

TOWN COUNCIL MEETING NO. 652, JULY 14, 2004

ROLL CALL

Mayor Comstock called the meeting to order at 8:02 p.m. and led the Pledge of Allegiance. Ms. Powell called the roll:

Present: Councilmembers Davis, Merk and Toben, and Mayor G. Comstock  
Absent: Councilmember Driscoll  
Others: Town Attorney Sloan, Dir. Admin Services Powell, and Deputy Clerk Hanlon

ORAL COMMUNICATIONS

Councilmember Davis asked that gifting of some of his personal property to staff be placed on the agenda as an urgency item. By motion of Councilmember Davis, seconded by Councilmember Toben, the item was added to the agenda by a vote of 3-0, with Councilmember Merk abstaining.

CONSENT AGENDA

By motion of Councilmember Toben, seconded by Councilmember Davis, the consent agenda item listed below was approved by a vote of 4-0.

- (1) Resolution No. 2132-2004 Approving and Authorizing Fourth Amendment to the Agreement Between the Town and Nicholson & Olson, LLP (auditing services), per Dir. of Admin Services memo of 6/21/04.

REGULAR AGENDA

- (2) Minutes of Regular Town Council Meeting of June 23, 2004 (Removed from Consent Agenda)

Councilmembers Merk and Toben submitted changes to the minutes of the Council's June 23, 2004, meeting. By motion of Councilmember Merk, seconded by Councilmember Toben, the minutes were approved (3-0) as amended, with Councilmember Davis abstaining.

- (3) Minutes of the Special Town Council Meeting of June 30, 2004 (Removed from Consent Agenda)

Councilmembers Merk and Toben submitted changes to the minutes of the special Council meeting on June 30, 2004. By motion of Councilmember Toben, seconded by Councilmember Davis, the minutes were approved (4-0) as amended.

- (4) Warrant List of July 14, 2004 (Removed from Consent Agenda)

Councilmember Merk noted that the June water bill was \$3,562.24; that was more than twice the bill for June of last year and was due to Rossotti Field. Additionally, the bill for Colony Landscape was an additional \$1,660 because of Rossotti Field. That should give people an idea of the cost of that kind of field. Mayor Comstock recommended that staff consider re-setting the fees for field usage.

Responding to Councilmember Merk, Ms. Powell said the Fund Balance expenditure (p. 5) was for the financial software maintenance agreement.

By motion of Councilmember Merk, seconded by Councilmember Davis, the Warrant List for July 14, 2004, in the amount of \$199,669.62 was approved by the following roll call vote:

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

(5) Amendment to Artists' Studio Leases (Removed from Consent Agenda)

Referring to Ms. Powell's memo of 6/27/04 on the artists' studio lease renewals, Mayor Comstock questioned the appropriateness of the level of liability insurance (lease, section 12)--especially since under the terms of the lease, there could be an average of 10 people/week occupying the studio. Ms. Sloan said \$1,000,000 was the standard number used for leasing space. She noted that there could not be any children under 18 and that the tenants were artists who mostly worked by themselves. Ms. Powell added that the only time there would be a larger number of people was when they had open studios.

Responding to Councilmember Davis, Ms. Sloan reviewed the indemnification and hold harmless section of the lease (section 16). If the roof fell in, she said under the terms of the lease, the artist agreed to hold the Town harmless; the lease indicated that they understood that some of the buildings were prone to earthquakes and that they would not sue the town. If someone else was in the space, it was likely that they would sue the Town and probably the artist for inviting that person in. She noted that there were also signs posted that would help from a liability standpoint, if anything happened. Responding to Councilmember Davis, she said the \$1,000,000 figure had been in place for at least eight years. More insurance could be required, but she felt it was a lot to ask of a single artist.

Mayor Comstock said there were two things the Town could do to reduce the risk: 1) require that the artists not have more than one or two visitors at a time; and 2) have the visitors sign a release. Councilmember Davis found that awkward; if necessary, he preferred the liability limit be raised. Mayor Comstock discussed the calculation of potential awards based on lifetime earnings. While he agreed that higher insurance limits might push the artists out, he thought there would be some advantage to requiring the visitors to sign a release.

Ms. Powell pointed out that there was far greater liability with the use of the MUR where large groups of people attended events. She reiterated that it was unusual for more than the artist to be in the studio; there was often no one in the studio. Mayor Comstock suggested banning the open studios.

Councilmember Merk felt the risk was minimal and noted that the use would not continue very much longer. If there was that great of a concern about the risk, the leases should be eliminated.

Ms. Sloan noted that the leases had been reduced to a 1-year term last year because of tax issues, but the artists were under the impression that they had a three-year commitment on the same terms. Additionally, section 16 of the lease included new earthquake fault warning language.

Responding to Mayor Comstock, Ms. Powell confirmed that there were events scheduled in the MUR through August. There were also times when the MUR would be used for meetings when the Schoolhouse couldn't accommodate everyone. No new requests were being taken for classes, but classes that had been in existence were continuing--as decided by the Council.

Councilmember Davis said a contract had been made with the artists who leased the studios. He felt it would be awkward and unnecessary to limit visitors to 1-2 people.

Councilmember Toben concurred. He was also concerned about the potential disparity of treatment between the artists and the operators of the art classroom, hapkido, and nature center. They served a very different and much larger population. Ms. Powell noted that the classes were treated differently. The Art Gallery and the artists in the studios provided their own insurance. The Town allowed the classes to purchase insurance through the Town's provider. The artists' studio leases required that the lessees obtain their own insurance. Responding to Mayor Comstock, Ms. Sloan said there was no lease with the teachers. The Town co-sponsored the classes because they provided services for the Town children. Responding to Councilmember Toben, she said there was insurance for the classes, but it was not independent from the Town's insurance. Given what the Town was willing to accept in terms of risk for the heavily populated classes, Councilmember Toben said he was disinclined to impose a greater burden than already imposed on the artists for the use of their space.

Councilmember Merk moved approval of Resolution No. 2128-2004 Approving and Authorizing Execution of the Lease Agreement Between the Town and Adele Seltzer. Councilmember Davis seconded, and the motion carried 4-0.

Councilmember Merk moved approval of Resolution No. 2129-2004 Approving and Authorizing Execution of the Lease Agreement Between the Town and Stephen Browning. Councilmember Davis seconded, and the motion carried 4-0.

(6) Approval of an Agreement with Environmental Planning Consultants (Removed from Consent Agenda)

Referring to Ms. Powell's memo of 6/29/04 on the retention of Environmental Planning Consultants for CIWMB reporting, etc., Councilmember Merk said Task E of Exhibit "A" should read "...all clean-up events..."

Councilmember Merk moved approval of Resolution No. 2130-2004 Approving and Authorizing Execution of the Lease Agreement Between the Town and Environmental Planning Consultants. Councilmember Toben seconded, and the motion carried 4-0.

(7) Adoption of the 2004-2005 Appropriations Limit (Removed from Consent Agenda)

Referring to Ms. Nerdahl's memo of 7/9/04 on the 2004-2005 Appropriations Limit, Ms. Powell confirmed for Mayor Comstock that the Town was \$525,648 dollars below the cap, which was \$2,735,878. Mayor Comstock asked that the statement in the memo referring to the limit totals be reworded.

By motion of Councilmember Toben, seconded by Councilmember Merk, Resolution No. 2131-2004 Determining and Establishing the Appropriation Limit for 2004-2005 was adopted by a vote of 4-0.

(8) First Amendment to Architectural Services Agreement

Referring to Ms. Powell's memo of 7/7/04 on the first amendment to the Siegel and Strain Architects agreement for additional services, Mayor Comstock noted that the cost was now \$25,000 as opposed to the previously discussed amount of \$12,000. Responding, Councilmember Merk referred to the comparison of additional services chart prepared by Siegel and Strain and noted that more services were being provided

than initially discussed, such as the review of parking, circulation, etc. Those things would have to be looked at at some point, and he felt the additional work was necessary.

Councilmember Merk moved adoption of Resolution No. 2133-2004 Approving and Authorizing Execution of a First Amendment to the Agreement for Professional Services Between the Town and Siegel & Strain Architects. Councilmember Toben seconded the motion.

Responding to Mayor Comstock, Mr. Strain said an artist's rendering of the project from a bird's eye view would be available when it was down to one scheme. Mayor Comstock said that would be of vital importance when the Town started asking people to contribute to the project.

Mayor Comstock called for a vote, and Resolution No. 2133-2004 passed by a vote of 4-0.

(9) Status of Town Center Project

Ms. Powell said the staff had successfully moved from the old building into the modular building. As of Monday, Town Hall was operational and business opened Tuesday morning. Everyone was happy with the new building and felt a lot safer. Councilmembers commended staff on the way the move had been conducted. Responding to Councilmember Davis, Ms. Powell said the emergency radios/antennas would be installed following input from the Emergency Preparedness Committee.

After discussion, Council agreed the demolition of the administration building should be agendized in September. Responding to Mayor Comstock, Ms. Powell said a decision on temporary buildings for the classes had been deferred. There were concerns about placement and power. Councilmember Davis noted that the users of the art room were concerned about proximity to bathrooms, safety of exiting and entering, etc. Mayor Comstock suggested deferring a discussion of the classroom issue until a master plan was developed.

(10) Response to the 2004 Grand Jury Report

Ms. Sloan reviewed her memo of 7/2/04 on the 2003-2004 Grand Jury annual report. She said the recommended modifications to the Town's Personnel Policy Manual would be brought back to the Council. Responding to Councilmember Davis, she said the due dates for actions recommended by the Grand Jury report could all be changed from September 1 to October 1 in the Town's response letter.

Council agreed to forward the response letter as amended.

COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

(11) Approval of 2004-2005 Planning Program

Mayor Comstock referred to Ms. Howard's memo of 6/30/04 on the 2004-2005 planing program and budget. He noted that Town Planner Mader was unable to attend tonight's meeting.

Councilmember Davis said the expense of the Planning Commission was driven by the Planning Commission itself and the Council. He said the Council and Commission needed to be mindful that there was a budgetary limitation.

Councilmember Toben noted that the mechanism put in place that included quarterly reports for tracking the budget had been helpful following the problem that occurred two years ago.

Councilmember Merk said while the Planning Commission had gone over budget in the past, they should not be blamed. It was a combination of what was brought to them to deal with and the public response. More often than not, public questioning raised additional issues in addition to questions raised by the Commissioners. It was a price the Town paid for having an excellent planning structure. He agreed, however, that the budget needed to be monitored.

By motion of Councilmember Davis, seconded by Councilmember Merk, the Council approved the 2004-2005 Planning Program in the amounts shown in the memo of 6/30/04 by a vote of 4-0.

(12) Addendum to Advisory Committee Handbook

Ms. Powell reviewed her memo of 6/30/04 on the addendum to the Advisory Committee Handbook on fundraising. When the handbook was reprinted, it would be incorporated as a regular chapter.

Councilmember Merk said the addendum did not address anonymous donors. Ms. Sloan agreed something should be included about donors who wanted to remain anonymous to everyone. A lot of these donors worked with a bank or a foundation such as the Peninsula Community Foundation. If a donor wanted a donation to remain anonymous, some language should be added indicating that: 1) the donation should come from an institution or non-profit organization; and 2) the donor should remain anonymous to everyone. Responding to Councilmember Davis, she said the donation could come from the donor's attorney or banker. Councilmember Merk suggested indicating donations had to come "through...." Ms. Sloan agreed and said the language could indicate that the donation could come through or from a person/representative as long as it wasn't a gift or a campaign contribution. She said she would work with staff on the language.

Councilmember Davis agreed some procedure for the Committees was needed but thought it should be broader to include people who wanted to give money directly to the Town.

Responding to Councilmember Toben, Ms. Sloan said if one Councilmember knew who an anonymous donor was, there was no obligation to share that information. It only became complicated when there was a written record, such as a letter from the donor, which was a public record.

(13) Consideration of Town Informational Mailer

Referring to Ms. Powell's memo of 7/6/04 on the options for an informational mailer, Councilmember Toben said the Town had made some nice strides in the last couple of years in terms of public information. What was proposed was similar to what the Town of Woodside used. Responding to Councilmember Toben, Councilmember Merk recalled that mailers had been budgeted at \$10,000. Referring to Ms. Powell's memo, Councilmember Toben noted that there would need to be 24 mailings rather than 12 to cover all Council meetings. In general, he thought this was a good direction to go in.

Councilmember Davis felt very few people would be interested in generic meetings. While he shared the spirit of wanting more communication, he questioned whether it was necessary to have mailers for every meeting. He was more comfortable using mailers for agendas with items of high interest.

Councilmember Merk agreed. Referring to the sample mailer, he said if he got one of these every two weeks, he would call the Town and asked to be removed from the junk mail list. Mailers for things like land use issues, major planning, ordinances, riparian corridor, fencing, subdivisions, etc., would be more

appropriate.

Councilmember Davis thought mailers would also be appropriate for certain Planning Commission meetings as well. Responding to Councilmember Davis, Councilmember Toben agreed with the suggestion to make a judgement in anticipation of important items which would trigger a mailing. This had worked with the charrette and comments indicated people were pleased that the Council was reaching out to the community. Councilmember Merk added that with any judgment call, there would always be someone who would complain about the judgement.

Councilmember Toben suggested that the Mayor and Town Administrator decide whether an upcoming agenda justified a mailing. Councilmember Davis felt the liaisons to the various Committees should indicate when an issue of importance was coming forward. For example, the Traffic Committee was still ruminating about an extra stop sign; that issue had a lot of interest. When that issue came forward, the discussion would include the whole concept of stop signs in Portola Valley.

Councilmember Toben said a short narrative of the situation might also be included in the mailer. Councilmember Davis suggested using headlines such as "Should we demolish the old administration building?" Some discussion could be included that addressed, for example, use of bathroom facilities, re-use of materials, etc.

With respect to format, Councilmember Merk said the half-fold option offered twice the print area at a lower price. He also agreed that something of importance before the Planning Commission or ASCC should be noticed in mailers.

Responding to Councilmember Toben, Ms. Sloan said it would be appropriate for her to see mailers that included comments or a narrative to ensure that the Town was not using public funds to advocate a position. That could be worked out issue-by-issue. Additionally, she thought using bright colors would make mailers stand out from the rest of the junk mail.

With respect to the updated mailing list, Councilmember Davis confirmed for Councilmember Toben that if someone owned property in Town; paid taxes; had trash picked up by GreenWaste; was part of the Westridge, Ranch, or Blue Oaks homeowners' association; or lived at the Sequoias, they were definitely on the list.

Mayor Comstock said the information on the mailers would have to go on the website as well. In the website version, there might be a way for someone to e-mail the Town if they preferred not to receive a mailer. That would reduce the number of mailers. Additionally, he asked to see a copy of one of the Woodside circulars. He thought that the staff should go a little further and address what should be included in the mailers, frequency, how to control the mailing list, etc. He confirmed for Ms. Powell that the Council preferred the half-fold option and asked that an example reflecting the Council's discussion also be provided. Responding to Councilmember Toben, Ms. Powell confirmed that the post office did not require that the half-fold mailers be sealed.

(14) Reports from Commissions and Committee Liaisons

(a) Airport Roundtable

Councilmember Toben said he attended the last airport roundtable meeting. Along with Nate McKittrick, he said he would be pursuing the noise issue, over-flight patterns, etc.

WRITTEN COMMUNICATIONS

(15) Town Council 6/25/04 Weekly Digest: None

(16) Town Council 7/2/04 Weekly Digest

(a) Council of Cities Meeting

In the Mayor's absence, Councilmember Davis said he would attend the Council of Cities meeting on July 23, 2004.

(b) Traffic on Los Trancos Road Generated by Palo Alto Projects

Referring to the Traffic Committee's memo about construction traffic on Los Trancos Road, Councilmember Toben said the basic issue was whether the Town could claim any kind of damages for traffic and construction impacts that resulted from transiting trucks and other usage to serve Palo Alto addresses.

Councilmember Merk said there used to be signs on Los Trancos Road that indicated "no through commercial traffic without a permit." Additionally, when the quarry was operating, the Town generated some revenue because their trucks passed through Town. He thought there might be something similar for the construction traffic generated by projects located in Palo Alto. He pointed out that this was somewhat similar to the issue raised by John Boice in the Highlands.

Responding to Councilmember Toben, Ms. Sloan said some cities required certain sized trucks to pay a fee. The problem was enforcement. The construction fee in Town was enforced because it was tied to the building permit. She noted that staff was working on collecting data for the John Boice/Woodside Highland's issue. After discussion, she said she would research both issues for a discussion of options in September.

(c) Sand Hill Road Project

Referring to the July 2004 notice on the Sand Hill Road project, Councilmember Toben said he was very impressed by the quality of information that was coming out about the traffic impacts, etc., from the project. Describing how information was made available, he said this was a good example for the Town of how the public could be kept informed.

(17) Town Council 7/9/04 Weekly Digest

(a) League of CA Cities Designation of Voting Delegate for Annual Conference

Referring to the League's letter of 6/30/04, Councilmember Davis said he had attended the conference in the past and found it extremely interesting. He volunteered to attend the upcoming conference in September. He described a previous conference.

ADDITIONAL AGENDA ITEM

(18) Gift of Personal Property (Added earlier as urgency item)

Councilmember Davis described his intent to offer staff some of his personal property that he no longer needed. Because the Town had recently put rules into place for gifting to members of staff, he wanted

Council's concurrence that in this case, those rules did not apply. His proposal was that any member of staff and their family come to his house and take whatever they wished; whatever was not taken would be turned over to other organizations. Items included glassware, furniture, etc.

Ms. Sloan noted that the Town policy said that staff members should not except gifts from residents unless they were things that were edible and could be shared with the whole staff. The State law (Political Reform Act) required Councilmembers to fill out forms once/year that indicated investments, income and gifts. She listed the people who were required to fill out the forms. The Council had the duty to determine what employees of the Town exercised sufficient discretion over projects and needed to be bound by the conflict of interest rules. Those designated positions were listed in the Town's code and bound by FPPC rules. If you were not one of those people, you were not bound by the State law rules; if you were, you had to report gifts that were \$50 and more. You were also prohibited from receiving a gift(s) from anybody within your jurisdiction that aggregated \$340. Under State law, Councilmember Davis could offer his personal property to everyone at Town Hall except those in the designated positions. However, the Town's policy said that Town employees should not solicit or accept individual gifts or gratuities other than edible/drinkable gifts offered to the entire Town staff. She added that the Town's position was a policy--not an ordinance. If the Council felt that in this case it was appropriate, she thought an exception to the policy could be made.

Mayor Comstock felt it was a question of interpreting the policy. He did not think that these were gifts. Councilmember Merk disagreed. Councilmember Toben noted that there was case law on what defined a gift. Ms. Sloan agreed that this would be a gift; it was something that had value that Councilmember Davis was giving away.

Councilmember Davis said the difference here was the motivation. He was not trying to influence anyone but wanted to have people locally benefit from what otherwise would be distributed elsewhere. He was also not being specific; the items were there to choose or not.

Councilmember Toben felt it was an appropriate circumstance for permitting an exception to the general policy--given the uniqueness of the circumstance and the extent of disclosure. He was comfortable with permitting this one-time action on the part of Councilmember Davis to offer his surplus to members of the Town staff who were not covered by conflict of interest rules.

Councilmember Merk said the Council had voted on the policy, and he felt it should stand. He was not comfortable with an exception.

Mayor Comstock said when the policy was set up, the Council hadn't considered all of the kinds of scenarios there might be. The policy was excessively general, and he thought it was entirely appropriate to recognize an exception.

After discussion, Councilmember Toben moved that the Council permit Councilmember Davis to give away surplus property to members of the Town staff who were exempt from State law governing conflicts of interest as a one-time exception to the Town's personnel policy. Mayor Comstock seconded, and the motion carried 3-0, with Councilmember Merk abstaining.

#### ADJOURNMENT

The meeting adjourned at 9:47 p.m.



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Mayor

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Town Clerk