

TOWN COUNCIL MEETING NO. 597, JANUARY 23, 2002

ROLL CALL:

The meeting was called to order by Mayor Davis at 8:00 p.m. 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, and Deputy Town Clerk Hanlon.

ORAL COMMUNICATIONS

George Stern, 865 Portola Road, asked that the Council study and make recommendations for changing Chapter 6.04 of the animal control section of the ordinance adopted in January 1991. He felt this law and the way it was being administered by the Peninsula Humane Society was inconsistent with the general policies and objectives of the Town. Reading a prepared statement, he described his property and an incident that occurred on October 9, 1991, that involved his maintenance worker's dogs and a doe. The dogs had been impounded on the authority of the Humane Society and were designated dangerous animals. At an administrative hearing, the designation was upheld. He felt the procedures that had been followed were inconsistent, improper and unconstitutional, and there was no further recourse other than to seek a writ of mandamus to the Superior Court of San Mateo County against the Humane Society and the Town. While he did not relish the idea of a lawsuit, there was no other way to get justice for the animals and their owner. He felt the ordinance controlling this matter was deeply flawed and would inevitably result in future problems for the citizens of the Town.

David King, counsel representing the Brents, said the last meeting he attended on the creekside corridor regulations was in October. At that time, a promise had been made by the Town Council that there would be workshops held with opportunity for the public and, in particular, riparian property owners to have input and work with the Town on revising the regulations. To date, he and the Brents had not received any notice of anything that had been going on. He was distressed to learn: 1) that a meeting recently took place; 2) that members of the "pro-regulation" group had been invited; and 3) that significant discussion had been held on what would be going into the revised regulations. Without notice, he and the Brents had not had the opportunity to participate in that meeting.

Noting that the Planning Commission would be holding at least one more public hearing on the riparian regulations, Mayor Davis said it was not the intent of the Planning Commission or the Town Council to have private meetings where people were selected for their attendance. Town Planner Mader clarified that the Planning Commission had held a field trip and discussed the field trip at the following public meeting. There were people in the audience who were conservationists and property owners. At the meeting, the Commission directed staff to write draft regulations which would then be circulated to everyone for discussion.

Mayor Davis said on this evening's agenda was the matter of increasing the planning budget for a number of items--including riparian regulations. None of these items had exited the Planning Commission, and any and all public meetings would be noticed. Responding to Mr. King, Ms. Sloan suggested deferring any extended discussion at this time until the planning budget was under discussion.

CONSENT AGENDA

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

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

- (1) Minutes of the Special Town Council Meeting of January 10, 2002.
- (2) Warrant List of January 23, 2002, in the amount of \$204,901.56.
- (3) Second Reading and Adoption of Ordinance No. 2002-339 Amending Section 10.72 (Construction Traffic Road Fees) to Title 10 (Vehicles and Traffic) of the Municipal Code.

REGULAR AGENDA

- (4) Minutes of the Town Council Meeting of January 9, 2002 (Removed from Consent Agenda)

Councilmember Driscoll submitted a change to the minutes of the January 9, 2002, meeting. By motion of Councilmember K. Comstock, seconded by Councilmember G. Comstock, the minutes were approved as amended by a vote of 5-0.

- (5) Review of 2000-2001 Annual Audit

Ms. Howard reviewed her memo of 1/16/02 on the Town's 2000-2001 audit. She said the Town was debt-free and had paid off the \$3.5 million loan in July, 2001. Additionally, she said the Auditor had determined that the items noted in last year's Management Letter had been corrected and that no Management Letter was necessary this year. Her only concern was that a full accounting of the fixed assets had still not been done. She anticipated this would be included in next year's budget. She reviewed the fund balances set forth on page 5 of the report, noting that all of the \$10 million Alpine Road project and been reimbursed except for \$500,000 due from OES. Additionally, she said the Town received funding from the federal government for the "Single Audit" section of the report; in that section, there were no reportable conditions. Responding to Councilmember Merk, she said changes in staff had caused delays in staff's review of the audit and subsequent presentation of the documents to the Council.

Councilmember G. Comstock noted that the Finance Committee had reviewed the report and found no flaws. Councilmember K. Comstock moved to accept and file the General Purpose Financial Statements, Single Audit, and Measure A Funds Financial Statements. Councilmember Merk seconded, and the motion carried 5-0.

COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

- (6) One-Year Status of Construction and Demolition Debris Recycling Program

Ms. Howard reviewed Barbara Powell's memo of 1/17/02 on the status of the Construction and Demolition Debris Recycling Program and the recommended changes (pp. 5-6) to the ordinance.

Councilmember K. Comstock said the Town was doing a great job in terms of recycling this material and could do even better by raising the deposit as recommended. He said he was very much in favor of the proposed amendments.

Councilmember G. Comstock said he was disappointed by the recommendation that remodels be exempted from the recycling requirement. He described his efforts in finding ways to recycle material from his remodeling project 10 years ago; at that time, there seemed to be no official channels to assist, and the material had been trucked to South Dakota to rebuild a ranch there. Mayor Davis noted that the recommendation was that only remodels of less than 1,000 sf be exempted.

As a former ASCC member, Councilmember G. Comstock questioned whether the ASCC was fully informed about this program. He suggested that staff work with the ASCC and also that applicants be informed as early as possible in the process of these requirements.

Councilmember K. Comstock moved to direct staff to go forward with the recommended ordinance amendments. Councilmember Driscoll seconded, and the motion carried 5-0.

Ms. Sloan noted that recommendation #1 (p. 5) was to revise deposits to a flat rate or percent of valuation. Councilmember Merk said he felt a flat rate of \$5,000 would be unreasonable for a small project. He supported a percent of valuation over a flat rate but was unsure about what the percent should be; he did not know what it cost a contractor to recycle the materials.

Councilmember Driscoll was concerned that using a percent could result in a situation where the deposit was too low to incentivize recycling. He suggested establishing a minimum deposit of \$1,000 or 1/2% of valuation--whichever was greater. Council agreed.

(7) Increase in 2001/2002 Planning Commission Budget

Ms. Howard reviewed her memo of 1/16/02 on the requested budget augmentation for the 2001-2002 Planning Program. She reviewed the chart showing the budget and proposed additions for the remaining fiscal year.

Mayor Davis noted that creekside mapping (\$15,000) was not listed. Ms. Howard said this was a separate budget item that was allotted to the Creekside Corridor Committee and had been spent by Bill Cotton's office; this amount was not part of the Planning Commission budget. Responding to Mayor Davis, she confirmed that a consultant had also been brought in to do some work on riparian matters which had also come out of the Committee's budget.

Councilmember G. Comstock said he was concerned that the numbers shown represented a best case situation and that there was a significant likelihood that the tasks would not be brought to a level of completion within those estimates. Responding, Town Planner Mader said if things moved very efficiently, the numbers were just adequate. He said it depended largely on the number of meetings, follow-up to the meetings, revisions, etc., that would take place. He noted that in his memo of 1/10/02, revised 1/17/02, the budget for the tasks associated with each of the items was indicated. If those tasks expanded significantly, then the estimates would need to be revised. For the items listed, he did not feel that the amounts shown were generous. While his office was sensitive to the problem of the budget and the need to be as parsimonious as feasible, a lot of additional staff work on the items resulting from meetings could be a problem.

Noting that the requested increases to the budget were significant, Councilmember K. Comstock suggested that the Council had been a willing accomplice in the process and that there had been a lack of earnest consideration of the economic impacts of how some of the items had been managed. He had not seen this coming and felt at this point, the inherent flaws or weaknesses in the system needed to be dealt with. The

whole process, oversight, and effectiveness of advisory bodies needed to be addressed in the coming fiscal year. He said he was uncomfortable carrying on in an open-ended manner and suggested setting some priorities among those items which had surfaced as contributing to the financial overrun. As Town Planner Mader had indicated, it was unknown how many hearings would be required and how much extra work would result. There had been a lack of promptness in the process; the longer it took, the more costs. He suggested sequencing the items listed rather than paralleling them.

Councilmember Driscoll noted that the Council had discussed holding a joint session with the Planning Commission to discuss priorities, etc. He felt a study session with the Commission should be held prior to approving any budgetary supplements.

Councilmember Merk noted that there were items on the list that had been on the list when he served on the Planning Commission many years ago. He understood how that happened because the Planning Commission consistently was faced with additional items that arose during the year. Also, some of these items had been highly politicized in the last election with a lot of hyperbole; a lot of people had come to meetings that might otherwise not have attended. He shared the concern that the work would not be completed within the dollar amounts shown--especially given the tenor of the positions of some of the people involved with some of these subjects. On the other hand, sooner or later, these items needed to be taken care of. Whether it was done this year or spread out over 2-3 years didn't really effect the final cost to the Town.

Councilmember G. Comstock supported the suggestion to prioritize the items. He felt the two most controversial items were the Nathhorst Triangle rezoning (item #1) and the riparian corridor regulations (item #2). Recent observations suggested that there had been significant progress made with respect to item #2. One of the leaders of the group that was questioning the work being done a couple of months ago by the Planning Commission, now felt that a reasonable compromise had been reached. With respect to item #1, the most recent comments heard from the property owners' side suggested that there had been some movement in their feelings and a movement towards a mixed-use strategy. He suggested deferring further Planning Commission action on the commercial/office regulations until the next fiscal year. The Planning Commission could then focus its efforts on getting the riparian corridor regulations completed and then turn their attention back to the Nathhorst Triangle. During a rest period, some new suggestions might emerge from the property owners that the Planning Commission might find quite refreshing.

Councilmember Merk suggested that deferring the commercial/office regulations might put the owners of those properties in an unfair situation. The moratorium had ended, and they would continue to be in limbo. Responding, Ms. Sloan confirmed that the property owners could have applications processed under the current regulations. Councilmember G. Comstock said the owners had consistently maintained that the proposal the Planning Commission was working on was unworkable and economically infeasible. He questioned whether the Planning Commission should continue down that path. With a change in thinking on the part of the homeowners, they might come to the Town with a suggestion that all parties concerned might agree on.

Mayor Davis asked for comment.

Dick King, counsel representing the Brents, said before further monies were spent preparing another set of revised riparian regulations, the people concerned should be given the opportunity to be heard. That had not happened as yet. There had been a walk through and the property owners' concerns were voiced. Apparently, there was another meeting which he and the Brents had not been noticed of. Before spending any more money, he wanted the Town to hold the workshops that were supposed to have happened where

people would have an opportunity to participate in this process. He said Councilmember G. Comstock had indicated that the primary representative of the people opposed to the regulations had had some input at the last meeting. Assuming that was Craig Bucksbaum, he said Mr. Bucksbaum represented himself and not anyone else--including his clients. There were a number of riparian property owners who had serious concerns about the revised regulations and were not content; they would like an opportunity to have their input. Additionally, he suggested the Town do what Palo Alto had done which was to exempt existing residential property owners from most of the regulations. Their regulations were aimed at new development and new structures.

Mayor Davis said the riparian regulations were not before the Council. Responding to Mr. King, he said if the Planning Commission continued with this item, there would be public meetings, and they would be noticed.

Councilmember G. Comstock suggested that Mr. King might not understand that the Planning Commission had regular meetings the first and third Wednesday of every month during which these issues were frequently brought up. These meetings were generally noticed--not to specific groups of individuals. The agendas were published and posted on the bulletin board. The public meetings were all noticed and in a very effective manner. If not, he wanted to know about it. Responding, Mr. King: 1) repeated that noticing had not been effective; 2) asked if the property owners would be given notice in the future; and 3) promised legal action if the process was not followed properly.

Ms. Howard said all the meetings were noticed. Assuming that the meeting referred to by Mr. King was a Planning Commission meeting, she said there was a long list of people who received the agendas. If Mr. King wanted to be put on the mailing list, he could call Town Hall and provide self-addressed, stamped envelopes. If it was a public hearing, it was noticed in *The Almanac*, posted in several places in Town, and mailed to an extended list of people.

Town Planner Mader confirmed that the Planning Commission discussed riparian corridor matters at its meeting on December 5 and again on January 16 during the normal, regular Planning Commission meeting. This was listed on the agenda, and a number of people came who read the agenda which was posted. None of those were public hearings on the proposed regulations; they were discussion items for the Planning Commission, and some of the people in the audience made comments. The way those meetings had been conducted was perfectly valid. Responding to Mr. King, Ms. Howard repeated that if Mr. King provided a stamped, self-addressed envelope, agendas would be sent to him.

Douglas Aikins, counsel representing the McKinneys, said he had followed the debate on the Nathhorst Triangle issue and the rezoning effort. With regard to the budget, from the private property owners' perspective, the only thing worse than a wrong decision was indecision. Even though he objected to the rezoning in its early form, he had witnessed movement on the Planning Commission's part. From a developer's perspective, it was better to diversify your investment, and a mixed use had been his original proposal over a year ago. He was gratified to see the current thinking of the Commission and movement in that direction. The debate to date had stimulated a lot of conversation among his clients' development team, and he had also spoken with Terrell Slawson. He felt the process had evolved to a point where it might be a shame to abandon this effort at this stage. He was confident he could work with the staff to devise a rezoning that: 1) took out some of the constraints/formulas/restrictions; 2) stimulated and encouraged a private sector mixed-use development proposal that involved at least two and potentially three of the properties; and 3) would accomplish the Town's objectives while overcoming the initial economic feasibility threshold that was critical to getting anything built. He suggested continuing the process and dialogue rather than deferring it.

Councilmember K. Comstock moved to defer action on the requested budget augmentation until after the joint meeting with the Planning Commission. Councilmember Merk seconded, and the motion carried 5-0. After discussion, Council asked staff to set up a joint session for January 30 or February 6.

(8) Consideration of Change in Fees for Photovoltaic Solar Permits

Ms. Howard reviewed Ms. Lambert's memo of 1/16/02 on the fees associated with solar permits. She said Ms. Lambert had also determined that the current fees for a \$10,000 project that included solar panels would be \$298.86.

Councilmember G. Comstock suggested eliminating the building fees associated with solar photovoltaic installations. He described the satisfaction he had as an individual from a photovoltaic system that cranked out power--some of which went back to PG&E. He described the environmental and economic benefits of solar systems as set forth in his handout entitled "Solar PV Economics Analysis." He felt the Council should put itself on record as supporting this kind of thing. The Council had signed onto the broad-based Sustainability document, but this would really be doing something about it.

Responding to Councilmember Driscoll, Ms. Howard confirmed that the building inspector needed to make inspections of these systems. Councilmembers G. Comstock and Merk described what needed to be inspected and the interaction with PG&E that was required.

Councilmember Driscoll suggested charging \$50 to cover the Town's expenses. If not, the Town would be, in effect, subsidizing these installations. Responding to Councilmember G. Comstock, he questioned whether the Town had the right to spend tax dollars on something like this. He also felt there could be situations where some people might object to a solar collector on a neighboring house. Councilmember G. Comstock noted that the ASCC would be reviewing these for reflectivity, etc. Responding to Mayor Davis, he felt the normal ASCC fees should apply. Responding to Councilmember K. Comstock, he agreed that if a great many applications were received, the issue should be looked at again.

Councilmember Merk noted that when he applied for his permit, he had not had to go to the ASCC. Ms. Howard said ASCC review had been required on one of the applications because there had been some concern about views from neighbors. Those fees had been paid.

Referring to Mr. Lane's letter of 1/22/02, Councilmembers discussed Mr. Lane's support of an added fee for photovoltaic solar installations and decided there might be some misunderstanding of the issue. It was agreed staff should return the check forwarded with and referenced in Mr. Lane's letter.

Councilmember Merk said the fee for his system was less than \$200; compared to the price of the whole system, he thought it was relatively insignificant. He agreed with all of the benefits of the system enumerated by Councilmember G. Comstock--including seeing your meter running backwards.

Councilmember Driscoll said he agreed with the sentiments expressed but felt some fiscal responsibility would be prudent. Councilmember Merk agreed and thought there should be some minimum fee charged. Additionally, PG&E would not accept a system unless it had passed inspection by the Town, and rebates would not be given until the permit was finalized.

After discussion, Councilmember K. Comstock moved to reduce the building permit fee to a flat fee of \$50. Councilmember Driscoll seconded, and the motion carried 5-0.

Councilmember G. Comstock noted that the 2001 edition of the National Electric Code included a new section on photovoltaics which made a big difference in installation. He asked that adoption of the latest version of the National Electric Code be agendized. Ms. Howard noted that the building officials had not yet adopted the 2001 edition and that the 1999 edition had been adopted by the Town.

(9) Reports from Commission and Committee Liaisons

(a) Parks and Rec Committee

Councilmember K. Comstock distributed copies of a proposal (dated 1/23/02) from Roxy Rapp to the Parks and Rec Chair to upgrade Ford Field at no cost to the Town. He said the Committee and staff would be reviewing the proposal.

Councilmember Merk said the concept of the snack shack needed to be looked at because it produced a huge amount of litter. Councilmember K. Comstock noted that the proposal was multi-phased; whether the snack shack stayed or not was not part of fixing the field. Improving the snack shack, bathroom facilities, etc., would all need to come before the ASCC.

Responding to Ms. Sloan, Councilmember K. Comstock said Roxy Rapp was representing the Little League in this effort. Ms. Sloan said the Town could contract with the Little League whereby they would have the right to do the work proposed and would be responsible for all the costs. When the improvements were finished and inspected by the Town, the Town would accept those just like in a subdivision. Or, the Town could be given the money and the Town enter into a contract with the landscape management company and supervise the work.

Councilmember Merk said unless the Town did/oversaw the work, there could be a feeling of ownership where the Little League might feel it was their field. In the past, that had caused problems for the staff and the Town in general. He preferred that the Little League give the money to the Town and the Town spend it. Mayor Davis agreed. Councilmember K. Comstock said he would convey Council's discussion to the Parks and Rec Committee. Ms. Howard said she would coordinate with the Committee, Roxy Rapp and staff.

(10) Discussion of Animal Control Ordinance

As George Stern had requested during oral communications, Councilmember Driscoll suggested a discussion of the animal control ordinance be agendized. Councilmembers agreed.

WRITTEN COMMUNICATIONS

(10) Town Council 1/11/02 Weekly Digest

(a) Debris Removal from Creeks

Referring to John Else's letter of 1/7/02, Councilmember Driscoll asked staff to look into the concerns expressed about his responsibility for clearing debris from his property in the creek and whether the ordinance placed an unfair burden on large landowners. After discussion, Ms. Howard said she would clarify the concerns with Mr. Else and work with the Town Attorney.

(b) Bicycle Usage on Windy Hill Trails

Referring to the Trails Committee's memo of 1/9/02, Councilmember K. Comstock said the Committee was concerned about MROSD opening up the existing hiking-equestrian segment of the Bay Area Ridge Trail in Windy Hill to bicycles. Councilmember Merk noted that the Committee was also concerned about the direct connection of this trail to Razorback Ridge Trail.

Mayor Davis said he had spoken with two MROSD representatives who indicated they had already taken a firm position on the subject. Responding to Mayor Davis, Councilmember Merk said in the past the Council had asked that committees not send letters directly to organizations. In that case, Mayor Davis felt the Committee should provide more information to the Council on what their concerns were.

(c) Performance Survey

Councilmember Driscoll complimented staff on the draft performance survey.

(11) Town Council 1/18/02 Weekly Digest: None.

ADJOURNMENT

The meeting was adjourned at 9:45 p.m.

Mayor

Town Clerk