

TOWN COUNCIL MEETING NO. 602, APRIL 24, 2002

ROLL CALL:

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

Present: Councilmembers G. Comstock, K. Comstock, Driscoll and Merk, and Mayor Davis  
Absent: None  
Others: Town Planner Mader, Town Attorney Sloan, Town Administrator Howard, Admin. Services Dir. Powell.

ORAL COMMUNICATIONS

Al Schreck discussed his service to the Town and the Little League and the history of Ford Field. He said the Little League enhanced the community greatly, and he was concerned about the maintenance of Ford Park. He suggested the League take over that responsibility and carry out Tom Ford's wishes for the park. Mayor Davis noted that Susan Ford had telephoned and also discussed her concerns about the park.

Mary Enright and Danna Breen, Conservation Committee, discussed the Committee's concern about the recent polluting of the creek and questioned why the parking lot project had not gone through the Committee. Responding to Mayor Davis, Ms. Enright said she had immediately made inquiries of staff when she heard about the incident but had not received any answers. Responding, Ms. Howard said some of the material used to seal the parking lot ended up in the creek; many agencies had been called over the weekend, but staff had not learned of the problem until yesterday. She said San Mateo County had determined that the substance was not toxic. Additionally, the creek had been walked and tested by several agencies. So far, there was no evidence of dead fish, etc. The recommendation was to do nothing until more information was gathered.

Mayor Davis noted that this was not something that had been authorized or agreed to by the Town. In an effort to get the parking lot prepared quickly, the normal process of approvals/contractual agreements had not been followed. Additionally, the contractor found that the soil had different absorption rates than anticipated and had brushed the excess into a drain that went to the creek. Ms. Breen said the Conservation Committee wanted to be involved whenever a large-scale sealing project near a creek was proposed or whenever a toxic spill occurred. Mayor Davis reiterated that in this case, the Town would have liked to have been included as well.

Councilmember Merk noted that there were no memos to the Council about this issue. When the Little League came to the Town at the last minute to redo the field, he had warned the Council about his concerns. Someone ordered this product to be applied on a Friday who did not know how to apply the product correctly. It was pushed into a drain that had been put in by the Little League without the Town's permission and against current regulations. The substance put on the parking lot was ostensibly meant to control dust. This had never been done before, no one was asked, and he felt the result had required a lot of staff time. Ms. Sloan suggested agendaizing the item if further discussion was needed, or resuming the discussion when item #4 was discussed.

CONSENT AGENDA

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

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

(1) Warrant List of April 24, 2002, in the amount of \$78,940.73.

#### REGULAR AGENDA

(2) Minutes of Regular Town Council Meeting of April 10, 2002 (Removed from Consent Agenda)

Councilmember G. Comstock said he had voted in favor of the motion to adopt Ordinance 2002-341 regarding animal control but thought there would be a third reading prior to adoption. Ms. Sloan explained that all ordinances were required to be read a loud in a meeting unless the title of the ordinance was read and reading of the ordinance itself was waived. All ordinances had two readings: the first reading was the introduction, and the second reading was the adoption of the ordinance. In thirty days, the ordinance became effective. Councilmember G. Comstock said he felt the ordinance needed more study. The minutes represented his action but did not represent his understanding or intent. Since the ordinance was not effective, Ms. Sloan said she would discuss Council's options at the end of the meeting.

Councilmember Driscoll and Mayor Davis submitted changes to the minutes. By motion of Councilmember K. Comstock, seconded by Councilmember Merk, the minutes were approved as amended by a vote of 5-0.

(3) Reduction of Speed Limit on Alpine Road

Wil Patterson, co-chair Traffic Committee, reviewed his memo of 4/15/02 and recommendation to reduce the speed limit in the 3300 block of Alpine Road from 45 to 40 mph. He said cars coming into the 35 mph zone from the 45 mph zone were coming into a downhill bend where the line of sight was impaired. The survey conducted showed that the speeds ranged from 47 to 60 mph; 22 citations were issued during the month of March. Additionally, Ford Field was across the street from the Westridge intersection which added to the concern. It was also confusing to motorists to switch from 35 mph to 45 mph to 35 mph, and officers were finding it difficult to enforce the citations in court. Councilmember Driscoll questioned how a 40 mph zone would be less confusing than 45 mph. Mr. Patterson said it reduced the speed differential by half and lowered the entrance speed into the intersection.

A resident questioned why the whole stretch wasn't 35 mph. Responding, Mr. Patterson said that had been considered. Because of the open stretch of road there, it was felt that going to 35 mph for the whole stretch would be too onerous for people who drove it on a daily basis. Additionally, in order to use radar enforcement, a high percentage of the cars had to move at or less than the speed limit; a survey could not support 35 mph for the whole stretch.

Councilmember Merk said this item had been before the Council a number of times. If judges were accepting the excuse that the changes in speed limits were confusing, this would be a step in the right direction. Six or eight months ago, he suggested reducing the speed in increments so that a traffic survey could apply. By going to 40 mph, the survey would apply and radar could be used to ticket people. While he enjoyed being able to drive 45 mph, there were increasing numbers of joggers and bicyclists and he supported a lower speed.

Councilmember G. Comstock said Westridge was an extremely dangerous intersection. He described how he had to stop his car within the crosswalk in order to see approaching traffic from the left. It was also dangerous entering the middle lane because of cars speeding around the corner to the right. People passing on the right were often travelling 60 mph. It was amazing that there weren't more accidents at the intersection. He suggested installing a traffic light.

Councilmember K. Comstock said he voted for a reduction before and had not changed his mind. He added that he found it necessary to apply his brakes when approaching the intersection so that he could get down to 35 mph; it would be easier if the speed differential was less.

Councilmember Driscoll said it was clear that there was a problem with the intersection. With Ford Field across the street, people often parked on the other side of Alpine when the parking lot was full and then ran across; people coming from Westridge to attend the games also crossed there. He felt the problem was the transition from a stretch of road that was straight and open for about .6 miles to a treacherous intersection. He asked whether the Committee had considered any transition solutions--such as rumble strips--to warn people that they were moving from a straight country stretch to an area of more concern. He added that he thought the existing speed limit was conservative along that stretch. Lowering it would cause all of the law abiding people to drive 5 mph slower, but they were not the people that were causing the problem. Those who didn't pay attention to the speed limit wouldn't pay attention to a limit of 40 mph, which they would find even more absurd. He appreciated the enforcement that was being done but questioned whether reducing the speed would address the transition problem.

Mr. Patterson said rumble strips had been considered but rejected because of the noise problem. In this case, there were only 1-2 homes that were well-setback from the road. However, he felt most people drove 5 mph over the limit on the open stretch; if that could be lowered by 5 mph, it would be the first step in addressing the safety problem at that intersection. There were other things that might be done later. Lowering the speed limit would help the Sheriff's Dept. to enforce tickets. Additionally, he thought surveillance should be increased at the intersection.

Councilmember Driscoll said rumble strips when placed correctly acted as an early warning system. Mr. Patterson suggested they could be placed, on a trial basis, somewhere in the vicinity of the "Reduce Speed Ahead" sign which was well forward of the 35 mph zone. Councilmember Driscoll noted that children trying to cross to Ford Field would be able to hear someone coming as well. Mr. Patterson felt a lot of the speeding was unintentional; it was a downhill stretch and rumble strips might be considered in conjunction with reducing the speed limit. Councilmember Driscoll recommended the matter be referred back to the Committee for consideration of some more transition-oriented solutions. He felt reducing the speed would penalize the law abiding drivers. Lowering the speed limit to a level that was difficult for people to maintain or was unnatural trivialized the law and did not address the problem. The danger was coming from people who didn't pay attention to the 45 mph zone.

Mr. Patterson said on Alpine Road, the Town had taken small measures at a time, such as extending the 35 mph zones that were already in place. This was a recognized dangerous intersection with a number of accidents; the Traffic Committee felt the recommendation would best address the safety problem at this time along with increased enforcement. Councilmember Driscoll said he supported the increased enforcement but felt lowering the speed to 40 mph would also encourage more passing. Mr. Patterson said the Committee welcomed any suggestions. Councilmember Driscoll said he felt the crosswalk lighting at the Priory was a good thing, a discreet use of technology in lights, and a 21st century solution to a 21st century problem. He appreciated the rural atmosphere of the Town but thought there might be other ways to address the problem. He did not think a stoplight was a solution. Mr. Patterson noted that the Committee had stayed away from any kind of permanent, flashing light.

Councilmember G. Comstock said he would be delighted to see a light that was triggered by a car coming down Westridge. Additionally, he said he practiced driving 35 mph in that area and no one had passed him.

After discussion, Councilmember K. Comstock moved to adopt the Committee's recommendation to lower the speed limit from 45 mph to 40 mph in the 3300 block of Alpine Road. Councilmember G. Comstock seconded the motion, and it carried 4-1 (Driscoll opposed).

(4) Consideration of Reduction of Alpine West Menlo Little League Field Use Fees

Councilmember K. Comstock said this issue had been discussed by the Parks and Rec Committee and brought to the Council's attention at the last meeting. After the staff report of 4/16/02 was written, the Little League decided they would like to come back with a broader proposal. He moved the item be taken off the agenda. Councilmember Driscoll seconded, and the motion carried 5-0.

COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

(5) Reports from Commission and Committee Liaisons

(a) Planning Commission

Councilmember G. Comstock said the Planning Commission had recommended a \$125,000 budget for the next fiscal year. They also discussed whether an EIR would be necessary for the Nathhorst Triangle zoning study. Town Planner Mader noted that it had been agreed that an environmental consultant would be contacted for advice. Councilmember G. Comstock said the Commission also discussed construction trailers and mobile homes on building sites. Town Planner Mader added that the ordinance did not allow people to live in a trailer or mobile home on their property while they were remodeling, etc., which the Commission supported. Additionally, he said the Planning Commission would be addressing unresolved fencing issues in the next fiscal year as an adjunct to the Design Guidelines rather than an ordinance.

(b) Parks and Rec Committee

Councilmember K. Comstock said the Committee was developing a fund-raising process for Little People's Park. At the Town picnic, they planned to have a table to solicit and encourage donations.

(6) Report From Ad-Hoc Geologic Setback Committee

Councilmember Driscoll reviewed his memo to the Council and summarized the Ad-hoc Geologic Setback Committee's discussions. He said it was the expectation of the Committee that the recommendations would be referred to the Planning Commission and any other appropriate committees for comment. Town Planner Mader reviewed the Committee's recommendations set forth in his memo of 3/20/02, revised 4/18/02. He noted that the Town Geologist was currently analyzing what an appropriate minimum setback from a fault should be if adequate studies had been done.

Referring to his e-mail of 4/24/02, Councilmember K. Comstock said he recommended holding a special study session/tutorial/briefing on the issue so that the concepts and implications could be discussed. He thought the Council should fully understand the issue before referring it to the Planning Commission. Mayor Davis said he felt the Planning Commission would benefit from the study session as well. Responding to Mayor Davis, Councilmember Driscoll felt that the briefing should carefully address what the impacts would be of the planning policies that would result from the recommended changes. Mayor Davis felt there should also be some discussion of why the changes were recommended.

Referring to the staff report of 3/20/02, revised 4/18/02, item 2.c (p. 2), Councilmember Merk asked if the term "inferred" fault was now being used for an echelon faulting or Pf zones. Councilmember Driscoll said the Committee had discussed this at length and settled on known fault "area" as opposed to known fault "lines." The Committee had tried to be consistent with the State's Alquist-Priolo Act as well as the existing ordinances. "Inferred" meant two things: 1) the fault was known to be there, but it was not sure where; or 2) there were microbreaks in an area. Councilmember Merk noted that he felt the recommendations were

great and that it should go to the Planning Commission.

Town Planner Mader reviewed key planning implications from the recommendations including: 1) allowing a building to be up to 25' from the fault provided there had been rigorous review; and 2) use of the Town's updated Movement Potential Map in place of the zoning map. Responding to Councilmember Driscoll, he said for Town applications that did not fall under the Alquist-Priolo Act, a closer boundary around the fault would be drawn by the Town Geologist. Councilmember Driscoll noted that there was an opportunity for the Town Geologist to generate additional fees by keeping that boundary wider so that he would have to do a review. The Town Geologist had indicated, however, that he did not want to do geotechnical investigation in the hills because he knew there was no fault there. He suggested the Town Geologist be asked to do a study that produced lines that could be adopted by the Town so that the consultants would not be determining whether someone was inside or outside an area for investigation. Town Planner Mader noted that there was also a problem when someone wanted to build just outside the setback.

Councilmember Driscoll reiterated that it would be important to take a careful look at the impacts on the development potential of critical parcels in Town. He noted that the structural engineer on the Committee indicated that due to current building codes, buildings today were 2.7 times stronger than in 1974.

Mayor Davis asked staff to coordinate a joint meeting with the Planning Commission as soon as possible with the Town Planner and Town Geologist attending.

(7) Request to Amend Chapter 8.12 - Nuisance Abatement

Ms. Sloan reviewed her memo of 4/18/02 on the request by Jon and Nina Else to amend the Nuisance Abatement Ordinance to address the problems that might arise for creek owners in another serious El Niño situation. She said the liability part of Mr. Else's homeowner's insurance would not cover the cost of removing obstructions in streams unless the homeowner was negligent; the property part of the insurance only covered the property of the homeowner himself. As indicated in her memo, there were a number of ways to amend the ordinance if the Council decided that was appropriate. Responding to Mayor Davis, she said Mr. Else did not think it was fair for the Town to require him to do something that might be outrageously expensive if he was unable to get insurance to cover it. She reiterated that the insurance would not cover the cost because there was no negligence involved. She discussed how the mudslide on Minoca had been handled after El Niño noting that in that case, the septic system on the property was believed to have contributed to the slide.

Jon Else, 5600 Alpine, described the properties in his area and the creek movement over the years. In 1998, the Town Manager had cited the Nuisance Abatement Ordinance when requiring that he remove all the trees that fell down. He thought the ordinance had to do more with ice boxes, abandoned cars, shopping carts, etc., on trails and in small streams. As written, he was apparently responsible for anything that ended up in the creek--no matter where it came from or how it got there. He routinely cleaned up the creek, but he did not feel he should be responsible for naturally occurring debris in streams--particularly if it was large scale.

Councilmember Driscoll said debris in streams could come from one side and cause flooding on the other side; that property owner had increased damage. He questioned whether leaving natural debris in the creek was a good idea. Mr. Else said the question was who should pay. Councilmember Driscoll said he was concerned about the Town being treated as the insurance company of last resort. That would encourage people to buy borderline properties without assuming any risk. There were other properties in Town that were very risky. In some cases, people chose to own property that was characterized as deep landslide, and he felt there was risk associated with that.

Councilmember K. Comstock said the reason this issue came up was because of a catastrophic event that

occurred. He felt the ordinance had been drafted for other kinds of events, and he questioned whether it should be applied to this situation. What had happened in 1998 wasn't Mr. Else's fault or the Town's fault.

He agreed there should be some protection against the normal events, and he felt amendment #3 set forth in Ms. Sloan's memo could accomplish that.

Councilmember Merk suggested the trigger should be whether the Town had declared an emergency. If, on the other hand, a tree fell in his yard across the creek, it was perfectly fair to expect that he would take care of removing it.

Mayor Davis said he liked amendment #3 in the memo with the addition of the phrase "...and it was not caused by an extraordinary natural event...." A real El Niño changed the rules, and he felt the mechanics should be put in place that allowed for that. Referring to the phrase "...the natural material did not come from the property owner's property," Councilmember Merk said he questioned whether the landowner should be held responsible for the landslides that would occur during a hundred-year event.

Responding to Mayor Davis, Ms. Sloan said basing it on whether the Town had declared an emergency would eliminate someone in the Town having to decide whether something was an "extraordinary natural event." Mr. Else said the event of February 3, 1998, had been described as a rogue cell, and it had widely inequitable distribution of rain. He could easily see a case where there would be astonishing landslides and log jams in the upper part of the canyon with the rest of the Town unaffected. Mayor Davis said an earthquake might cause the same situation during the wet season. That was a risk that came with buying those properties. That was why he preferred the non-emergency language even though it might be harder to implement.

Councilmember Driscoll preferred that it be based on the declaration of an emergency, which had been declared in 1998. Ms. Sloan added that when an emergency was declared, it did not need to be declared for the whole Town. If the "extraordinary natural event" language was used, it would be up to the Town staff to decide; if there was an appeal, the Council would interpret it. Cities were given deference as to how they interpreted their own ordinances. Responding to Mayor Davis, she said an emergency could be declared days after the event. Responding to Councilmember G. Comstock, she verified that the city council declared the emergency. In the case of a nuisance that needed to be abated, the Town staff took care of it in accordance with the procedure laid out in the Code.

Councilmember Driscoll said natural disasters had led to personal bankruptcies in the past; that was not necessarily an unreasonable thing. People sometimes made investments that had disastrous outcomes, and he was a little nervous about making a decision to benefit Mr. Else and others; while it might be reasonable, it would saddle the Town potentially down the road with a bankrupting expense. Ms. Sloan said this was supportive of tying it to the Council declaring an emergency. The only chance of getting federal and State funds was when an emergency was declared.

Councilmember Driscoll said a disastrous event in an area should be borne equally by everyone as opposed to being disproportionately borne by one. He felt the government was meant to be the representative of everybody. If the Town would be bankrupted, he suspected the federal government would provide funds. From a practical standpoint, he was comfortable with a revised amendment #3 as discussed but felt it was necessary to mention that there might be regrets.

Mr. Else said if a big fire came through that led to subsequent erosion of the land, he felt the government should step in. This was very similar to that. Councilmember Driscoll agreed but added that whenever you bought property, you needed to look at the downside risk associated with it.

Responding to Ms. Sloan, Councilmember Merk said he felt it was fair to include "natural material that came

from a property owner's property." The material was coming from somebody's property one way or another—even if it was way upstream. Councilmember Driscoll did not want the Town to be put in a position of trying to figure out whose material it was. Mayor Davis asked Ms. Sloan to draft amendment wording based on the discussion and to have the item reagendize.

WRITTEN COMMUNICATIONS

(8) Town Council 4/12/02 Weekly Digest

(a) Draft Open Space and Field Research District for Stanford University

Referring to the Menlo Park Mayor's letter (4/2/02) to the County of Santa Clara Planning Office, Councilmember K. Comstock suggested forwarding a copy of the letter to the Town Planner.

(b) Request for Support of AB 2366

Councilmembers K. Comstock and Merk did not feel that the Council should support the bill.

(9) Town Council 4/19/02 Weekly Digest

(a) Request to Agendize Off-leash Dog Park

Referring to Jackie Starkovich's letter of 4/17/02, Ms. Howard said the matter would be agendized for the next Parks and Rec Committee meeting.

(b) Crime Activity Report

Councilmember K. Comstock referred to the crime report (p. 5) for January thru March, 2002, and recommended the Traffic Committee look at the Indian Crossing Road and Horseshoe Bend area. SamTrans buses made U-turns, people parked along the red curb and around the corner, etc., and he felt there would be more accidents. Councilmember Driscoll agreed and felt this was also an area where more enforcement was needed.

Councilmember Merk referred to the incident occurring on 3/15/02 (p. 6) and pointed out that the 1500 block of Portola Valley Road was in Woodside and not Portola Valley.

Discussion on Rescinding Ordinances

Ms. Sloan said once the Council had voted on something, the action would need to be rescinded; reconsideration could only take place on the same day. Rescinding an ordinance at a meeting without prior notice required a 4/5ths vote to put the item on the agenda--similar to an urgency item. If it was noticed, it could be rescinded with a majority vote. In the case of the animal control ordinance, the second reading and adoption took place on April 10, and it would not become effective until May 10. It could be agendized at the May 8 meeting and discussed then.

Mayor Davis said two Councilmembers had felt more study was needed. If more study could be done relative to the cat issues, he would support agendizing it.

After discussion, Councilmember G. Comstock asked that the item be agendized for the May 8, 2002, meeting.

ADJOURNMENT

The meeting was adjourned at 10:00 p.m.

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Mayor

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Town Clerk