

REGULAR TOWN COUNCIL MEETING NO. 634, OCTOBER 22, 2003

ROLL CALL

Mayor Driscoll 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, K. Comstock, Davis and Merk, and Mayor Driscoll  
Absent: None  
Others: Town Planner Mader, Town Administrator Howard, Town Attorney Sloan, Deputy Town Clerk Hanlon, Dir. Admin Services Powell, and Planning Manager Lambert

ORAL COMMUNICATIONS

Russell and Kay Erickson said they were hoping to be able to rebuild their home that had been damaged by the recent fire. Mayor Driscoll offered condolences on behalf of the Council and said the Town would do what it could to help.

(1) Presentation on Charrette Process

Steve Toben, Town Center Citizens Advisory Committee and Planning Commissioner, reviewed his e-mail to Mayor Driscoll sent on 10/8/03 on the charrette process he recommended for the Town Center project. Based on his work with the Committee and the Planning Commission, he had a fair degree of confidence that pursuing an unconventional method for dealing with the design phase of the Town Center project might be in the interest of the community. There was a large degree of consensus among people who had an interest in the future of the Town Center that a novel process that was more intensive and involved a concentration of experts in this area might yield a more cost-effective result than the more traditional process. Responding to Councilmember G. Comstock, Mr. Toben explained that charrette is a French word meaning "cart." The term is thought to have originated at the Ecole des Beaux Arts in Paris when a cart was sent around to collect students' architectural drawings/plans as they scrambled to meet deadlines.

Linda Weil, Carter Warr, and Kevin Schwarckopf used a Powerpoint presentation to discuss: 1) the 4-day charrette process proposed; 2) participation by professionals; 3) why the Town would benefit from a charrette; 4) why charrettes worked; 5) the goal of the process; 6) sample charrette products; 7) the preparation phase for the charrette; and 8) the charrette team (i.e., architects, planner, landscape architect, transportation planner, geologist, public finance person, etc.). Councilmember G. Comstock said he would also like to see an environmentally experienced person who was familiar with sustainable concepts, green architecture, etc. Responding to Ms. Weil, he said he wanted the person to be a co-equal and not a subhead under "architects."

Continuing with the presentation, Ms. Weil and Messrs. Warr and Schwarckopf discussed: 9) the 4-day charrette work cycles; 10) representatives from the Town staff/committees that should attend; 11) differences between a charrette and other planning processes; 12) when the charrette process was typically used; 13) the cost of a charrette process; and 14) what happened after the charrette.

Mr. Toben urged the Council to consider pursuing the design of the Town Center using the charrette process in the next several months. He said the stakes were sufficiently high in this instance, and pursuing a process that would help people behave, act and think differently would be beneficial. He noted that Planning Commissioner McIntosh had participated in a similar venture in Napa County and believed strongly in its potential. He said he knew that there was a lot of history on this project, but his firm belief was that the

Town could achieve an extraordinary result that would avoid the fate of the Los Altos town hall. The charrette provided a far better prospect of a satisfactory result that the entire community could be proud of.

Responding to Councilmember Davis, Mr. Warr said the baseline for the project would be for the Council to make some very specific decisions--some of which had already been made through the Citizens Advisory Committee (e.g., where the Town Center should be). One of the other major decisions was what the Town Center should include. These threshold items could be tentatively or firmly agreed on. What the project consisted of would need to be understood for the preparation of the charrette and the design. The charrette process would be used to design the project and also refine what was being designed. The more concrete you were about what the community wanted and what the process would design, the more likely it would be that a positive and buildable plan would result. He confirmed for Councilmember Davis that the charrette process would not be a reconsideration of: 1) the functions; or 2) the placement of the Town Center. It was a design process.

Responding to Councilmember Davis, Mr. Schwarckopf said part of the preparatory process was to do an outreach program to the community so that everyone knew what was planned, when, and the time periods. This would be done on a multiple basis and would not be just a single flier that went out. Mr. Warr added that this would be done far enough in advance so that people could rearrange their schedules.

Councilmember K. Comstock said the Council had acted pretty completely on the baseline issues. When the Advisory Committee's recommendations were presented, the Council had given direction to staff on where the Town Center would be, etc. At that time, the idea of a charrette surfaced. He had reacted negatively to it because he misunderstood the process and the intended result. Knowing how long it had taken to get to this point, if the charrette could be done in 4 days, he supported it.

Responding to Councilmember Merk, Mr. Warr said members of the Council, Planning Commission, ASCC, and other Town bodies could/would be part of the process. Ms. Weil added that as part of the preparation, there would be a list of key stakeholders that would be developed who would be contacted to make sure that they would be able to participate. Councilmember Merk asked if a councilmember would be barred from providing an opinion in a charrette because that councilmember would be voting on the decision at a later time. Responding, Ms. Sloan said the memo that she wrote on this issue divided things into two categories. First, with quasi-judicial decisions, such as actions on projects/variances, the councilmember could be accused of bias if he spoke up at a Planning Commission meeting and then later had to act on that item. Choosing a design of a Town Center was not that kind of decision. The other category addressed in the memo was based on feedback from one or more committees that at times when they were working on their own and a councilmember showed up, they felt a little intimidated or pushed in one direction; this was contrary to how they saw their charter. She did not have a concern with this issue.

Councilmember G. Comstock liked the idea of 4 days. If that could be done, that would be fantastic. Responding to Councilmember G. Comstock, Ms. Sloan said more than two Councilmembers could attend if it was noticed as a special meeting. Responding to Ms. Weil, she said there need not be any special protocol if these were special meetings. The agenda would include a roll call, followed by the charrette, and then adjournment. Responding to Councilmember G. Comstock, Ms. Sloan said it would also be considered a special meeting of the Planning Commission and ASCC if they were all invited.

Mayor Driscoll said he had had some experience with large, unwieldy committees. Responding, Mr. Warr confirmed that there would be a professional facilitator. Mayor Driscoll said he had been a little skeptical at first because of the amount of time already spent on this project--even though the majority of the meetings had been about the issues of "where" and "whether" as opposed to what it should look like. There was some consensus on the "where" issue and money was being spent to confirm the feasibility of that issue. It

might now be appropriate to consider this kind of design process. He could support the process. Once the trenching was complete and financial issues were better understood, he suggested agendaizing the confirmation of processes/schedules.

Town Planner Mader said one of the advantages of this would be to get people to buy into the process. An old teaching statement was: "Tell me, I'll forget. Show me, I'll remember. Involve me, and I'll understand." That process was really important because people became a part of it. The synergy that came out of these could be really important, as long as it was controlled. It was good that there was a starting point and that some decisions had been made. If done right and well managed, it could be very exciting.

Mayor Driscoll said he did not think there would be as wide a diversity of opinion of people in Town about design issues as there had been about some of the programmatic/location issues. With those decisions made, the Town could move forward with a process like this that would help pull things back together again. One of the difficulty people had had about whether and where to do things was an inability to visualize what was being talked about. This process would hopefully yield the positive aspects of what the Council was talking about. Ms. Weil agreed that it was a very visually oriented process. Mayor Driscoll thanked the presenters.

#### CONSENT AGENDA

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

Ayes: Councilmembers G. Comstock, K. Comstock, Davis and Merk, and Mayor Driscoll  
Noes: None.

(2) Warrant List of October 16, 2003, in the amount of \$106,024.85.

#### REGULAR AGENDA

(3) Minutes of the Town Council Meeting of October 8, 2003 (Removed from Consent Agenda)

Councilmembers Merk and G. Comstock submitted changes to the minutes of the October 8, 2003, meeting. By motion of Councilmember Merk, seconded by Councilmember K. Comstock, the minutes were approved as amended by a vote of 5-0.

(4) Town Administrator Employment Agreement (Removed from Consent Agenda)

Councilmember Merk said he wanted it noted that he was in disagreement with the conclusions arrived at for the Town Administrator's Employment Agreement. By motion of Councilmember K. Comstock, seconded by Councilmember Davis, Resolution No. 2085-2003 Approving and Authorizing Execution of Amendment No. 3 to the Town Administrator Employment Agreement Between the Town and Angela Howard was approved by a vote of 4-1 (Merk).

(5) Report from Consultants Diane Woods and Stacie Cusulos on Staff Interview Findings

Mayor Driscoll noted that the purpose of this item was to receive the report from the consultants on the Team Building project as described in Ms. Howard's memo of 10/14/03.

Stacie Cusulos discussed the background for the project. She reviewed: 1) the intent of the staff interviews;

2) questions formulated for the interviews; 3) the importance of the preservation of anonymity; and 4) the intention to take a macroview in order to come up with a content and process that would help staff in looking at both short- and long-term goals.

Councilmember Merk said it was his understanding that in very small groups in organizational development, anonymity was almost impossible to maintain when there were very few people involved. Responding, Ms. Cusulos said individual staff members had been told that when they were interviewed, the questions and responses in particular would be anonymous. She said they can't control what people did once the interview was over; but whatever came forward to us was held as sacrosanct. In addition, she and Ms. Woods emphasized strongly that people honor the confidentiality issue both in terms of themselves and others. They did not want any undermining to take place. The idea was not to be destructive but constructive; everybody had a responsibility to uphold that. There could always be loopholes, but the intention, purpose, and communication of this was very clear from the beginning about anonymity. With a small staff, that was very important. It was she and Ms. Woods's experience that staff felt comfortable once they understood the confidentiality and anonymity issue. In fact, they were very delighted with the responses they received. People had been very forthcoming, honest, humorous, and had focussed on things they wanted to see improved as well as things that were going very well.

Continuing the presentation, Ms. Cusulos said subsequent to the interviews, the report had been written which gave a 5,000' elevation look at what had been heard and pointed out a direction of where things could go in the future and what would move things ahead. Subsequent to that, staff members had an opportunity to see the report. From that came a one-day workshop which was held earlier this year. They thought that had been a lot of fun with a lot of good, hard work. The intention was to build relationships, identify areas going well that could be enhanced, and identify areas needing improvement. The reception had been very good with a lot of energy. Ms. Howard would discuss the action that came out of that. Responding to Councilmember Merk, she said the report provided at the staff retreat was the same as the report presented to the Council with the exception of one piece, which had now been returned. She said Ms. Howard and Ms. Powell had already presented that to the Mayor.

Diane Woods said this particular model had been chosen in order to report something outside of what Ms. Howard had asked be done. Ms. Howard wanted us to look at those domains that were under her control (e.g., staff, communication, career planning, customer services, etc.). There were, however, two buckets of data that came from the twelve staff members: 1) those things that were under Ms. Howard's control; and 2) things in the environment outside of her control that were also impacting the effectiveness of the staff. Referring to the report (p. 3), she noted that all staff members expressed appreciation for Ms. Howard initiating this effort and being able to participate. She said there was an overwhelming hue and cry that the Town Council was generally oriented towards what was not working rather than what was working. Additionally, the Town Administration was in transition from decades of being much more informal to now having increased its work output and number of people on the staff; it was therefore moving toward a more formal structure. What could pass between 2, 3 or 4 people was now more difficult to do now that there were 12 people. These were the things that were outside the Town Administration's control. Referring to page 5, she said she and Ms. Cusulos wanted to make sure that those things that were working well were underscored. One bullet note under What's Working was that the Town had talented, knowledgeable, dedicated, hardworking folks who had lots of output. The amount of work that was done on a daily basis was remarkable; that might be because we are used to working inside corporations. She said this was refreshingly different here. Under Needs Attention (p. 5), she said Ms. Howard would address the resolution to 3-4 things that had already happened.

Referring to Structure and Support (p. 7), Ms. Woods said staff often commented that they really enjoyed the beautiful, nurturing setting that they worked in. Under Needs Attention, staff commented that there wasn't

workspace for the whole team to get together. Referring to page 8, she said to a person, everyone agreed with the notion of listening to the needs of the customers and responding. What needed attention was a communication competency. People felt that they were committed to increased communication, but in some cases, that commitment was much higher than competence (i.e., how do we enter into difficult conversations, how do we resolve decision making when there are various points of view, etc.). Referring to page 10, she said the Analysis of Strategy indicated that short-term projects were working well; these were projects that were executed by groups of 2-3 people. But, the long-term strategy of the entire Town Administration needed some attention; it helped in efficiencies over time. Referring to page 12 and the Analysis of Mission, Vision, and Values, she said what was working was the high quality of customer service. What needed attention was a mission statement for the Town Administration. Ms. Howard would speak to that. Referring to page 13, she reviewed the recommendations.

Ms. Howard thanked the Council for approving this expenditure. She thought this process had been of great benefit. She also thanked Ms. Cusulos and Ms. Woods for helping the staff feel comfortable and finding direction for the work that needed to be done. She thanked the staff for participating in the process freely, for their hard work, for their commitment to the process, and for the dedication to the Town. She reviewed her memo of 10/14/03 on what the staff had done during the one-day workshop ("offsite"), the sub-groups formed to focus on areas within our control, and the work that staff had completed to date, including the mission, vision, and values statements. In addition to that, she said staff had spent some time coming up with new ideas for making the working environment better. Staff wanted to continue to create a stronger team. To that end, staff would try to do more things together, such as holding a potluck and having a staff workshop in November that would specifically target communication amongst ourselves. A policy was also being developed for a staff anniversary/service recognition program. There were also plans to document a lot of Town policies and procedures similar to the process used to develop the Personnel Manual. She said the work that began with the staff surveys had provided a new and interesting direction. She felt the staff had a renewed sense of accomplishment; everyone came out of that workshop feeling good and that we had accomplished a great deal. For those issues listed in the report beyond the staff's direct authority or control to change, she hoped that staff would be able to work with the Council, committees and residents to find creative solutions to address these issues.

Councilmember K. Comstock asked if the original contract included any provisions for a re-convening six months from now to bring these outside eyes back in to see how things were going. It was sometimes hard to examine your own processes. Ms. Howard said the consultants had been asked to come back for the workshop in November; part of that would be a review and part would be a starting point to continue what had been accomplished so far. Ms. Cusulos said there were other venues to look at the diagnostics six months later; that would be up to Ms. Howard and her team. The November workshop would focus on communication issues that had crystallized, such as performance and relationship building amongst the staff. Councilmember K. Comstock suggested that there should be some time following the initial burst of enthusiasm to see how things were developing.

Councilmember G. Comstock thanked the consultants and staff for the work done putting this whole thing together. Referring to the report (p. 3), he said there were two items that really got to him. One bullet said the Town Council was oriented to what's not working, and the last item said little appreciation was expressed by the Council to the Town Administration. He felt very badly that those items came up during this study. He felt remiss in not doing his part to make sure this not happen that way. He offered his apology and also wanted to express his appreciation for what a good job the staff was doing. His alibi was that he didn't want to disturb the staff because they were so busy. He was sorry that the Council had not adequately expressed appreciation for what they had done. As to having a "what's not working" attitude, he guessed he was as guilty as everyone on that. The problems always got the attention. There was so much that was right about this Town and the way it worked.

Ms. Cusulos thanked Councilmember G. Comstock for his comments, which meant a lot to people. She also did not think it uncommon to focus on problems. Rarely did people stop and register accomplishments and express appreciation to one another. It was so important to make those moments count rather than just go on to the next issue or problem.

Councilmember G. Comstock said he wanted to emphasize this whole team concept. It was not just that the staff was a team, but he felt that the ASCC, Planning Commission and Council along with the staff constituted a great big team that was trying to get the whole job done. He liked to be viewed more as a team member than as a person who always focussed on what's not working and never said thanks.

Mayor Driscoll said a lot of the activities in a small town were accomplished by outside consultants; about half of the functional staff in Town had been part of this process. He asked if Ms. Cusulos and Ms. Woods felt it might be appropriate to also speak to some of the outside consultants and service renderers in order to get a fuller picture of how the whole system worked. Responding, Ms. Woods said their charter was confined to seeing how the effectiveness of Town Administration could be improved. The larger the scope, the more information was obtained. But, by confining the scope, we were able to be very focussed and concentrated. As a result, many of the bullets contained in the report had already been resolved or were well on their way. Responding to Mayor Driscoll, she said it would have been insightful to have had the eyes and ears of some of the volunteers and consultants who were part of the larger team of which Town Administration was a subset. Ms. Cusulos added that this could take place in some other way in the future. An advantage of having gone somewhat smaller at first was not to dilute the attention needed by this smaller group. Mayor Driscoll said part of Ms. Howard's challenge now would be to sell the work that had been done to the external group so that everyone felt they shared the mission, vision, values, etc. They were the overall group that the citizens got served by and paid for.

Referring to the Analysis and Strategy section (p. 10), Councilmember Merk asked for clarification of the Needs Attention bullet that read "Competency development for long-term (reduction of consultants)." Ms. Woods said staff members had indicated that they were doing an effective job within the confines of their job description and that they had aspirations for the future, including more work within their domain. One of the alternatives was to see in some long-range plan if there was work that could possibly be skilled up and done by staff members that was now being done by external consultants. For example, within a year, someone could internally do a facilitated "offsite" on communication skills. If done well, it could reduce reliance on external consultants in terms of cost and internally give the staff job expansion, which was a part of job satisfaction.

Referring to page 3 and the bullet "Responsibility and authority of volunteers and consultants - unclear," Councilmember Merk asked for clarification. Ms. Woods said they noted that as the size of both the consultant population and the size of the staff grew, boundaries became confused. Right now, there was no formal sit-down assembly of all consultants and staff members coming together for periodic review to touch base on boundaries, opportunities for collaboration, where there was overlap, and where there might be gaps. Because there was no communication vehicle/process right now in place, it led to some confusion from time to time.

Ms. Lambert also thanked the Council for giving staff the opportunity to work closely with Ms. Cusulos and Ms. Woods. She said they were easy to open up to and talk to, and they really appreciated what a small staff went through on a day-by-day basis. From the interviews and the one-day workshop, the staff all came away much closer and more comfortable to move on to the next phase and work towards every task that came up together.

Referring to page 3 of the report, Councilmember Merk said there was a bullet which was in the original report, had been left out of the report at the time staff discussed the report at the retreat/workshop, and then put back in the report. He asked for an explanation as to why the bullet was there and why staff was not given the opportunity to discuss that issue along with all of the other ones that they discussed in the retreat/workshop. Ms. Woods said this was our recommendation. This particular bullet had been withdrawn because it fell outside of the context and domain of Town Administration and therefore what staff could resolve. They thought this was something that was over and above what the staff members as a whole team could resolve. Therefore, we left it out. They thought it was something that was a domain above them.

Councilmember Merk asked why it had been brought back at the staff meeting of October 16. Responding, Ms. Woods said they wanted to be as open, clear, honest and complete as possible before the Council tonight. We felt it was important that staff get a full report before the Town Council received the full report. That was different from going to an offsite where the intent was to look at what the staff could effectively work on together. That was the purpose of the offsite. One was so that work could begin; the other was so that information was received.

Councilmember Merk said that did not answer his question. Ms. Woods said they wanted the offsite to be effective and all of the items addressed that day to be do-able. There were 2-3 intentions in mind. One was that they would be inspired. Two, that they could see work that they could tackle and, through problem solving and creativity, actually come up with resolution and see that they were moving forward. Three, we were doing teambuilding. When dilemmas are raised and your hands are tied, it tended to frustrate rather than motivate. They wanted the people who had both the power and foresight to respond to this to be the people who wrestled with the dilemma, as opposed to staff who had wrestled with it but had no power to respond.

Ms. Cusulos added that the bullet was in the report because it came up in the interviews, and it was a very present theme in the interviews. It was on people's minds and weighed on people. It came forward very clearly that this was impacting performance. People felt badly--not so much angry but just not knowing what to do--and a sense of frustration. As part of their job to be responsible and totally honest with the report, it had to be included just like anything else; although, we recognized the nature of the sensitivity. In terms of the decision, she said part of it was that one of the persons here was going to be in that offsite. They wanted that person to feel that they could fully contribute and have an opportunity to come forward with their contribution, which she felt had happened. It could have gone very differently if the bullet had been in there.

She thought people would have been frustrated. It would have been hard to talk about because this was a very difficult issue to talk about. She felt it could have seriously derailed what they were trying to do. Finally and most importantly, she felt this was an issue that belonged with the Council. It was a diagnostic. You walked into a doctor who said you had some kind of gall bladder problem and your options were a, b, or c. You walked out and decided what you wanted to do; sometimes, you decided not to do anything right now. This was information for the Council. In part, the intention and purpose of the consultants being here was to give you information and let you know what was going on and what was impacting both positively and negatively the performance of the staff. They would have been remiss if they didn't do this. On the other hand, it was not our intention to cause anybody unnecessary pain. To have had the bullet in the report during the offsite would have done that. Bottom line, this was a Council decision and Councilmembers needed to decide or not whatever it was that you wanted to do to respond--just like with any other issue.

Councilmember Merk said that was a pretty good answer. He asked when the Council would deal with this issue. Issues like this had come up in the past and been swept under the rug. He did not care to see that happen in this situation. He felt that he had been attacked and maligned. It did him great hurt to feel that he was backed into such a corner that he had to bring it up in this public session and do what he felt was damage to the Town--certainly in the short-term. He sincerely hoped that this was something that would help the Town in the long-term. He read a prepared statement:

"There is a bullet in this report which was included before going to the entire staff. It disappeared before the retreat day of discussions about the report and reappeared for this presentation to the Council. I can only assume that it is directed to myself and to the Recreational Facilities Coordinator. It highlights a 'perceived lack of impartiality - conflict of personal and business relationships between Councilmember and Town employee.' I know of no business relationship that is in any form of conflict to either position. I have discussed this with representatives of the Public Employees Retirement System, and I am assured that none exists. I have no business relationship with the Town. In terms of a personal relationship, there is one. And because of it, I consistently recuse myself from voting on issues which would be considered to be any form of conflict regarding that relationship. I do, however, occasionally vote on issues which pertain to the entire at-will staff, collectively. These occasions are with the full knowledge of the Town Attorney, being done in her presence. Perceptions of a conflict of interest have not been brought up in the past. When the current Recreational Facilities Coordinator was hired in August 1996, there was no mention of a conflict of interest. I was on the Town Council at that time. At each of his annual reviews, there has been no mention of any perceived conflict of interest. This issue has only appeared since this report was commissioned. In a telephone conversation with the Town Attorney on October 14, 2003, I was told that she was not aware of any conflict. She said that she had done some research on the subject when I was last elected to the Council in 2001 and found no conflict and that she did try to follow the changes in the law as they appeared. She did refer to one section of Government Code that has to do with a council signing contracts with an entity which has business with a councilmember. She has subsequently told me that my relationship is exempt from that section of Government Code (1060 I believe it is). She mentioned that PERS might be an issue. PERS denies that it is an issue. In fact, they have vigorously denied that there is any conflict under the law. The accusation has been made that at-will staff are afraid to speak at staff meetings or to a particular employee because 'Their words may get back to a Councilmember.' I know I have never attended a staff meeting, but I do not know whether or not other Councilmembers have. In any event, I do not believe that this is an issue for anyone other than the Town Administrator and perhaps, by her close association, the Director of Administrative Services. By position, the Deputy Town Clerk who is part-time has expressed no concern to me, and the nature of her job would not likely create a perceived conflict nor a real one. The maintenance staff, one person, could care less about an alleged perceived conflict. The maintenance coordinator would echo that sentiment with no concern whatsoever. I have known him for twenty years. The Deputy Town Clerk (Building and Planning) has expressed no concern to me, and the nature of her job would not likely create a perceived conflict nor a real one. The Deputy Town Clerk (Administration) has expressed no concern, and we work together easily and well. The Building Official has said that he has no concern directly to the Recreational Facilities Coordinator and to staff in the October 16 staff meeting. The Planning Coordinator has expressed no concern, and we work together easily and well. The Planning Manager has expressed no concern to me and has expressly remarked to the Recreational Facilities Coordinator that she is uncomfortable with the issue even being brought up. I have known her for about 12 years--her entire length of employment with the Town. The Town Engineer/Public Works Director has expressed directly to the Recreational Facilities Coordinator that he sees no conflict. The Director of Administrative Services and I have had no conversations on this issue. As expressed above, her close association to the Administrator may color her attitudes. Yet, I doubt so due to her highly professional conduct, which I have observed in all of our interactions. I do not have enough confidence in the professionalism of the Town Administrator to feel comfortable naming names. Nevertheless, through hearsay, I understand that at least six of the 10.5 at-will employees in Town Hall--I'm leaving out the Recreational Facilities Coordinator--see no conflict. An additional 2.5 of them, due to their positions, would be very unlikely to find any issue with the relationship. That leaves the two who I have mentioned above. One of whom may have an



issue, may not have an issue, or may have by proximity and position to the Town Administrator, an issue. I reiterate that I see this as an issue for the Town Administrator only and that the real cause has nothing to do with any form of conflict of interest. If there is a perceived conflict of interest in managing a Town employee with a connection to a Councilmember, then I suggest that it is from a failure of management skills and does not arise from the relationship. There are three degrees of separation to consider. First, the Councilmember has consistently recused himself from any business having to do with any at-will employee. Second, the Town Council gives direction to the Town Administrator under our current system. Third, according to the Town's responsibility flow chart, the Town Administrator gives direction to the Town Engineer (often called the Director of Public Works) the responsibility for the activities and duties of the Recreational Facilities Coordinator. This perceived fear may have much more to do with the fact that the Recreational Facilities Coordinator is the only Town Employee who lives in Town--a 29-year resident--and therefore has contacts within the community that are outside the control of the Town Administrator. Now, there is a chronology here. These following referenced employee reviews have been provided to me by the Recreational Facilities Coordinator after he was instructed by the Town Administrator to discuss this issue with me. On or near each annual date of employment, the Recreational Facilities Coordinator has had an annual review. In 1997, with Town Administrator Sue McGowen, he received a positive review. In 1998, 1999, and 2000, with Town Administrator Alex McIntyre, he received positive reviews. In 2001, with Public Works Director Kevin Rohanni and interim Town Administrator Angela Howard, he received a positive review. In 2002, with the current Town Administrator, he received a review in which not one single positive item was mentioned. In 2003, with the Town Engineer, he received a positive review. I can only assume from this chronology that there is a personal, and I suggest non-professional, bias on the part of the one person. Interestingly, not long after the so-called negative interview, the Town Administrator presented a memo to the Town Council in which she lauded the excellent group of employees that are working for the Town saying, in effect, that we could not have a more professional team. It should be noted that in the year following my election to the Council in November 2001--that means 2002--I began to question the management style being used at Town Hall. Before the October 16 regular staff meeting, the Town Administrator offered the option to the Recreational Facilities Coordinator that he not come to the meeting because of this perceived conflict...[tape change]...said at that time that he saw none. After the meeting, the Recreational Facilities Coordinator went to his supervisor, the Town Engineer, to discuss the matter and was told by his supervisor that he (the supervisor) had no problem and did not perceive a conflict.

Consistency of Report. A large body of materials of this report came out of the personal interviews with each of the staff. The so-called issues of perceived conflict of interest came up at this time. Why then, when the entire staff met on retreat for one day, was this issue specifically left out of the materials presented to the staff for discussion? You've answered that question quite well for me, thank you. Why was it left undiscussed at subsequent staff meetings until October 16, 2003? I can only surmise that this is because it was understood by the Town Administrator that she could find no support for the concept.

Simultaneous Interviews. On Monday, October 13, 2003, I had a meeting with Councilmember Ed Davis. He had requested the meeting late in the previous week. When we met in the parking lot, I discovered that he and Mayor Driscoll had discussed the materials he wanted to go over. I expressed concern about a possible violation of the Brown Act. He suggested that I should hear this first before I made a decision not to see the materials. The Town Attorney subsequently told me that this was probably not a violation of the Act. I was briefly shown two sheets of paper (and I emphasize the word "briefly") with a series of bullet points on different versions of page three of this report. He pointed to the one difference: the bullet referencing a 'Perceived lack of impartiality - conflict of personal and business relationships between Councilmember and Town employee.' He

then ominously stated that this report was going to be made public with the bullet included. He said that everyone (and I emphasize the word 'everyone') on staff was concerned and that there was not a clear line between when they were talking to a particular employee--the Recreational Facilities Coordinator--or to me. I said I did not believe the statement. Councilmember Davis continued saying there is a perceived conflict of interest and that the Town Administrator would be putting this bullet back into the report, reiterating that it would soon be made public. He said that if the Recreational Facilities Coordinator were my spouse, it would be an illegal situation. No evidence was given to back up that statement. And, a subsequent conversation with the Town Attorney and later with others proved it to be a false statement. I said that if there were a legal conflict, I would resign. He suggested that he preferred that I not resign and that the Recreational Facilities Coordinator find another job and that the Town might facilitate such a move. I replied that such a consideration was not my decision to make. Councilmember Davis said that perhaps nothing had to be done right now, but that the report was going to be made public, and he did not know what might happen. He then informed me that the Recreational Facilities Coordinator was having a concurrent meeting with the Town Administrator covering the same subjects. When I asked what he wanted me to do and what the next step was, he replied, 'I don't know.'

The Other Interview. All of this following description is from a conversation on the evening of 13 October between the Recreational Facilities Coordinator and Councilmember Merk. This is at the conversation that was given to the Recreational Facilities Coordinator at the direction of the Town Administrator. The Recreational Facilities Coordinator was called to a meeting with the Town Administrator on Monday afternoon the 13th of October. She told him that she had the results from the consultants who did the staff interviews and staff retreat. She said that she had initially removed an item from the draft that was presented to her and that now the report was going to the Council. On the advice of the Mayor, she was reinserting it into the report. The item had to do with a perceived conflict of interest between a Councilmember and a Town Employee and that others were uncomfortable with. She stressed that this information would soon be made public. She agreed with him that there was not a conflict when he was hired in 1996. She reported that Councilman Davis was having the same conversation with Councilman Merk, concurrently. She expressly wanted him to talk to Merk about this issue and to decide what to do. This description is the result of that request. He asked, 'What is there to do?' She replied that she had heard that he would resign if Merk won the election in 2001. It is unknown where she got this idea. She accused Councilman Merk of not helping when he used the name of the Recreational Facilities Coordinator in discussions of policies and procedures at a Council meeting. She said that she would not have them both in a room to talk about this issue because he had said some 'hurtful/mean' things to her and he was 'not talking to her.' She said nothing about finding him another job. I would like to explain some of these statements.

'Merk not helping at a Council discussion.' In the two meetings where the Policies and Procedures Manual was discussed at length, a number of issues having to do with employees came up. I used the Recreational Facilities Coordinator as an example specifically because an issue had come up where he had gone to the Town Attorney for direction, was given a direction, and the proposed policy was in contradiction to the Attorney's decision. Clarification was needed. I suggested many changes to the draft to promote fairness to all at-will employees. My colleagues supported many of these changes and voted to pass the proposal with its various amendments. I voted against the document because I felt other sections of it further eroded the power of the Town Council, moving the Town further from our traditional Town Clerk form of government toward a Town Manager form of government. This is an issue which has been hotly contested in years past and is slowly happening now without any public input.

'Saying hurtful/mean things.' On three occasions I have observed the Town Administrator disrespect our employees. In each case, I spoke to her directly about it expressing my displeasure and hope that I would not see it again. The first time had to do with public meetings where I'd ask a

question directly to a staff member responsible for a report being discussed, and she interrupted the employee's answer to answer the question herself. In her defense, she said that the employee did not have the knowledge to answer the question--an assertion I strongly doubt. I replied that I asked them in front of many people and that their job was to answer, and her response was to give them the courtesy to answer. If there was more information needed, she could add it when they were finished. The second time was during a Standard Emergency Management Systems introductory training when an employee had to leave to take her husband for scheduled dental surgery--if my memory serves me correctly--for which she had properly applied for leave. The Town Administrator snapped at the employee saying that she should not leave during the exercise, bringing that employee to tears. I observed this disrespectful act as it occurred, and it greatly lowered my esteem for the Town Administrator.

'Not talking to her.' The last three times I have been in Town Hall and seen the Town Administrator--now, this is the last three times up to this week--I have greeted her and received no reply. According to Councilmember Davis, he was told by the Mayor that she did not want me in her interview with the Recreational Facilities Coordinator. Who is not talking to whom? The Town Administrator has to, from time to time, sit down and talk to disgruntled citizens and volunteers. Where is the professional detachment needed to sit down with both of the people affected by this alleged, perceived conflict?

My Contentions. I have consistently recused myself from any materials having to do with the pay, assignments, duties, etc., of any of the Town's at-will staff. I have also consistently voted against any items that in my opinion would increase the power of the Town Administrator and/or decrease the power of the Town Council. I have observed poor management skills on the part of the Town Administrator in relationships to employees with whom I have no special connection other than in the ordinary working relationship at Town Hall. The Town Administrator has in her own words said to me that her greatest problem is one of control, that she needs to control everything, and, as a result, finds there is hardly time enough in the day to do her job. The Mayor, I might add, is very disturbed with me because I will not come on board to support staff.' By this he means Town Administrator. I have consistently supported at-will staff. He is annoyed because I have also consistently not supported the Town Administrator after observing the activities described above and because I have consistently supported retaining the traditional powers of the Town Council--powers which have served the Town very well for its first 35 years of existence. He seems to feel that as an elected Councilmember, I am obligated to conform to his view on this subject. Naturally, I do not share that view.

My Conclusions. This issue is about desire for control I believe. It has been brought up at this time, I can only guess, because of my political views about the management of our Town and my dissatisfaction with the performance of our Town Administrator. It has not been expressed during the past seven years. It has not been raised until I started to express my concerns about management as an elected Councilmember. It is hard for me to see it as anything other than a personal vendetta. I feel it is very unfortunate that the at-will staff has been pulled into this issue by the apparent manipulations of the Town Administrator and perhaps one of my fellow Councilmembers. This is grossly unfair to them and is indicative of at-will staff's concern about the lack of appreciation from the Council. The fact that both the Town Administrator and Councilmember Davis intimated by their speech and actions that having this item go public was an issue for myself and the Recreational Facilities Coordinator in terms of our relationship is an insult to us both. I have lived in Portola Valley for 43 years. The employee in question has lived her for 29 years. We have lived together for 27 years. We had been living together for 20 years when he was hired. He has worked for the Town for a full seven years without this matter being raised. The idea of outing us as retribution for my views only shows the total lack of understanding held by some of our standing as a couple within our community. In truth, I hope this perception of mine is incorrect. It is, in any event, beside the point. The real issue is the professional conduct of the Town

Administrator. The manipulation of reports, the unfair deflection of management inabilities from self to the at-will staff, the making of charges to discredit a dedicated employee and a dedicated Town volunteer to protect and hide her own inadequacies, and the inability to let go of being--again, to use her own words--a control freak. It saddens me to see someone speak for the group when they do not apparently share the consensus of that group. By trying to affect the employment status of a Town employee in such a way that the Town may be violating the employee's civil rights under federal law. There are more pages of this. I will not bore you with it further. I think I've read enough. Thank you for your time."

Mayor Driscoll thanked Ms. Woods and Ms. Cusulos for their report.

(6) Vacating of Storm Drain Easements on Lands of Shorenstein

Ms. Lambert reviewed the staff report of 10/15/03 and recommendation to summarily vacate an existing drainage easement and dedicate a new easement along the actual drainage course on the Shorenstein properties. Councilmember K. Comstock asked if the lot line adjustment of the properties impacted any trail or utility easements. Responding, Mr. Lambert used the map to show there would be no impact to any other easements, etc.

Councilmember G. Comstock said it appeared that this shift in lot line changed the areas of the two lots. Ms. Lambert said it was an even swap that allowed the owner to construct a carport on the property at 1260 Westridge without applying for a variance.

Councilmember Merk moved approval of Resolution 2086-2003 of the Town to Vacate Summarily the Storm Drain Easement on Lands of Shorenstein, 1260 Westridge Drive and Lot #116 Mapache Drive. Councilmember K. Comstock seconded, and the motion carried 5-0.

Councilmember Merk moved approval of Resolution 2087-2003 of the Town Accepting Grant of Storm Drain Easement on Lands of Shorenstein, 1260 Westridge Drive and Lot #116 Mapache Drive. Councilmember K. Comstock seconded and the motion carried 5-0.

COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

(7) Cultural Arts Committee Appointment

Referring to Marie Margolin's letter of 10/9/03 and Ms. Thomas's recommendation, Mayor Driscoll appointed Ms. Margolin to the Cultural Arts Committee. By motion and second, Council unanimously concurred with the appointment.

(8) Historic Resources Committee Appointment

Referring to Joan Leighton's letter of 10/1/03 and Ms. Lowengart's recommendation, Mayor Driscoll appointed Ms. Leighton to the Historic Resources Committee. By motion and second, Council unanimously concurred with the appointment.

(9) Discussion of JPA Library Governing Board

Councilmember K. Comstock distributed his memo on issues related to the JPA Library Governing Board. He said the consultant's report covered governance, lines of authority, etc. He said the Board and the Operations Committee were both comfortable with the recommendations, which needed to be fleshed out

and then reduced to specific agreement language. He discussed concerns about the decrease in County general fund support for the system. Unless the economics and the financial condition of the Board improved, he felt in due course, some other way of supporting this district would need to be found. He recommended the Town support the recommendations with respect to governance, etc., but take a firm position that the proposed cutbacks were too much and too fast. Responding to Councilmember G. Comstock, he reviewed the system costs, financial projections, and cumulative cutback of \$300,000 over the next three years as set forth in his memo. Councilmembers and staff discussed impacts on library services. Councilmembers concurred with Councilmember K. Comstock's recommendation.

(10) Reports from Commission and Committee Liaisons

(a) Historic Resources Committee

Councilmember Merk said Marilyn Walter would be helping the Committee with Spanish translation of the Martinez archives.

(b) Parks and Rec Committee

Councilmember Davis said the Christmas party was scheduled for December 5, 2003, and the Committee was looking for suggestions for honorees. He distributed a list of prior honorees at Town events. Responding to Councilmember Davis, Ms. Howard said the selection of the honoree was usually a Committee decision. Councilmember Merk noted that there was no one from the Public Works Committee on the list; he felt they should receive some recognition. Mayor Driscoll asked that suggestions be provided to Councilmember Davis to pass on to the Committee.

With respect to the Rossotti Field opening event, Councilmember Davis said the dates of November 8 or November 15 had been discussed. He asked that the Mayor and Vice Mayor let Ms. Powell know of their availability.

(c) Planning Commission

Councilmember G. Comstock said the Planning Commission discussed the CUP for the Woodside Priory and the question of how many students were accommodated. Apparently, the present usage authorization from the Town was for 250 students, and they were running at 280 right now. The statement was made by the representative from the Priory that 350 students was the minimum that was needed for a viable 1-12 [sic] institution these days. It sounded as though there was some significant growth planning going on by the Priory. He said he was not sure what kind of questions that raised for the Council, but it would be something that would be coming up.

Responding to Councilmember Merk, Commissioner Toben confirmed that the numbers were spelled out in the CUP. He added that the Priory was working on its master plan.

Councilmember G. Comstock said there was also the question of desirability of a joint meeting with the Council to discuss principles relating to Design Guidelines and related ordinances--aesthetics versus reality. Mayor Driscoll referred to Ms. Lambert's memo of 10/16/03 to the Council, noting that the Planning Commission wanted to hold a joint meeting on fences. He suggested discussing the issue when the 10/17/03 digest was discussed.

(d) Town Center Trenching

Mayor Driscoll said the trench had been dug to the point where they reached water. It was shallower than expected and in some places was only 8' deep. The location had also been adjusted to the fence line due to conflicts with the soccer field. A preliminary report had been received on Monday about what the trenching so far had found. He described the group meeting during which the trench was inspected. It was felt that they had not been able to go as deep as they wanted or probably needed to. He discussed the State geologist's preference that an investigation go back at least 6 earthquake cycles, or about 1,500 years. This trench probably went to about 800-1,000 years at the shallowest parts. Furthermore, it was obvious that at the end that was close to the culvert, it was an old dump, and they were not able to get quite as much information as they wanted at that end of the trench. There had also been some discussion about: 1) using bore holes in the places where it was shallow; and 2) whether they would replace the long trench along the length of the field with a series of bore holes. That would preserve the Town's expense line because bore holes were cheaper than a trench. He said he conveyed to the Town Geologist that obtaining more money from the Town would be difficult and had suggested that he negotiate with the consultant to try to find a slightly different plan based on what they had learned so far that did not require additional expenditure of money. They were working that out. In general, no smoking guns had been found, but the negative hypothesis had not been fully proved because they hadn't been able to get deep enough. Hopefully, the borings would allow that.

(e) Election

Ms. Howard noted that yesterday was the deadline for filing for write-in candidates, and none had been received. Therefore, there would be an opening on the Planning Commission. There were five applicants which would need to be interviewed. Responding to Mayor Driscoll, Town Planner Mader said the Planning Commission had some studies that would be coming up for discussion, but these were not time sensitive issues; there were no major applications that needed to be reviewed before a seat on the Commission became vacant. After discussion, Council agreed to hold interviews in January.

Councilmember Merk said he thought it was awkward having both ASCC applicants in the room at the same time with all the other people. After discussion, Mayor Driscoll suggested having the interviews at 7 p.m. before the regular meeting in January.

WRITTEN COMMUNICATIONS

(11) Town Council 10/10/03 Weekly Digest

(a) TCCAC Questionnaire

Referring to the letter from Bill Lane of 10/2/03, Councilmember Merk said he appreciated Mr. Lane's comments on the TCCAC questionnaire.

(b) Town Clean-up Day

Councilmember K. Comstock noted that a Town Clean-up Day would be held November 1, 2003, from 9 a.m. to 12 p.m. Councilmember Merk said it was costing the Town almost \$5,000 to have Greenway haul the material away. Councilmember K. Comstock said the November 1 event was the roadside clean up.

(12) Town Council 10/17/03 Weekly Digest

(a) Joint Meeting

Referring to Ms. Lambert's memo on a joint meeting with the Planning Commission to discuss fences, Ms. Howard noted that November 19 was a regularly scheduled Planning Commission meeting. Responding to Mayor Driscoll, Town Planner Mader confirmed that the issue raised by Councilmember G. Comstock with respect to the population figure for the Priory had not been acted on by the Planning Commission yet. He said the Council did not need to take that up and suggested the proper procedures be followed. Councilmembers indicated availability for a joint meeting. Town Planner Mader noted that some members of the ASCC should be invited as well. After discussion, Council agreed it should be a joint meeting of all three bodies if possible. Responding to Councilmember Merk, Town Planner Mader said it had been suggested at the Planning Commission that at some point, it might be appropriate to take a tour to look at some of the different fences in Town to further illustrate some of the problems that were being considered and discussed. That did not have to happen as a part of the joint meeting. Mayor Driscoll asked that a staff report showing the location of fences that should be visited be distributed before the meeting.

(b) Fire Damage

Referring to the memo from Ms. Lambert on the fire at 133 and 135 Russell Ave., Councilmember Merk asked for clarification on the code relating to reconstruction of nonconforming buildings damaged by fire. Town Planner Mader said in geologically unstable areas, the Town had an exception in Resolution 500-1974 that permitted people to rebuild if the damage was not caused by a landslide or earthquake. The 50% rule applied if it was non-conforming. He noted that he had not seen Ms. Lambert's memo on the fire incident. Responding to Mayor Driscoll, Ms. Howard said a meeting had been set up with the Eriksons and Mr. Bartlett to discuss their options.

ADJOURNMENT

The meeting adjourned at 10:40 p.m.

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Mayor

\_\_\_\_\_  
Town Clerk