was off the property. Ms. Sloan noted that that language still applied as set forth in Section 6.04.010.H.3. Mr. Stern said Section H.2 contradicted that.

Responding to Mayor Davis, Ms. Sloan said one of the premises was to tighten up the ordinance and make it easier to declare an animal dangerous or vicious. An animal could be dangerous even if it wasn't provoked. Provocation could be considered as a mitigating factor, but you didn't need to have it.

Councilmember Driscoll said the provocation could be very minor with the response being way over the top. He felt the appropriateness of the reaction to the provocation was the issue. He was also persuaded that some of the "experts" in animal behavior might not be experts. He agreed that if it was kept local, the Town might have a better sense of proportion in reaction/response. Councilmember Merk and Mayor Davis agreed local control should be retained.

Referring to the definitions section (p. 3), Councilmember Merk said he felt the definition of "person" should be retained. "Person" was used in Section 6.04.010.G, and he felt the definition should remain. He was also bothered by the definition of "dangerous animal" and the language indicating that any animal deemed by another jurisdiction was dangerous. Referring to the definition of "severe injury," he said he had a scar of 2-3 stitches on a finger from a dog bite he got while trying to separate two dogs. He did not think that made either dog a dangerous animal. Referring to Section 6.04.115.B (p. 13), he questioned why "the strict rules of evidence shall not be applicable." Responding, Ms. Sloan said you had to go to law school to know the rules of evidence. The hearing officers were not judges and did not deal with evidence. Even though people presented things, it was not the formal rules of evidence; the hearings were quasi-judicial.

Councilmember Merk said the Town was paying way too much money for the services being provided. While he realized that State law required animal control services, he thought the Town might look for someone else to provide the services. Councilmember Toben said he didn't know if there were any alternatives other than the Town taking it on, which was unattractive. His sense was that this was take-it-or-leave-it without a lot of negotiating leverage.

Ms. Powell noted that the comments the Town submitted to the County expressing some concerns about the ordinance were ignored. The ordinance was brought to the Board with no revisions, and it was approved. She felt some minor changes could be made, but the County expected the towns to approve it.

Councilmember Driscoll said it was reasonable for the Town to "ruralize" the document and let the County respond. He also felt some of the "without provocation" clauses should be put back. He agreed there should be some qualifier--perhaps "without any provocation" or "without some kind of provocation."

Responding to Councilmember Merk, Ms. Powell said a threshold of 50 pounds had been added to differentiate between all animals. The intent was to make it more suitable to Portola Valley. She felt the drafters were focusing on urban situations where deer didn't wander through. Councilmember Merk noted that a lot of people in Town had a dog to keep the deer out of the yard.

After discussion, Councilmember Driscoll asked staff to review the document in terms of what was right for a rural community. Ms. Sloan asked that any additional suggestions be submitted within the next week. She reiterated that an animal was not automatically deemed dangerous. Someone had to complain, call the animal control officer, and a hearing had to be set. Mr. Stern responded that the animal control officer made the designation. If you wanted to get out of that, then you paid for a hearing. The animal control officer had all the power.

Mayor Davis asked that staff contact the rural neighbors and find out what they had done. Secondly, he would like to see the fee structure that was being proposed. Councilmember Driscoll suggested putting an opening statement in the ordinance that said "All of the following is subject to judgment in a rural context" as opposed to proposing a lot of changes that the County would have to review. Councilmember Toben suggested adding that as a specific mitigating circumstance.

COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

(7) Proposed Revised Policy Regarding the Planning Commission and ASCC

Ms. Lambert reviewed the staff report of 10/19/05 on the ASCC and Planning Commission policy statements. Responding to Councilmember Toben, she confirmed that the Planning Commission policy included a reappointment process whereby: 1) a notice was sent out at the end of an incumbent's term inviting new applicants; and 2) incumbents would be interviewed by the Council liaison to determine interest in re-appointment. Councilmember Merk said the policy should be the same for the ASCC and Planning Commission. Councilmember Toben agreed. Ms. Howard noted that an ordinance would be required to change the ASCC term to 4 years; the ASCC policy would then be changed to: 1) include the new term; 2) include a re-appointment procedure similar to what was shown for the Planning Commission.

Councilmember Comstock said he was uncomfortable with the idea of turning each appointment into a contest. If a person was not doing a good job, it was up to the chair of the commission to have a discussion with the mayor about asking that person to resign; the vacancy could then be filled. To create an artificial contest was divisive and uncomfortable for both the incumbent and the person applying.

Councilmember Driscoll said the committees were advisory, and the Commissions and Council were bodies that made the decisions. The decisions at the Council level were subject to an election every four years. It

could be argued that if decisions were continually inconsistent with what the public wanted, there should be some mechanism by which the public could act.

Councilmember Merk said the Planning Commissioners and ASCC Commissioners served at the pleasure of the Town Council. If it was no longer the Council's pleasure, then reappointments would not be made, and there would be openings.

Councilmember Toben said he was concerned about the perception of a "closed society." There had been some recent instances, both on the ASCC and Planning Commission, where too little examination was given to the performance of the particular commissioners. He thought this mechanism would take the subjectivity out of it and make it a routine matter of practice. When a term was up after four years, there should be a regular procedure that permitted anyone interested in the position to apply. The presumption now was that if the incumbent was doing a fine job, he/she would get the job. He felt it was a matter of good, open government. People could come to the meeting where the incumbent was interviewed and speak up or communicate confidentially during the notice period. He felt it could be very civil and not be turned into a contentious contest.

Councilmember Merk said the system had worked for the last forty years. If there was a problem, it was the responsibility of the liaison to bring that problem to the Council.

Councilmember Driscoll agreed with Councilmember Toben. He recalled situations in the past where there were some concerns about whether an ASCC commissioner was unbiased in doing his/her job. There was also the sense that it was a lifetime appointment. One solution might be to have the mayor be more proactive and think about each re-appointment.

Councilmember Merk said he had no problem with the mayor looking much more closely with the liaison at re-appointments. But, he did not want it thrown open. It was not an election, and the Commissioners were appointed by the Council to serve at the Council's pleasure. If there was a problem with a commissioner, the mayor and liaison should speak to the commissioner.

Mayor Davis said when a term was up, it should be noticed and the incumbent reviewed. The incumbent, if doing a good job, would have the advantage. He asked for public comment.

SallyAnn Reiss, Golden Oak, thanked Councilmember Toben for bringing this issue forward. She didn't think much would change but wanted everyone to have an equal opportunity.

Danna Breen [*unidentified*] said she didn't know that ASCC appointments were currently for a 1-year term. It took her at least a year to get up to speed.

There were no other public comments.

Councilmembers agreed on a 4-year term for the ASCC. Mayor Davis noted that it was 3-2 in favor of noticing re-appointments and accepting applications when a term ended. Ms. Sloan suggested clarifying the language to indicate that "incumbents and others interested in the position shall be interviewed."

Councilmember Comstock said candidates might not apply if they thought they would face a re-election campaign after four years. He thought some good candidates might be lost. Councilmember Driscoll said it was an interview as opposed to an election. Responding to Councilmember Comstock, he said it might be good for Commissioners to think about the fact that the execution of their job was supervised. The way it worked now, you were re-appointed unless you said you didn't want to serve any more. Councilmember Toben said that was not healthy, and Councilmember Driscoll agreed.

Responding to Councilmember Merk, Ms. Lambert said "Town Attorney" would be reinserted in the Planning Commission policy, item #2 under Liaison and Coordination. Responding to Councilmember Merk, she said the Planning Commission duties and functions with respect to the General Plan were covered under item #1.

Mayor Davis asked that the methodology for re-appointments be set out in the ASCC policy. Councilmember Toben said the timetable for noticing would also be tweaked so that there was no gap in appointments.

(8) Status of New Town Center Project

Ms. Howard said the design team was responding to the ASCC's comments, and an ADT meeting was held last Tuesday. The revised designs would be presented at a special ASCC meeting on November 7. It was already posted on the website and an ad would appear in *The Almanac* to get as many people involved as possible. There had also been quite a bit of work done on the lot line adjustment.

In the interest of openness and clarity, Councilmember Comstock suggested that at the appropriate point, a semi-formal poll of the citizenry be conducted showing the old and new design and requesting feedback. Individuals could sign the postcard to ensure there wasn't duplicate voting. Only about 200 citizens had been involved in the design process so far. There was a vast body of people who had not registered their opinion. They might register their opinion indirectly through the upcoming election, but it was very hard to interpret that kind of thing. A postcard poll would show the level of interest and the opinion of the Town as a whole.

When the time was right, Councilmember Toben said there might be some merit to the idea of giving each household an opportunity to comment on the ultimate design. It was a very important public involvement question. With respect to the ASCC, he said Mike Schilling indicated that the ASCC was very clear that they had a limited mandate, which was all about design. He [*Schilling*] was very anxious not to be drawn into decision-making about programming. Councilmember Merk said at the ASCC meeting, there were at least as many comments about design as programming.

(9) Reports from Commission and Committee Liaisons

(a) Conservation Committee

Councilmember Merk said Stan Gage from the Los Trancos Woods Water District presented a proposal about donating 3 acres of land adjacent to the Town in San Mateo County as open space. The Conservation Committee was very interested. He described the parcels. Councilmember Toben noted that this subject was on the agenda of the Open Space Acquisition Committee last week. There would be a field trip to view the parcels.

(b) Emergency Preparedness

Councilmember Merk said the CA Specialty Training Institute training put on by the Woodside Fire Protection District and CERPP was amazingly educational. It was unfortunate that more Councilmembers and staff didn't attend for longer periods of time. If you attended a small part of the exercise, you couldn't grasp how the communication worked. The whole Standard Emergency Management System was totally dependent on intercommunication of the five functions. In Town, staff was here about only ¼ of the time. The exercise demonstrated that people with a modicum of training could make an OES work. He recommended this training be held again with a much more concerted effort to get more volunteers involved. About 40 people showed up for the Saturday exercise, which was very good. As illustrated by the recent hurricanes, everything might not be taken care of in 72 hours; it could be many days before help

arrived. The Town needed to be able to respond with the resources it had on hand. He described how the EOC would need to be set up.

Councilmember Toben said he was very concerned about the role of Councilmembers as elected officials in an emergency situation. He felt there had been a heavy dose of generic information in the training, and he would rather have an emergency binder that was particularized for Portola Valley. Councilmember Merk said the instructors were available for a special exercise.

Councilmember Driscoll said the situation in Town was different because there was no police department, fire department, etc., with an inherent reporting structure. Each of the agencies that the Town interfaced with was substantially bigger than the Town government. He asked how you established at the beginning who the responsible agency was. Responding, Councilmember Merk said there needed to be conversations with agencies that would be responding ahead of time so that there were contact people, MOUs, etc. It might be useful for the Town to work more pro-actively with Woodside. Councilmember Driscoll said he would like to have a follow-up meeting where the responsible parties in each of the agencies (e.g., fire, sheriff, etc.) got together and talked about various scenarios and responsibilities.

WRITTEN COMMUNICATIONS

(10) Town Council 10/14/05 Weekly Digest

(a) Correspondence to Matt Stoecker on Opening Up Sausal Creek

Referring to the Town's letter of 10/14/05, Councilmember Merk said Sausal Creek was not a tributary of Corte Madera Creek.

(b) Models of Town Center Project

Referring to the Bayuks' letter of 10/12/05, Councilmember Comstock liked the suggestion to take photos of the Town Center models and put them, with appropriate explanations, in a special edition of the Post for mailing to every household. Councilmember Driscoll agreed, noting that there was not yet a consensus of what the project would be. Councilmember Comstock said it would be a good thing to include in a postcard survey asking for response. Councilmember Toben suggested letting the Bayuks know their suggestion would be implemented in the future.

(c) Article on Earthquakes

Referring to the *San Francisco Chronicle* article by George Will on the earthquakes in Pakistan, Councilmember Driscoll noted that he had attended a talk by the author of *A Crack in the Edge of the World*, Simon Winchester. He described the event, noting that some misinformation in the book about the Town's approach to earthquakes had been discussed.

(11) Town Council 10/21/05 Weekly Digest

(a) Correspondence from Matt Stoecker on Opening Up Sausal Creek

Referring to Mr. Stoecker's letter of 10/16/05, Councilmember Toben said Mr. Stoecker's description of flow conditions in Neil's Gulch was inaccurate based on the comments of the property owner George Stern, who was present at the meeting.

CLOSED SESSION

- (12) Public Employee Performance Evaluation
Government Code § 54957
Title: Town Attorney
- (13) Public Employee Performance Evaluation
Government Code § 54957
Title: Town Administrator

REPORT OUT OF CLOSED SESSION: Nothing to report.

ADJOURNMENT

The meeting adjourned at 11:15 a.m.

Mayor

Town Clerk