

TOWN COUNCIL MEETING NO. 679 SEPTEMBER 28, 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, Dep. Town Planner Vlastic, Town Administrator Howard, Town Attorney Sloan, and Deputy Clerk Hanlon.

ORAL COMMUNICATIONS

Matt Stoeker said he attended the ASCC meeting on the new Town Center design. He was glad to see the Town address the issue of restoring Sausal Creek through the campus. But, he felt the current design had some components that might preclude creek restoration through the whole site as opposed to having just 30% restored. Leaving parts of the culvert in place would also leave fish passage barriers. There were also wildlife corridor issues by leaving parts of the culvert in place. Restoring the creek through the Town Center was an amazing opportunity for the Town to improve water quality; there were also educational values for kids. Additionally, in other areas, liability was actually reduced by bringing creeks back. Having a culvert in place was a trap that attracted children. The culvert was also in the fault zone and was already bending in spots. Leaving it in place would mean it would shift around, spots would fail, or debris would block it; flooding could occur at the Town Center. After discussion, Town Planner Mader asked that comments be submitted in writing for distribution in packet material prior to the ASCC's meeting on the Town Center design in two weeks.

Councilmember Comstock said Lenny Roberts (Committee for Green Foothills) was hoping that someone from the Town would attend a meeting tomorrow morning concerning the Stanford trail proposals at 3921 East Bayshore. Mayor Davis said Susan Gold from the Trails Committee would be attending.

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) Warrant List of September 28, 2005, in the amount of \$303,466.49.
- (2) Resolution No. 2213-2005 Approving the Use Agreement to Locate an Alternate Emergency Operations Center at the Woodside Priory, per Asst. Town Administrator's memo (revised) of 9/20/05.

REGULAR AGENDA

- (3) Minutes of Town Council Meeting of September 14, 2005 (Removed from Consent Agenda)

Councilmembers submitted changes to the minutes of the 9/14/05 meeting. By motion and second, the minutes were approved as amended by a vote of 4-0, with Mayor Davis abstaining.

(4) Fortieth Anniversary of *The Almanac*

Mayor Davis read the resolution honoring the 40th anniversary of *The Almanac*. He complimented Marion Softky and Marjorie Mader on their consistent and even-handed writing, noting that David Boyce now attended the meetings.

Bernie Bayuk, Paloma Rd., suggested the Herb Dengler reference be changed to read, "Whereas, the first edition was published by the personal efforts of Betty Fry and Hedy Boissevain in which Herb Dengler wrote *The Almanac's* first column." He felt the two young entrepreneurs who were new residents who conceived of a local paper and got it published by their own efforts should be recognized. Councilmembers concurred.

By motion and second, Resolution No. 2214-2005 Honoring *The Almanac* on the Occasion of Its Fortieth Anniversary, as amended, passed by a vote of 5-0.

(5) Appeal of Planning Commission Decision Regarding Sausal Creek Associates

Mayor Davis noted that the following correspondence was received since the packet material was distributed: 1) letter from Lynn Jacobson dated 9/23/05 containing copies of her letters dated 9/22/05, 9/23/05 and 9/24/05; 2) two letters from Don Jacobson dated 9/26/05; 3) letter from Jeffrey Wagner dated 9/28/05; 4) e-mail from Margaret Eaton dated 9/28/05; and 5) letter from Woodside Mayor Paul Goeld dated 9/28/05.

Ms. Sloan read a prepared statement about the subject matter of the appeal. She said the Sausal Creek project received approval in 1996 after extensive environmental review and many public hearings; the process lasted well over one year. At that time, the Town granted Sausal Creek Associates a conditional use permit (CUP) that approved the type of project (i.e., a senior housing project), as well as the density, design and location of buildings, and architecture of the project. There was much discussion at that time about the legality of the project being for seniors 62 years and older. As special counsel then, when Mr. Morton was Town Attorney, he and she concluded that the restriction for "seniors only" was legal. Her conclusions remained the same and were set out in her memo dated 9/15/05 that was attached to the staff report. Those conclusions were also repeated in the letter received from Jeff Wagner, attorney representing Sausal Creek Associates, dated 9/28/05. She was willing to answer questions, but the issue of whether the senior project was appropriate or not was well settled in 1996 and was not the subject of the appeal. The time for challenging that provision was long past. In implementing the project, the owner needed to submit a subdivision map and receive a site development permit for the creek restoration. As Mr. Vlastic would explain, because the creek restoration work was complicated and needed approval from different governmental agencies, it had taken a very long time. Practically speaking, the issues involved in approving the subdivision map (e.g., consistency with the General Plan and zoning, the density, and design of the subdivision) were settled in 1996. The major issue on appeal to be dealt with tonight was the creek work. Responding to Mayor Davis, she confirmed that only the last of the five grounds for appeal having to do with the creek was legitimate for this discussion. She noted that the grounds for appeal were listed in the staff report of 9/22/05 (p. 1) and lettered A through E; grounds A, B, C, and D were all subject matters of the use permit.

Mr. Vlastic reviewed the staff report of 9/22/05. He said there were a number of contentions and questions that had been raised in the various appeal documents. In looking at the history of the community, it was very clear that the Planning Commission took creek conditions very seriously. To alter the natural flow of the creek was not something that the Commission or staff would come to grips with in any wide way. Using overheads, he described the project, which included two parcels. He said there were existing buildings on those parcels that included a commercial office and existing residence. There were also two smaller buildings in the rear of the parcels that were rental units that had been there before the Town's incorporation. The existing commercial building had historic character to it, and part of the project was

restoration of that building. One of the critical elements in this area was the recognition that the land use was a reflection of Portola Road, an arterial road, and historic patterns of use—including commercial and institutional uses. The circumstances were not dissimilar from those in neighboring communities where historic commercial areas were on arterial roads. The intensity of use was more than it might be on roads that were not arterials. In conformity with the provisions of the General Plan and the historic pattern of land use, the land use provisions in this area and the Town Center Plan reflected that series of conditions. The actions that were taken 10 years ago to grant the approvals of the Sausal Creek Associates project reflected those elements and reflected the conditions in this area. The relationship of more intense uses along arterials with larger lot zoning in the background was not an unusual circumstance. In this case, there was a very unusual drainage condition. In one area, there was a very constrained concrete channel. The water going through there dumped into the creek channel and made a left turn at a 90-degree angle; it was not a natural condition. The flows of water through the area were highly unusual within the community. The circumstances that happened after the 1996 approvals, including storm flows, had impacted a number of conditions along the channel that required additional review and study as part of the site development permit. Using sheet C-4, he discussed the boundary of the creek channel in 1995 and the cutting back that had occurred since that period. In the process of the channelization, the down cutting that had occurred caused significant erosion to the point that the neighboring Conlon property put some riprap on the side. Of the redwood trees that were there, three were undercut by the storm flows and fell. Three additional trees were at risk and had to be removed. The undercutting continued to the point where trees were sitting on over-steepened banks. In order to deal with continuing erosion that would continue to cause downstream problems and the potential for tree failure, some efforts were needed and a study was done to see how that could be accomplished. Using overheads, he discussed property boundaries, top of the creek bank in 1995-1996 and setbacks. He noted that the Town was trying to come to grips with the issue of creekbank setbacks; the intent was to have it 20' from the top of the bank. Because of the complications of the storm flows and the artificial conditions here, some way had to be found to restore the creekbank for the project to move ahead. The efforts that were made, including environmental reviews, looked at biotechnical solutions that would (1) deal with the over-steepened bank and (2) protect the trees that could be protected. A solution was sought that did not result in a concrete channel along the creek. The approved project included restoration/replication of an historic building; a below market unit, which redid an existing structure; and the five residential units all in the neighborhood of 2,100 sf with a 1-car garage. That led to the work on the tentative map and the site development permit. The BMR unit and commercial building did not change in location, and all of the units were located as anticipated. The red line on the map showed the 20' setback from the repaired creekbank, which was virtually identical to the setback that was shown on the approved plan in 1996. There had been more work on the creekbank than was hoped would be needed. The project included stitch piers tied together underground and log bins tied back into the stitch piers so that soil, vegetation, willows, and other riparian conditions could be replicated. He described tree protection, which had been accomplished. The project had only proceeded to the point of Planning Commission presentation after peer review by the Town Engineer and after staff was satisfied that the drainage and flows that would result would not change conditions or cause upstream or downstream impacts. The Planning Commission approved the tentative map that addressed the creekbank repairs. It was consistent with the setbacks established with the use permit approvals. It included adjustments that both the Conservation Committee and ASCC required to soften the bank repair and allow for appropriate revegetation with riparian materials. The environmental review conducted on behalf of the Town at the cost of the applicant by LSA associates supported the granting of permit letters by Army Corps of Engineers and Fish and Wildlife Service. Once this action was completed, the Dept. of Fish and & Game would make use of that to issue their approval letters. The project as presented had received, as required in the use permit, the approvals from Army Corps and Fish and Wildlife Service. The Army Corps letter concluded that this could actually enhance the opportunity for the red-legged frog habitat. There had been a very comprehensive and careful review of the creekbank repair effort. He reiterated that this was a very unusual/unnatural situation that had been impacted by previous improvements that the applicants had tried to come to grips with without changing the dynamics either upstream or downstream or across the property in terms of drainage flows. The reviews indicated that if things continued to fail on their own, the erosion and trees falling into the creek would

continue; that would have downstream impacts. Everything had been done to ensure the flow conditions would not change as a result of the project. Comments from the consultants indicated that the slowing of the water with this approach would enhance conditions along that area and reduce the erosion problems with that shoot. The nick point that was working its way back to Portola Road would likely continue and jeopardize the wall and improvements next to it. The solution, in essence, took care of a number of problems. It was not something that the staff or the Planning Commission would want to see repeated in a number of locations. But, it was unusual and not a natural problem that this was responding to. In terms of maintenance, the Town required that the CC&Rs and homeowners be party to the maintenance of this improvement. This was not dissimilar to other subdivisions the Town had approved recently that required that creekbank improvements must be maintained over time. The Town had also put the burden on individual private property owners to maintain and protect creekbank improvements. Using the map, he showed where an easement would be established for repair as needed.

Responding to Councilmember Driscoll, Mr. Vlastic used the map to show where the water to the site was coming from upstream. He said the water that came through Town Center, in front of the church, and under Portola Road was directed to a constricted channel, which was installed prior to the Town's incorporation; it would never be approved today.

Responding to SallyAnn Reiss, Mr. Vlastic confirmed that the parcel size was 1.39-1.4 acres. The proposal was to subdivide the property in conformity with the uses that were granted with the use permit in 1996. There would be five single-family residences on single parcels for seniors' use; one parcel would accommodate a BMR and repair/replacement of an historic building. Responding to Ms. Reiss, Mayor Davis said the age of the residents occupying the buildings was not before the Council. Responding to Ms. Reiss, he re-iterated that the density decision had already been made.

Responding to Mr. Bayuk, Ms. Sloan said the Council could not rescind the action taken in 1996 to grant this use permit. Things could not be rescinded if the other party relied on it. The owner of this property had been relying on it by continuing to do work for 9 years. The only way that the Council could do anything at this point would be to try to rezone the property before they built anything. The subject of this appeal was only the map and primarily the creek restoration. With respect to the age question, she said if there was no demand for senior housing and the units didn't sell, they didn't sell and remained unoccupied until they sold. That had not been a problem in this area. The conditions of approval did not say it was for seniors unless you couldn't find a senior after trying for six months. It was an absolute restriction that it was only for seniors.

Referring to Mr. Vlastic's 9/22/05 memo, Councilmember Merk asked for clarification of item #3, p. 5, Site Development Permit application findings. Responding, Mr. Vlastic said the findings were based on the language in the existing site development ordinance. "Similar conditions" referred to a situation where there were natural conditions that could be impacted in a negative way by the project. "Minimize visually unpleasant relationships" indicated that the improvements should not look inappropriate when it was completed. For example, putting in a concrete channel all along with no opportunity for riparian vegetation would not be something you would like to see in relationship to a riparian creek bank.

Responding to Councilmember Comstock, Mr. Vlastic said the LSA report reviewed effects on the wildlife corridor. It concluded that the improvements and long-term vegetation would not jeopardize wildlife movement. Additionally, the provisions of the use permit did not allow fencing that would restrict wildlife movement.

Lynn Jacobson, appellant, said they moved to Portola Valley over forty years ago. When they moved here, it was on the presumption that it was rural. They had not moved for suburbia and certainly not for an urban density. To the comment that you couldn't rescind something because someone relied on it, she said they had relied on a rural setting—not this density. Every single time a letter had been written, every single

Council meeting, every single Planning Commission meeting, the same issues had come up—based always on the illegality of this project. There was a petition on March 31, 1990, by Sausal Creek Associates that was entered into the record. On that were the names of 167 people. It read: “The following residents of Portola Valley responded to a mailing inquiry March 31, 1990, stating that they were generally in favor of the Town of Portola Valley considering additional senior housing within the community.” She did not remember who had these lists, but they were given out and she received one. They spread them all out in the valley and everyone was asked to call 10-20 people, which she had done. The conclusion was that 50% of these people had died, moved or couldn’t be contacted. All the ones that were mentioned that had been contacted wanted their names removed from the list. Then, they all got calls and were told they legally couldn’t do that. They were under the impression that more senior citizens housing was for The Sequoias. At that time, it was for six luxury homes. When they found out, they wanted out. After that, the next thing that came up was another petition, which was all over the valley. That petition said the undersigned opposed the Sausal Creek project on 1.39 acres for 5 homes of 2,000 sf, carports, etc. The concerns were the same that had been going on since 1996. (1) Rezoning and conditional use permit. They were against it. (2) High density. From Nathhorst, you knew the Town didn’t want that. (3) Building codes. All the setbacks would be changed. You didn’t have to go next door to get a loaf of bread there. You could just put your hand out the window and get a loaf of bread. (4) Cost to the Town because of enforcing the CC&Rs and for the liability of the age restrictions [*inaudible*]. (5) Wildlife and the creek. There were fox and deer that were born here. You couldn’t have a row of houses with lights and all these animals, raccoons, skunks and quail. A lot of coveys of quail had been lost when they took the trees out. They said they were going to remove two, but they removed 22 trees. There were enormous coveys of quail that still had not moved back. This went all over the valley. Hundreds of people signed, and it all went to the Planning Commission/Town Council. They were all opposed. At the first meeting she attended, she heard only two people speak up for this project, and there was standing room only against it. That was the case for many, many meetings. Ten years later, people were worn down, and they didn’t want to keep coming back. The next thing that went to the Town was a petition from all five veterinary clinics. The declaration was that the Portola Valley veterinary offices opposed a high-density development of any kind, let alone on Sausal Creek—a known animal corridor with some dangerous wildlife that was a threat to domestic pets, etc. Every single vet clinic signed it and turned it in. Then there was the Town Village Square. It was the Woodside Patrol and the stores there and the airport center. They were afraid that with the restaurant and parking up until 10 p.m., the 24-7 Woodside Patrol, and noise and lights, people would start complaining that they didn’t want this development. The nursing/health facility that was supposed to come at The Sequoias was not going to happen. It was too far geographically, economically, physical limitations—it wouldn’t happen. Then the parking issue brought in the trail club because they planned to park extra cars over at Conlon’s. The problem with that was that he was trying to sell his place to us. He and his wife were trying to finalize the sale of their clinic. The situation had always been the same—every meeting. She never heard anybody for it except the developers. All these rules about setbacks, corridors, creek preservation, everything--were all broken so one developer could make a profit. This empty nest syndrome--that meant the kids didn’t go to college until they were forty. These people were supposed to be lonely without their kids and wanted to stay in the valley. So what had they been doing for 20 years? Had their kids been living with them for 20 years? She didn’t think so. She guessed they’d waited 20 years to feel the house was too big and now were going to move to a smaller place. They were here in the valley. If they moved here, they would lose their yards, wildlife, etc. It was an entirely different situation. It was suburbia as far as the density went. She referred to a paragraph from a June 9, 2005, memo to the Planning Commission that referenced the Lands of Conlon. She said he [*Conlon*] did not know anything about cementing, steel piers, anything about his side of the creek. She e-mailed him on June 15. He didn’t know it had passed until July 7. Saturday night, September 23, she and her husband talked to Dr. Conlon. He said the only thing he ever signed was saying that the developer did not have to do anything to his side of the creek. He never approved them doing anything to his side of the creek. After tonight, if he doesn’t own it, it’s moot [*inaudible*]. The creek itself kept getting wider and wider. Her kids used to jump over it; they couldn’t do that now. If you barricaded one side, it was going to go to the other side. Mr. Lodato said last night that they’d lost ten feet [*inaudible*]. She had lost 15’ or 20’. She’d had to move the fence—a lot of it collapsed—and rebuilt it. That was fine; that was what

nature was doing. They had been asked if they wanted to cement their side. No--because the liability to them was too great. The people in Portola Valley across from the Freize (sp) house were right on the creek. The homes on Family Farm were [inaudible]. If she altered the creek, whom would they sue? The people with the CC&Rs? Those five little families were going to have enough money to maintain the creek? Those five little families were going to take over the liability lawsuits on age discrimination? The Town wouldn't do it. They said the developer would do it. What if the developer went bankrupt? Who was left? The Town was left for all the liability for changing the creek. Today's *Almanac* had another article on flooding, and that referred to Family Farm. She said she had a letter from the developer's lawyer, Little & Saputo stating in this case the only purpose of the association would be to enforce CC&Rs. The association would be totally ignored. A homeowners' association was normally required to obtain liability insurance and file tax returns. Virtually, they did nothing. The owners would soon decide to ignore the association and then the State would just stop asking them to file income taxes. Then there was no homeowners' association. There were no CC&Rs. That was where the Town got to take responsibility. Who was going to maintain the creek? According to the engineer in Woodside, the bottom of that creek would fill up in two years. Apparently, they'd had 2-3 incidences where they had to fix the creek. It would just fill up again. This whole thing of changing the zoning so that one developer could make money was totally crazy. No one was for it--even the original petition in 1990 that started this. You never heard anyone at these meetings year in and year out. Where were all the letters saying this was a wonderful project? She had never seen them or heard them. For the sake of Woodside, the sake of Portola Valley, she said don't touch the creek. Don't incur all the liability that might be ahead because of the illegalities of age and because of downstream flooding. From Katrina, there was no sure thing with these engineers. They did their best, but nature was nature.

Jeff Wagner, counsel representing Sausal Creek Associates, said he would respond to three issues commented on by the appellant: 1) Dr. Conlon's views on the creek restoration work; 2) enforcement of CC&Rs; and 3) creek maintenance. He noted that he had not seen the letter from Little & Saputo. That firm formed many associations, and he did as well. An owners' association would be established for this development. CC&Rs would be recorded, which were enforceable against all of the lots. They would have to go through the CA Dept. of Real Estate (DRE) with a budget. The budget would include the cost to maintain that creek. That would be reviewed by the appraisal department. All of this had to be approved by the State for these lots to be offered for sale. There were in excess of 30,000-40,000 owners' associations in the State enforcing CC&Rs all of the time. This project would have enforceable CC&Rs. Often, it was common for the city or town to have backup enforcement rights; that was built right into the CC&Rs so that if the association failed to do what it was supposed to do, the Town could step in, do the work, and then step into the shoes of the association and exercise the lien rights that the association had to collect the funds the Town had to spend.

With respect to creek maintenance, Jeff Lee, project engineer, said Mr. Vlasic had addressed most of the technical items fairly clearly. He wanted to emphasize that this had been a long and arduous interaction with the various regulatory agencies. The proposal that had been presented attempted to address a problem that would not go away if this project didn't get built. If there was continued migration of the nick point of the creek toward Portola Road, no one would benefit. More bank would be undercut and more trees lost. It would have to be dealt with when it got up to the concrete channel. The stitch pier and log wall treatment were intended to be visually soft to allow planting willows and similar materials that would give a less harsh appearance and provide opportunity for habitat. This was something that had received Fish and Wildlife approval in other projects. It was important to recognize that all this was occurring outside of the 100-year flood corridor. This was being kept back so that in no way was the creek being restricted.

Tom Lodato, applicant, said he attended the Woodside Council meeting last night. Mrs. Jacobson had mentioned that Dr. Conlon was balking at the combined design efforts for the boundary line. That had surprised him because he had been very concerned about the nick in the creek and the damage it would cause. He met with Dr. Conlon today and discussed the plans, which had not changed since the time he had last reviewed them. Just his [Lodato's] side was being shored up--with the riprap being put in the bottom of the creek floor to slow down the velocity of the creek to help the downstream area. He had asked

Dr. Conlon to sign something in writing so that the Council could see that he was ready to cooperate.
[Inaudible.]

Responding to Councilmember Merk, Ms. Sloan confirmed that there was a condition in the CUP requiring CC&Rs be recorded at the same time the final subdivision map was recorded. They had not been drafted yet, but she would be reviewing them. She said the Town was not a party to the CC&Rs but, as Mr. Wagner explained, did require backup enforcement rights and backup ability to lien. She discussed the Blue Oaks CC&Rs which required an enormous responsibility of the homeowners' association with regard to the private roads, open space, fuel management, etc., noting that the Town had backup enforcement rights.

Mayor Davis opened the meeting for public comment and asked that speakers address only the subject before the Council. Ms. Sloan added that this appeal was not unlike the situation where the ASCC approved a house but wanted the applicant to come back for the pool or landscaping. What had come back here was the subdivision map, which actually drew the lines for the houses that had already been approved, and the creek restoration work. The subject of the appeal was only where the lines were drawn for the subdivision map and the creek restoration work. It did not concern the number of units, not the location or design of the buildings, and not the fact that the project was a senior project for those 62 and older.

Don Jacobson asked that his counsel review the legal issues addressed in his letter of 9/24/05. Responding to Mayor Davis, he said his position was that there was an underlying illegality that cut all through the project. He did not care about the nuances in the CUP. If this project was founded on a fundamental illegality, it was totally illegal.

Robert Aune, counsel representing Don Jacobson, said he had been practicing law for more the 30 years and specialized in, among other things, homeowners' associations. He represented numerous homeowners' associations in northern California, drafted CC&Rs, and defended associations against discrimination claims—including Unruh Act claims and Federal Fair Housing Act claims. It gave him no pleasure to disagree with the Town Attorney. With respect to the creek and the creek maintenance, he said Mr. Vlasic and Ms. Sloan commented that the homeowners' association would be responsible for the maintenance and repair of the creek. The fact was that in his experience, homeowners' associations of this size were notoriously unable to enforce or shoulder those responsibilities. Peter Saputo wrote to Mr. Lodato in October of 1995 and talked about the ability of the association to enforce the CC&Rs and, by implication, maintain the creek. He read: "I would expect that sometime soon after you sold the units, the association would be totally ignored." Understanding that the association was going to likely be a non-profit, mutual benefit corporation, it went on to say: "Because the association does nothing, you should expect that the owners will soon decide to ignore the association, and its corporate powers will then be suspended by the Secretary of State for failure to file tax returns." The point was apparent that the responsibility would then fall back on the Town. Regardless of the ability in the CC&Rs to enforce them, they would be largely controlled by those five units, which would fall into probable financial distress and be unable to carry out those obligations despite their obligation to do so and despite a budget approved by the Dept. of Real Estate. From personal experience, most of the associations he represented had not complied with the budget requirements of the Dept. of Real Estate. The Town of Portola Valley could not rely on that in order to maintain this creek. Secondly, the comment had been made that the Town had no ability to deal with anything other than the creek issue. Under Government Code § 66474, in considering the approval of a tentative map, it stated that the Town Council shall—is required to—deny that tentative map if the improvements thereon are not consistent with the general plan. As indicated in his letter, the general plan could not, by definition, include housing or projects which were fundamentally discriminatory and in violation of State statutes—particularly the Unruh Act—that prohibited that. Mr. Wagner had indicated in his letter that he [Aune] had a simple and fundamental misunderstanding about the statute. He [Aune] felt Mr. Wagner, as Mr. Lodato's attorney, had a simple and fundamental misunderstanding about the statute, which clearly required that a senior citizen housing development in California, excepting Riverside County, required 35 units. He believed it was set forth in detail in his letter why that was so. With all due respect to Mr. Wagner, he said the northern California head of subdivisions with the Dept. of Real Estate told his office

that they would not certify this project as a senior citizens' housing development unless it had 35 units. It was his opinion that under the Government Code, you were not so limited regarding the approval of this tentative map. The Council should decide to grant the appeal and reverse the Planning Commission's approval of the tentative map because, among other things, it was not consistent with the general plan. It was discriminatory, and there would be no ultimate responsibility, excepting the Town, for what happened thereafter. While he did not like to disagree with Ms. Sloan or Mr. Wagner, he was in good company with retired Judge David Garcia and Judge Friedman from Los Angeles, whose opinions, as indicated in his letter, were exactly as his own. The Council had the ability to change this.

Responding to SallyAnn Reiss, Mr. Vlastic said the Conservation Committee had had some concerns about the tree at the outlet side of the project. They also wanted a broader use of willows. Mayor Davis said the Committee members he spoke to were supportive because they were concerned about the tree loss and what would occur if this was not in place. Mr. Vlastic added that Committee member Eckstrom had worked with the project engineer relative to the trees.

Responding to Elaine French, Hidden Valley Lane, Mayor Davis confirmed that the Town received a letter from Woodside's Mayor. The letter pointed out that Woodside ordinances were different from the Town's with regard to setbacks from creek tops. The creek work would be acceptable, but not the setbacks according to their ordinances. Additionally, the Mayor indicated by telephone this morning that his concern was more directed at the effect it would have upstream from them with regard to erosion. The letter also expressed concerns about density. Responding to Ms. French, he said Woodside's concerns were an important input. The Town appreciated the cooperative activity between the two organizations.

Bernie Bayuk said there was a lot of déjà vu going through his head. The key word was density. The issue of high density in Portola Valley had been decided by a referendum. He did not have a sense that the Council, as representatives of the residents, had taken that into account. The citizens made it clear that they did not want to go back to the housing density that was okay before the Town was a town. That was clearly established during the Nathhorst controversy. Here it was again. The same Town Council seemed not to have taken into account that those who elected them had expressed an opinion against this level of density. He respectfully requested that the current Town Council put in the record how they arrived at this conclusion to approve this so that a future Town Council wouldn't consider this a precedent. Mayor Davis said this was approved long before the Nathhorst discussion and by a different Town Council and Planning Commission. He was not equipped to retroactively withdraw something that had been approved. Responding, Mr. Bayuk said even the Supreme Court over a 10-year period recognized changes in reality and changed decisions. He requested the Council, as the citizens' representatives, do something like that. Things had changed. There were evidences now that did not exist ten years ago. He questioned how that could be ignored.

Luis Mejia, Wayside, said he had a few years to go before he would qualify for these houses. But, he would like the opportunity at some point to purchase this type of home and stay within Portola Valley. He realized the issue was the creek, and he thought the mitigating factors would help preserve the creek. He recalled when the redwood trees fell over. The concrete implement that had been put into the creek caused this problem, and he felt the development sought to mitigate something that was unfortunately there. He supported the Town's approval of this project. He added that a neighbor at 172 Wayside also expressed his encouragement for the approval of the project.

Trish McBride, Windham Dr., said her property backed up against Sausal Creek. She had lived there seven years, and the erosion was very visibly increased. In last year's rain, the creek was so high, she thought one of the redwoods with exposed roots would go over. Responding to Ms. McBride, Ms. Sloan said if a private tree fell over and damaged a home, it was the private property owner's problem. Mayor Davis noted that part of the motivation for this work was to prevent that from happening.

Elaine French said she had just read the letter from the Mayor of Woodside, which she found extremely well stated. It raised some serious concerns. She said the Councilmembers needed to take what was said in the letter very seriously. It looked as if the Town of Woodside would be coming after the Town of Portola Valley should there be problems.

In response to Mr. Aune's earlier comments, Mr. Wagner said the position expressed about the legality of the senior requirements was not an issue before the Council on this appeal, but he did not want that position to go without a response. It was also an issue that was resolved 9 years ago. He was happy to respond to Mr. Aune but did not want to waste the Council's time with the details already expressed in his *[Wagner's]* letter. Councilmember Comstock said he wanted to hear Mr. Wagner's response.

Mr. Wagner reviewed his letter of September 28, 2005. For the record, he said he was not waiving his clients' rights with respect to his position that this was an issue that had been resolved and was not properly before the Council. With that said, he said he was surprised that Mr. Aune was confused about how the senior citizen laws worked. He had done extensive research and writing in this area. He wrote an extensive article in 1996 on senior law titled "A Recipe for Heartburn", which he had copies of. He said the senior housing laws were complex; there were both State laws and federal laws. Basically, the State and a couple of Supreme Court cases held that adult-only communities were illegal and unlawful age discrimination. He said you might remember the days of swinging single developments where you had to be 18 years old in order to live there. Those were held to be illegal by the CA Supreme Court. However, in those decisions, the court recognized that housing for senior citizens was an acceptable legal form of age discrimination if it was truly housing for senior citizens. In 1984, the legislature responded with specific provisions in the Civil Code on what was a legal senior housing development—what was legal age discrimination. They set two age levels: one at 62 and one at 55. This was the misunderstanding that Mr. Aune had. If the age level was set at 55, you must qualify as a senior citizen housing development. The legislature said if you were going to lower it to 55, you had to meet more requirements. One of the requirements was that you had to have a minimum number of units. When it first came out, the senior citizen housing development exemption at 55 had three different numbers, which he described. If the age level was 62, you were not required to be a senior citizen housing development, and you did not have to have a minimum number of units. That was his and the Town Attorney's opinion in 1996 and was the same today. It was the law. If you set it at 62, there were no minimum requirements. The State law was very similar to federal law. Federal law also had two age limits: 62 and 55; different requirements applied for each. He had processed at least three projects through the CA Dept. of Real Estate and gotten public reports. He had also prepared the CC&Rs on projects where there were less than 35 units with the age restriction at 62. The DRE processed those, and that was confirmed in writing in his letter. There was no question what the law was. At 62, the minimum number of units did not apply. Responding to Councilmember Comstock, Ms. Sloan said she concurred.

Councilmember Toben expressed appreciation to the Jacobsons and their counsel and other concerned neighbors who had framed the issue in great detail and had done a thorough job in bringing forward the concerns about the legal issues and policy questions. He had spent a great deal of time going through a very long and detailed record. He read all of the reports prepared by the Town Planner, minutes of the Planning Commission meetings, etc. This matter had been before the Planning Commission 6 years ago for a preliminary review when he was on the Planning Commission. He knew how difficult and closely divided the perspectives were. Having read the record and heard the comments, he found no merit in the arguments of the appellant. He would vote to deny the appeal and support the decision of the Planning Commission.

Councilmember Merk said it was not often that the Council sat as a judicial body as opposed to a legislative body. This was one of those situations where the Council was in a quite different mode of operation. The Council had before it attorneys who were experts in their fields with differing points of view talking about subjects that had gone before the CA Supreme Court. He was not a lawyer, judge or member of the CA Supreme Court. As a Town Councilmember in Portola Valley, he felt it was his place to take the advice of

the Town's counsel. In terms of what she said, he felt the limitation of the appeal was in fact to none other than the items which she indicated. He was on the Council when this project was approved. He recalled a number of people testifying before the Planning Commission that they really wanted this kind of housing and that they did not want to move into a facility such as The Sequoias. They were in a house that was too big for them—perhaps too old—and they wanted to move into something that was smaller, easier to take care of, and required less maintenance. He did not feel it was quite honest to say that there was no support for the proposal. In terms of the CC&Rs, he felt that the Town ultimately had the power to enforce CC&Rs. If the homeowners' association couldn't or wouldn't pay for it, the Town could take whatever action was necessary, pay for it, place liens on the property, and recover its cost at the time those properties were sold. He felt there was a way for the Town to enforce the CC&Rs and keep the creek maintained. Beyond that, he concurred with Councilmember Toben that he did not see any merit to the appeal. This decision was essentially made almost ten years ago. The changing facts of the creek were a fact of life, and the applicants were doing the best they could to address those changes. If it was left alone, it would just get worse.

Councilmember Comstock said he had reached the same conclusion as his two colleagues who had just spoken. He was convinced that this was not a senior housing development with a 55-year age limit. It was at 62, and there were not a minimum number of housing units required by State law. Based on the reports that he had read, he felt the creek work that was part of this project was an improvement of the creek condition that would: 1) not worsen the matter; and 2) improve the matter. That represented a positive advantage for the Town and for upstream and downstream owners. He had done a quick calculation on what the FAR would be for these houses. It appeared to be less than the zoning requirements for nearby residential areas such as the Brookside area. That kind of FAR was quite favorable in what was essentially a commercial area and would be an improvement. He also wanted to lend emphasis to Councilmember Merk's comment that the creek was a changing entity and would continue to be a changing entity. Time was significant and too much time had been wasted on this project that would lead to creek improvement. He would vote to deny the appeal.

Councilmember Driscoll said by accepting the appeal, the Town would end up with a creek in a continuing condition of deterioration that would continue to affect trees, etc., and be a mess—just as it was when he first looked at this property well over a decade ago. Or, the Council could choose to deny the appeal in which case this developer, at his or her own expense, would put in what appeared to be a more viable/compatible solution. Slowing down the creek reduced downstream concerns and helped at least one of the adjoining neighbors. In the long run, he suspected it would demonstrate the way to deal with a very difficult creek situation in a very constrained space that was inherited from some bad planning 40-50 years ago. That made more sense, and he would vote to deny the appeal.

Mayor Davis suggested that staff and those engaged in writing the CC&Rs be directed to include strong Town backup enforcement rights. From what he had heard and read, the risk of not maintaining this facility was worse than not putting it in. He would also vote to deny the appeal.

Councilmember Driscoll said there were obviously some complicated legal issues around this. There were two very competent attorneys who differed. He did not feel competent to understand/communicate the issue. The end result of this was that it might end up in the courts in front of someone more equipped to understand the legal issues, which might be the right venue. Councilmembers discussed possible outcomes.

Councilmember Comstock moved to adopt Resolution No. 2215-2005 Denying the Appeal of Mr. Donald Jacobson of Planning Commission Approvals of Tentative Map X7D-30 and Site Development Permit X9H-360 for Sausal Creek Associates. Councilmember Merk seconded the motion, and it carried 5-0.

(6) Approval of Town Center Plan and Certification of Final EIR

Town Planner Mader reviewed the staff report of 9/20/05 on the approval of the final EIR for the Town Center, including the conceptual site plan dated 6/16/05. He noted that Michele Yesney and July Mier were present from the firm that did the EIR work, David Powers & Associates. He reviewed: 1) minor changes made to the site plan included with the draft EIR; 2) the Statement of Overriding Considerations (Exhibit A); and 3) Mitigation Monitoring and Reporting Program (Exhibit B).

Responding to Councilmember Driscoll, Ms. Mier said by law, the whole development in its entirety had to be looked at. The only significant impact found was the loss of the historic structures. If the investigation had uncovered evidence that the culvert was a source of health or safety hazard on the site, then it had to be taken into account. When the document was prepared, there was no evidence that existed that indicated the culvert constituted a hazard or risk to the project or the people that the project would bring onto the site.

Referring to the Existing and Proposed Interior Building Area Comparison Table, Councilmember Comstock said the gross areas were listed as 27,652 sf for the existing campus and 23,300 sf for the new campus. There had been a fair amount of publicity recently indicating that a larger Town Center was proposed. He felt these numbers should be called to people's attention to show that there was a substantial reduction in the total floor area of the buildings. Referring to the Statement of Overriding Considerations (p. 5, Geology and Soils, Impact 1), Councilmember Comstock said the statement indicating that "...the site would experience very strong to violent ground shaking during a severe seismic event" was a partial statement; there was also some confusion about what was meant by "project site." If "project site" meant the location of the new buildings, then the statement was quite accurate in terms of shaking. But, if "project site" included the entire 11-acre site, there would be more than strong to violent ground shaking. There would be a totally disastrous consequence of ground rupture. That was not clear in that paragraph. Responding, Ms. Mier said because the project included two pieces (i.e., demolition and construction), "project site" included both where the old buildings were located and where the new buildings were proposed. The map showed the larger property. The entire site would be subject to ground shaking. In addition, part of the site would be subject to rupture. Those two phenomena had been dealt with in two separate paragraphs of the EIR. Mayor Davis noted that this document was a response to particular concerns in the EIR. The larger EIR described the regions. Councilmember Comstock said the EIR was a big document. When someone read this paragraph, they would think the Town Center could stay where it was. Rather than convey misimpressions, all you had to do was add two or three words to this paragraph. He suggested "...the site is anticipated to experience very strong to violent ground shaking during a severe seismic event, and portions of the site were very likely to be exposed to severe ground rupture." Ms. Sloan explained that the purpose of this document was to identify each potential impact; for each potential impact there had to be mitigation. If you added language that added an impact, you had to add mitigation. Responding to Councilmember Comstock, Ms. Mier explained that because the old buildings were not going to be used, you did not need to mitigate the impact of rupture. Therefore, the conclusions and findings did not need to address mitigation for the impact of rupture because you were avoiding that portion of the project site, and the impact was therefore avoided. Councilmember Merk noted that adding language about rupture implied that it could happen on this part of the site. Mayor Davis agreed. He felt the language as written had greater clarity for the EIR process. Councilmember Toben agreed.

Referring to page 9 of the Statement of Overriding Considerations (Exhibit A), Section II.A, Councilmember Comstock said the statement "Furthermore, it would likely not be economically feasible to maintain the buildings in the long term" was a weak statement. He preferred "It would be illegal to maintain the buildings in the long term." Responding, Ms. Sloan said there was a difference between maintenance and improvements; maintaining the buildings was not illegal. She added that she used the terms "...not likely to be economically feasible to maintain" because there were no concrete numbers. After discussion, Mayor Davis and Councilmember Driscoll agreed no change was necessary.

Referring to page 10, Section IID.1., Councilmember Comstock said splitting up the Town Center and

putting some of the buildings on alternate Site 1 would involve the loss of retail operations that were significant to homeowners. That would be a major negative impact and should be indicated. Town Planner Mader pointed out that it stated use of Site 1 "...would require demolition of existing commercial structures." Councilmember Toben suggested "...and elimination of valued retail uses." Councilmembers agreed.

Referring to page 11, Section III.A, Councilmember Comstock said the phrase "...constructing new buildings compliant with current safety...standards" was obscure and wouldn't mean much to 90% of the people who read it. He suggested, "constructing new buildings on a portion of the site a safe distance from the fault..." In Section III.B, he felt the phrases "existing buildings do not adequately serve" and "do not provide sufficient space for staff and the public" fed the impression that the Town was building an enlarged Town Center. The floor area was actually being reduced by 20%. There should be some language to indicate that. Councilmember Toben suggested replacing the word "sufficient" with "appropriate." Councilmembers agreed. Councilmember Comstock wanted to emphasize the fact that less would be built than currently existed. Councilmember Driscoll pointed out that the library and administration building would be larger. Additionally, he pointed out that this was not a marketing document; this was a legal document.

Responding to Matt Stoeker, Ms. Sloan said it was difficult to approve a project that was evolving. When the EIR was started, the April site plan was used. Because there was an updated site plan, the last page of the staff report had an addendum. As the project continued to change and if the changes were very minor, another addendum would be prepared that noted the changes. If a change required some environmental review and analysis, such as opening the creek, then the EIR could be supplemented and circulated for public review.

Mayor Davis closed the public comment period.

Councilmember Driscoll moved to adopt a Resolution Certifying the Final Environmental Impact Report and Adopting Findings, a Statement of Overriding Considerations, as amended, and a Mitigation Monitoring Program for the Portola Valley New Town Center Project. Councilmember Comstock seconded the motion.

Referring to Appendix A (p. 27, Tree Policy), Councilmember Merk pointed out a grammatical error. Referring to the Biological Site Assessment, Table 3 (following p. 13), he said he had never seen a purple finch on the site. Additionally, this was the wrong habitat for an orange-crowned warbler, and he questioned whether it had been seen at the site. On the subsequent page showing the list of plants, he said horse chestnut was listed as *Aesculus californica*, which was California buckeye. The trees on the site were *Aesculus carnea* and not native to Portola Valley. Those errors were repeated on p. 13 of the Tree Survey. Referring to Exhibit A attached to the staff report (Statement of Overriding Considerations, p. 11), Councilmember Merk pointed out a grammatical error in Section III.A. Additionally, he said he could not accept the statement indicating the buildings were "unfit for human occupancy." In Section III.B, he agreed that the existing buildings did not provide needed space for staff, but he did not agree that they did not provide the needed space for the public. There would be less space for the public in the new proposal because the gallery and artists' studios would be gone. In Section III.C., he said the new plan had less efficient and less useful vehicular access and, in particular, less parking. In his opinion, there was not enough parking. Overall, his basic difficulty was that the Council was approving not only the EIR but also the conceptual site plan. As he contacted more and more people in Town, there were a lot of concerns about the design and layout. There was also a lot of public misunderstanding and dissatisfaction with the product that had been arrived at this point in time. He would not vote in favor of this because he did not support the current conceptual plan. Responding to Councilmember Driscoll, he said there were a lot of people in Town who did not like the design, layout, extensive use of the site, and extensive changes to the site. He shared a lot of those concerns. People were also concerned about the look of the buildings; personally, he felt they would look extremely dated in 10 or 15 years. The Town was now at a point where consultants were deciding which trees would get bubblers. The project needed to be slowed down until funding could be assured.

Councilmember Driscoll thought many of Councilmember Merk's design concerns would be addressed publicly when that level of detail was discussed. Whether the Town could embark upon construction of the project was unrelated to whether the EIR was certified. He thought choosing not to certify the EIR would put a big delay on everything. Councilmember Merk reiterated that the reason he couldn't certify the EIR was because it was tied to the conceptual site plan. He had issues with the conceptual site plan along with a lot of other people. He did not think it was appropriate to take this step at this time.

Mayor Davis said the EIR was linked to where the buildings were placed more than their physical appearance. Councilmember Merk said he was not concerned about the placement of the buildings. Responding to Councilmember Comstock, Mayor Davis confirmed that the EIR also addressed parking, circulation, emergency access, drainage, etc. Ms. Sloan said some things could be changed. The EIR had to be based on something. If the Council decided to make changes, those would be evaluated to determine if additional environmental review was needed. The EIR could be supplemented or a note made that the changes were minor.

Councilmember Toben said the people he talked to thought this was a gorgeous plan. These were people who were interested in investing in this project. They might have issues about the cost, which he shared. There would also be issues about siding, materials, parking spaces, etc., but he did not agree there was a surge or phalanx of people who felt the conceptual design was all wrong.

In terms of architectural design, Town Planner Mader said the conceptual site plan didn't dictate that; there was a lot of give and take on architectural design that the ASCC would be dealing with. But, the site plan itself could not change dramatically under this EIR.

Mayor Davis called for a vote, and Resolution No. 2216-2005 was approved by a vote of 4-1 (Merk).

(7) Adoption of Risk Management Policy

Ms. Howard reviewed the staff report of 9/16/05 on the Town's risk management policy. She said ABAG indicated that if towns/cities did not adopt the risk management policy, there might be some incentives to do so. The hope was that plan members would voluntarily do so.

Councilmember Toben moved approval of Resolution No. 2217-2005 Adopting a Risk Management Policy. Councilmember Comstock seconded.

Referring to Section 1.1, Councilmember Merk said he did not think it was possible to "eliminate" risk. Referring to Section 1.3, he said the budget was a planning tool—not a bank account. He preferred "Protect the Town reserves" or "Protect the Town's financial position." Under Section 2.3, he said the statement about employees notifying their supervisors of any condition that exposed someone to injury or damage was typical; but, usually the whistleblowers were the most likely to be punished, terminated or demoted. This language was often included but rarely enforced.

After discussion, Council agreed to drop "eliminate" from Section 1.1 and substitute the word "finances" for "budget" in Section 1.3. Mayor Davis called for the vote, and Resolution No. 2216-2005, as amended, passed by a vote of 5-0.

(8) Consideration of Policy Regarding the Disbursement of Utility Users' Tax to the General Fund

Councilmember Merk said Maryann Derwin suggested a policy statement be prepared to address issues raised in a letter being circulated by those opposing the UUT. The policy was, in fact, what the Town had been doing. He felt it was the best the Town could do under the circumstances to demonstrate the Town's

commitment that these funds were being used to provide services to the Town. That demonstration needed to be made as strongly as possible given the specious arguments coming from those opposing the UUT.

Councilmember Comstock said there were a number of things that were only implicit or not mentioned at all. For example, under Trails, he asked if that was restricted to maintenance only or whether it included expansion/acquisition. Responding, Mayor Davis said it included any expenditure on trails, including capital improvements. Councilmember Comstock wanted that stated. Responding to Councilmember Comstock, Mayor Davis said the Fire District was separate and should not be included. Councilmember Comstock suggested adding Public Communications (i.e., the newsletter, website, etc.) One of the lessons of the recent past was that people needed to be kept better informed. Councilmember Merk said he did not think it should be on the list. It could be construed that the Town was using that money to educate the public about how much the Town needed this tax. Additionally, he said Ms. Howard had provided rough figures on what was spent on each of the items listed, which came to about \$850,000. The revenue from the 5.5% UUT was about \$611,000. If energy prices went up as expected, the tax would increase, but so would the costs for things like roads. He felt the categories listed had been well thought out. Councilmember Comstock suggested specifying categories on which the revenue would not be spent. Councilmember Merk said that was not necessary because it said, "...used exclusively for...."

Bruce Campbell, Santa Maria, said things were changing in the energy field a great deal. Today on the natural gas futures market, natural gas closed at \$14.10 per million BTU. Last year, it was going about \$6.80 per million BTU. This was not a short-term phenomenon. People in Town could expect to see their utility bills raised by at least 100% this coming heating season. The Town would get twice the revenue that it got in previous years. The bad news was that the Schoolhouse would be full of people screaming that they couldn't pay their utility bill—not because of the tax, but because of the bill itself. Councilmember Toben said the Town had ten separate streams of general fund revenue. There was tremendous volatility in several of those streams—including this one. That was a fact the Town had to deal with. If the Town had to adjust budget expectations on the basis of one single revenue source, it would be very difficult. That was why the funding streams had been diversified. Mr. Campbell discussed the shortage of natural gas and the inability to import liquefied natural gas to the west coast. He felt residents would focus on the tax side of it more than the reality.

Responding to Councilmember Comstock, Ms. Sloan verified that the amount of the tax could be reduced. Councilmember Driscoll noted that the Town was not a profit-making enterprise or trying to accumulate huge surpluses. The Town was just trying to cover operating expenses. Responding to Councilmember Comstock, he said the amount of budget surplus was a tiny fraction of the amount contributed by this tax.

Responding to Bill Henderson, Brookside Dr., Councilmember Driscoll said the policy had been drafted because there was some misinformation about the subject. The policy stated explicitly what the Town's practice was. Responding to Mr. Henderson, Mayor Davis said the basic reason for the UUT was because the Town received a far less percentage of the taxes that it sent to the government than almost any community in California. If the Town had the same amount of money returned to it as the neighboring communities, we wouldn't need a UUT. If the \$600,000+ was lost, most of the items shown on this list would be significantly hit. There was no relationship between the UUT and the building of Town center.

Responding to Mr. Henderson, Councilmember Driscoll said he thought there was a chance that the Town would end up having to seek a two-thirds vote if the Town could not successfully raise the money from private donations for the Town Center project. The logic being pursued was that before you chose to tax someone, you asked them for the money first. The Town was asking the citizens to voluntarily assist with this project. If they said "no," the Town would either shut down the current Town Center because the insurance would expire, or seek some other alternative financing, which would require such a vote. Responding to Mr. Henderson, Mayor Davis reiterated that in public meetings for funding the Town Center, it was decided that the Town would first go out to the Town for donations. Depending on how that turned

out, the Town could consider forms of public financing. The UUT was a whole different matter. Councilmember Merk said if the UUT didn't pass, people needed to remember that not having Sheriff services was not an option. The Town wouldn't be able to maintain the roads to the level they were maintained today. The Town was also required by State law to have animal services. What was left on the list were the things that would be cancelled like additional traffic patrols; improvements to or new trails, parks and fields; and funding for the Town's commissions and committees. Those were serious items for the Town.

SallyAnn Reiss, Golden Oak, said there was an opportunity for a bond if the Town had to do that. To those people who questioned whether the Council was being transparent about the UUT, she did not think they were trying to kill the UUT. She felt they were trying to kill the Town Center project, which was unfair.

Councilmember Merk moved approval of the Policy Statement Concerning Expenditure Restrictions for Revenues Collected from the Utility Users' Tax. Councilmember Driscoll seconded, and the motion carried 5-0.

(9) Consideration of a Policy Regarding Placement of Items on the Town's Website

Mayor Davis reviewed the staff memo of 9/23/05 and the proposed website policy. Referring to Sections 2.2.1 and 2.2.2, Ms. Sloan suggested adding the phrase "...as long as the information is related to Town business." Referring to Section 2.2.1, Councilmember Merk said the Town Administrator and Asst. Town Administrator were non-political, but Councilmembers could be political. He thought it should take more than one Councilmember to approve postings. He suggested there be more than one Councilmember or one Councilmember and one administrative person. Councilmember Comstock suggested "...or two Town Councilmembers...." Councilmember Toben suggested authorizations be in writing.

Councilmember Merk moved approval of the policy regarding placement of items on the website, as amended. Councilmember Comstock seconded, and the motion carried. 5-0.

(10) Consideration of Town-wide Mailing Regarding the New Town Center Project

Ms. Howard said a redlined version of Councilmember Comstock's recommended Town-wide mailing had been distributed for Council's review. Responding to Mayor Davis, Ms. Sloan said if the letter was sent out to more than 200 people and the cost of distributing it was \$50 or more, it was considered a mass mailing. The same rules would apply that applied to the newsletter. Among other things, the rules said the item could not feature an elected official. Featuring an elected official occurred if one official's name or photograph was shown. The solutions were: 1) Councilmember Comstock could send it out with his own money; or 2) it could be sent by the whole Council with all Councilmembers listed in the masthead.

Mayor Davis said there was some urgency in getting the message out. But, he wanted to start transferring positive messages in Town mailings. This was sort of a regurgitation of the reasons the Town needed to do something. He suggested the letter be published in *The Almanac*. Councilmember Comstock said there was a substantial percentage of the Town's population that didn't read *The Almanac*. If this was an important enough subject matter, he preferred a mass mailing to ensure that it reached every household.

Mayor Davis offered to help pay for a mass mailing with Councilmember Comstock. Responding to Councilmember Comstock, Ms. Howard noted that the Town's bulk mailing would not be able to be used; the cost would be about \$800-\$900. Mayor Davis reiterated that he preferred the Town's masthead start projecting the good things about the project.

Councilmember Toben noted that the draft of the first Town Center Newsletter had been prepared and would be discussed later in the agenda. He said he was disinclined to have the Council send out

Councilmember Comstock's letter. It was a more personal statement and might have more impact coming from a fellow resident who was personally concerned and had some well-informed perspective. He noted that Bill Lane had also suggested it could take the form of a paid ad. The audience might be somewhat less than all of the households in Town, but a great many of the households might not pay a lot of attention to a mailing of this kind. Responding to Councilmember Comstock, Councilmember Toben said the Outreach Committee would have some money for general informational mailings about the project, which would take the form of a newsletter.

Responding to Mr. Henderson, Ms. Sloan explained that the Town also published a newsletter twice a year that had information about a lot of things. She confirmed for Mr. Henderson that the Town advocating a Town Center in a newsletter was not illegal.

Mayor Davis said Councilmember Comstock's mailing would be useful because it was personalized, and he was willing to personally contribute. But, he felt it should be done outside of the context of the Town. The Town should be in the business of describing what it was doing in a holistic, positive way. Councilmembers Merk, Toben and Driscoll concurred.

COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

(11) Appointment to Parks and Rec Committee

Referring to Neil McKinnon's e-mail of 9/20/05, Mayor Davis appointed Craig Brandman to the Parks and Rec Committee. Councilmember Merk noted that the e-mail stated that the Committee had appointed Mr. Brandman to the Committee. He pointed out that only the Mayor could appoint committee members with the Council's concurrence. Councilmember Toben said Mr. McKinnon was aware of that policy.

By motion and second, Council unanimously concurred with the appointment.

(12) Status of Town Center Project

Ms. Howard noted that the final EIR had just been approved by the Council. On October 10, the design team would make a presentation to the ASCC. The story poles were up and would be up for two weeks. There was also an invitation on the website to come see the story poles and attend the meeting. As noted by Councilmember Toben, the TCOC had prepared the text for the first issue of the Town Center Newsletter and was interested in the Council's input.

Councilmember Toben commended the TCOC members for their work. He said future newsletters would address specific elements (e.g., components of the library, opportunities for the collaboration of cultural arts, etc.) It was intended to be an informational piece that would provide residents with regular updates on what was going on. He asked that comments on the text be submitted to Linda Weil, Chair-TCOC.

Councilmember Merk said the text was very good—especially the section about why it was not possible to retrofit the existing buildings. Referring to paragraph 2, he said he did not think the old oak trees were "centuries old." Councilmember Toben suggested "ancient."

Referring to the estimated costs of the entire project of \$20 million, Councilmember Driscoll suggested adding "including substantial contingencies."

Council member Comstock was troubled by the top paragraph on page 3. The cost to retrofit the old buildings would be zero because the Town was not permitted to spend anything more than zero dollars on it. It was misleading to suggest that the only reason for not doing it was because it would be so expensive. The fact was that the Town couldn't spend one dollar on it. Councilmember Driscoll pointed out that the

prior sentence addressed State law. The cost to retrofit these buildings to building codes would be enormous. It was not important that the buildings were valued at zero. He questioned whether that whole issue should be opened up. He preferred the existing wording. Councilmember Merk suggested, "The cost to retrofit the old buildings would be enormous and far more than their value" and then goes on to say it would be prevented by State law.

Council member Comstock did not like the statement in the next paragraph indicating that the library people found that the building was not safe for "long-term use." It really wasn't safe for any use. Councilmember Driscoll said the library's own report used the phrase "long-term use."

Ms. Howard said she would send out an e-mail with Ms. Weil's e-mail address for any additional comments.

(13) Reports from Commission and Committee Liaisons

(a) Trails Committee

Councilmember Driscoll said the Committee was concerned about a number of construction projects around Town; people were forgetting that the trails needed to remain open while the project was under construction. They were also concerned about the unexpected change in Stanford's policy on the C1 trail.

(b) Emergency Services Council

Councilmember Merk said San Mateo County had received 96 Katrina evacuees; the State had received about 5,000. Every county in California had accepted some evacuees. San Mateo and Santa Clara Counties had also sent people to New Orleans for relief work. San Mateo County had a team of 212 members for emergency response in district jurisdictions. On November 15, he said there would be a statewide drill involving hospitals, fire and police. It would revolve around an incident/event at Jack London Square. Homeland Security was promoting the drill.

(c) Conservation Committee

Councilmember Merk said the Committee wanted everyone to be aware that there would be a green homes lecture by Jennifer Roberts on October 8 from 11 to noon in the Schoolhouse.

(d) Planning Commission

Councilmember Comstock said the Woodside Priory would be putting up three smaller buildings as a part of the Performing Arts Center instead of two larger buildings. The Planning Commission reacted favorably. Additionally, the Planning Commission would be referring its recommendations regarding gates after Council took action on the fence ordinance.

(e) Parks and Rec Committee

Councilmember Toben said the Committee was working on the replacement baseball field. He discussed options being considered.

WRITTEN COMMUNICATIONS

(14) Town Council 9/16/05 Weekly Digest: None.

(15) Town Council 9/23/05 Weekly Digest

(a) Request to Move Town Archives

Councilmember Merk reviewed the Historic Resources Committee's request to move the archives to Room 6 once the Art Gallery vacated the space. Councilmembers agreed. Councilmember Merk noted that it would take some staff time to move the files, which were very heavy. Responding to Councilmember Merk, Ms. Howard said the gallery lease had been signed.

CLOSED SESSION

(16) Real Estate Negotiations

- (a) Conference with Real Property Negotiator
Government Code § 54956.8
Property: 815 Portola Road
Negotiators: Christ Church, Town Attorney and Town Administrator
Under negotiation: Price and Terms

REPORT OUT OF CLOSED SESSION None to report

ADJOURNMENT

The meeting adjourned at 12:00 a.m.

Mayor

Town Clerk