

PORTOLA VALLEY TOWN COUNCIL REGULAR MEETING NO. 866, SEPTEMBER 25, 2013

Mayor Richards called the meeting to order at 7:30 p.m. and led the Pledge of Allegiance. Mr. Pegueros called the roll.

Present: Councilmembers Jeff Aalfs and Maryann Derwin; Vice Mayor Ann Wengert; Mayor John Richards

Absent: Councilmember Ted Driscoll

Others: Nick Pegueros, Town Manager
Leigh Prince, Town Attorney

ORAL COMMUNICATIONS

Jeff Castina, GreenWaste representative, announced a Neighborhood Clean-Up scheduled for 8:00 to 11:00 a.m. on October 5, 2013.

Cory Wolbach, from the office of Senator Jerry Hill, reported that Governor Jerry Brown has signed Senator Hill's bill, SB132, to protect mountain lions that do not pose a threat. He also recommended reaching out to Senator Hill with ideas, suggestions and/or concerns.

CONSENT AGENDA [7:35 p.m.]

- (1) Approval of Minutes: Town Council Special Meeting of September 11, 2013
- (2) Ratification of Warrant List: September 25, 2013 in the amount of \$133,458.72
- (3) Recommendation by the Parks and Recreation Committee: Proposed change to Committee Charter

By motion of Councilmember Aalfs, seconded by Councilmember Derwin, the Council approved the Consent Agenda with the following roll call vote:

Aye: Councilmembers Aalfs and Derwin, Vice Mayor Wengert, Mayor Richards

Abstain: Councilmember Derwin and Vice Mayor Wengert (Item 1)

No: None

REGULAR AGENDA [7:36 p.m.]

- (4) Report from Town Attorney: Consideration of direction to the Town Attorney regarding participating in the preparation of an Amicus Brief supporting No Toxic Air Incorporated's Lawsuit against Lehigh Quarry related to the Board of Supervisors' determination related to vested rights.

Ms. Prince explained that when the Lehigh Quarry applied to amend its reclamation plan, Santa Clara County decided a formal determination of the geographic scope of the quarry's vested rights as a legal nonconforming use was appropriate. No Toxic Air, Inc. – also known as BACE, which stands for Bay Area for Clean Environment – challenged the Santa Clara County Board of Supervisors' determination that the vested mining rights covered 13 of the 19 parcels that comprise the property and appealed the Santa Clara County Superior Court's decision to uphold the Supervisors' determination.

Ms. Prince also explained that amicus briefs are generally letters from people (or organizations) who aren't parties to a case but bring different perspectives on an issue to light for the court's consideration.

Because this is a Santa Clara County matter, Vice Mayor Wengert asked how towns and cities in that county have responded if they also have been approached to support the Amicus Brief. Ms. Prince said she spoke with Sheryl Schaffner, General Counsel for the Midpeninsula Regional Open Space District (MROSD), who informed her that so far, Los Altos Hills and Los Altos have agreed to support the Amicus Brief. She said the Cupertino City Council curtailed its discussion of the matter after an issue arose questioning whether BACE has legal standing to bring suit or pursue an appeal. Campbell and Mountain View have been approached, too, but have not yet made decisions, Ms. Prince said.

Ms. Schaffner, who also indicated the presence of MROSD Board Member Yoriko Kishimoto in the audience, added that petitioners in opposition to the decision about the quarry's vested rights are reaching out to the wider community and the Atherton City Council apparently is considering a discussion on the Amicus Brief in a future meeting. According to Ms. Schaffner, MROSD considers the broad interpretation reflected by the vested rights determination a core reason why environmental impacts of quarry activities haven't been analyzed, and perhaps mitigated as a result. She said MROSD is concerned about the effects of quarry mining activity on both water quality and air quality, and in an earlier lawsuit, challenged the baseline data used in the quarry's environmental impact report (EIR) as well as the adequacy of the EIR analysis. She said approval of the EIR formed the basis of the amendment the quarry made to its 1985 reclamation plan.

Councilmember Aalfs asked for an example of circumstances that would apply to the so-called "diminishing-asset doctrine" discussed in Ms. Prince's staff report dated September 20, 2013. Ms. Schaffner said the case cited most frequently is the California Supreme Court's ruling in Hansen Brothers Enterprise versus the Nevada County Board of Supervisors in 1996. Councilmember Aalfs asked whether any comparable objective evidence from the Lehigh Quarry's primary vesting date in 1948 has been considered. Ms. Schaffner said that's a level of factual inquiry about which she lacks detail except in terms of equipment on a chemical manufacturing site.

Paula Wallis of Cupertino, who serves on the board of BACE, showed some maps of the quarry property, which she described as the single largest stationary source of pollution in Santa Clara County and the largest polluter in the nation that's so close to a densely populated area.

Jitze Couperus, member of Los Altos Hills Planning Commission, said he came to tonight's meeting at the request of Los Altos Hills Mayor Gary Waldeck. Mr. Couperus said he also wanted to be on hand to counter any comments if a quarry representative came to speak. He recalled that when the Los Altos Hills City Council discussed this issue, a quarry representative "managed to tar and feather, and cast mud and assertions with wild abandon."

Mr. Couperus, who's been taking aerial photos of the quarry for about 10 years for a variety of reasons, said he takes pride in the fact that Los Altos Hills will "belly up to the bar," committing up to \$7,500 toward the Amicus Brief if at least one other community does the same. Los Altos has done so.

Ms. Kishimoto, one of MROSD's seven directors, said she also served eight years on the Palo Alto City Council, including a term as Palo Alto Mayor. Although MROSD doesn't often involve itself in lawsuits, she said its Board felt very strongly that it needed to take action, inasmuch as quarry activities affect the adjacent Rancho San Antonio Open Space Preserve, which attracts more than 500,000 visitors annually. In addition to joining communities in support of the Amicus Brief, in November of 2012, MROSD filed suit, charging that the quarry's EIR lacked sufficient analysis of air and water quality, biological resources, hazardous materials, baseline conditions and visual impacts.

Ms. Kishimoto emphasized that no one is trying to close the quarry down; the main point is frustration due to the piecemeal approach to its plans, with analysis of three major components – the quarry, the cement plant and reclamation – all broken out rather than being considered holistically. She urged Portola Valley to join those who are supporting the Amicus Brief. She said addressing the legal aspect – the right to regulate – is huge, but it's also important to send a strong message of communities acting together to tackle important regional issues.

Cindy Russell, Foxwood Road, a physician, said she's speaking as an individual but has been Chair of the Santa Clara County Medical Association's Environmental Health Committee since 1999. She said she's known and been involved with Lehigh issues for six or more years, and attended the meeting when the Santa Clara County Board of Supervisors decided to extend the operation's vested rights.

Dr. Russell pointed out that it's come through the Environmental Health Committee to support stricter limits on mercury emissions, which the EPA has been working on. She said she was shocked to learn how much the Lehigh operation has gotten away with, including multiple violations in air quality, mining operations, waste disposal and reclamation. She's pleased to see that the operation has indicated willingness to clean up the creek, she said, but still, Lehigh is the fifth-largest mercury emitter in the nation, in fact emitting more mercury than all the coal-fired plants in the state of New Jersey.

Alex Von Feldt, Creek Park Drive, expressed support for the MROSD, an excellent partner of the Town, and said the Lehigh operation has a long history of pollution. The facility is now being required to pay for some remediation of the Permanente Creek watershed, but what affects Portola Valley the most and should be a concern to all residents, Ms. Von Feldt said, is air quality. She said it's taken a lot to reach the point of the Amicus Brief, and she wouldn't want Portola Valley to be a hurdle to accomplishing its goals. Although the Town may not be able to contribute significant funds to the cause, she said that at this point even being a signatory would be a sign of regional cohesion.

Councilmember Derwin said she favors joining the Amicus Brief effort for four overlapping reasons:

- Neighborliness; she said she's a great believer in regionalism, and as Ms. Von Feldt stated, MROSD is a great partner to Portola Valley. Because they rarely ask, she said, Portola Valley should take very seriously the request for support, joining next-door neighbor Los Altos Hills, and Los Altos, which is just a bit further down the road.
- Precedent; according to Councilmember Derwin, the Town has precedents for taking stands on regional environmental issues, including weighing in on the Cargill project and passing a resolution in opposition to diverting water from the Tuolumne River.
- Health and safety of Town residents and the larger community; as previously stated, the quarry is the fifth-largest mercury producer in the U.S., and also the South Bay's biggest air and water polluter. Councilmember Derwin said it's even more troubling to have mercury in the fish in Crystal Springs Reservoir tied to the quarry. She pointed out, too, that Crystal Springs Reservoir is the source of some of the Town's drinking water.
- The Town's longstanding record of environmental leadership; for instance, she said, our Town Center was the first platinum-certified municipal complex in the country.

Councilmember Aalfs said he, too, supports the MROSD's request, although he's very concerned about having to spend money on this he feels a basic environmental review is important.

Vice Mayor Wengert said she has a slightly different view at this time. While she said she values the Town's relationships with the various agencies and jurisdictions, the Lehigh Quarry situation has a long, complex and significant history that involves a number of jurisdictions, and an important element missing in tonight's conversation is why the Santa Clara County Board of Supervisors reached the decision it did. (In later discussion, Mr. Couperus addressed this issue, also noting that the Supervisors made their decision contrary to staff's recommendation.)

Vice Mayor Wengert said there's no doubt about the Town's commitment to environmental leadership and public safety, and while the Town's engagement on broader environmental issues would be more appropriate, she said the Amicus Brief's scope is a very limited and very specific. She also said she'd like to understand why other communities that are much more directly affected either haven't weighed in or chosen not to join the effort.

Mayor Richards said he's somewhere in between the sentiments expressed by Vice Mayor Wengert on the one hand and Councilmembers Derwin and Aalfs on the other. He agreed that there's a lot of information the Council doesn't have available to consider, such as which portions of its property would be affected by Lehigh's expansion plans. If the timing isn't critical, he suggested possibly continuing the item until the next Council meeting. Ms. Schaffner stated that the Amicus Brief would have to be submitted by November 12, 2013, or later if it's necessary to take advantage of a grace period.

After further discussion of the issue and the pros and cons of holding off on a decision, Councilmember Derwin moved to support the Amicus Brief. Councilmembers agreed to commit up to \$1,300 in support. Seconded by Councilmember Aalfs, the motion carried 3-1, with Vice Mayor Wengert dissenting.

- (5) Recommendation by Town Manager: Approve Town Council Fall/Winter meeting schedule [8:10 p.m.]

Mr. Pegueros outlined the remaining Town Council meetings for the calendar year, including two joint study sessions with the Planning Commission and one joint meeting with the Emergency Preparedness Committee. An October 13, 2013 meeting with the EPC would focus on the new Travelers' Information Service (TIS) AM radio antenna, which is expected to be installed and operational by that time. Joint meetings with the Planning Commission are scheduled for:

- October 9, 2013; a study session devoted to the 2014 Housing Element update and follow-up on the Ad Hoc Affordable Housing Committee priority recommendations
- November 13, 2013; a study session to obtain Council input on the Portola Road Corridor Plan draft

Councilmembers also discussed the timing of applications and interviews for new appointments to the Planning Commission.

COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

- (6) Reports from Commission and Committee Liaisons [8:15 p.m.]

Councilmember Derwin:

- (a) Resource Management Climate Protection (RMCP) Committee

The September 18, 2013 meeting of the RMCP Committee, part of the City/County Association of Governments (C/CAG), featured:

- A presentation regarding the development and adoption of the City of Santa Cruz's Climate Adaptation Plan
- An update on San Mateo County Energy Watch Initiatives, including schools benchmarking programs, the Regional Integrated Climate Action Planning Suite (RICAPS) and residential programs.
- Councilmember Derwin explained that school districts are receiving Proposition 39 funds to undertake energy-efficiency projects, and a Prop 39 Funding Workshop is scheduled for October 10, 2013.

- (b) San Mateo County Poet Laureate Selection Committee

The Poet Laureate Selection Committee interviewed the five finalists, but Councilmember Derwin was unable to stay for the entire process due to a meeting with Congresswomen Anna Eshoo and Jackie Speier and Federal Aviation Administration (FAA) representatives.

(c) Meeting with Congresswomen Eshoo and Speier

Councilmember Derwin said she had no idea what she was walking into when she entered the conference room full of senior West Coast FAA members, local constituents and officials from other jurisdictions. Councilmember Derwin said they discussed findings about flight arrivals (a particular concern in Portola Valley) and departures (a particular concern in Brisbane). After much discussion, she said the FAA accepted the local constituent's findings. Councilmember Derwin considered it a productive meeting, with everyone walking away with an assignment.

(d) Housing Endowment and Regional Trust (HEART) of San Mateo County

The first report from the group charged to do a feasibility study for a \$200 million campaign to raise money for affordable housing in San Mateo County was presented at the HEART meeting today, September 25, 2013.

Councilmember Aalfs:

(e) City/County Association of Governments (C/CAG)

Meeting on September 12, 2013, C/CAG Board members discussed setting aside dedicated money to fund retiree medical obligations for C/CAG employees.

Vice Mayor Wengert:

(f) TRACON

On September 19, 2013, Vice Mayor Wengert participated in a tour of the Northern California TRACON (NCT) facility. TRACONS – an acronym for Terminal Radio Approach CONTROL – provide safety alerts, separation and sequencing of air traffic arriving, departing and transiting airspace and airports.

(g) Architectural and Site Control Commission (ASCC)

At its September 23, 2013, following a second site meeting for continued review of proposed new residence, detached garage, office and site improvements at 5 Naranja Way, the ASCC approved revised plans for the project on this 2.5-acre Westridge Subdivision property.

The ASCC also:

- Continued its architectural review of the project proposed at 1305 Westridge Drive by Kenneth Hirsch and Rebecca Long; this project would involve converting an existing garage to living space, building a new garage and relocating the driveway.
- Reviewed a proposal for a construction tent at 50 Pine Ridge Way.

Mayor Richards:

(h) San Mateo County Emergency Services Council

Meeting September 19, the ESC discussed completion of the radio tower for San Mateo County.

(i) Conservation Committee

Members of the Conservation Committee, meeting on September 24, 2013, discussed the Redwood Guidelines, Backyard Habitat, upkeep for the Native Plant Garden at Town Center and plans for a field trip to examine the willows planted in the creek at Town Center.

WRITTEN COMMUNICATIONS [8:27 p.m.]

(7) Town Council September 13, 2013 Weekly Digest

- (a) #5 – Memo from Administrative Services Manager Stacie Nerdahl re: update to Field Rental Policy – September 6, 2013

Vice Mayor Wengert said it was a good idea to change policy for private use of Town fields to “residents only” to align with the new policy on Community Hall rentals. It applies to private events such as wedding parties and private picnics, rather than sporting events.

(8) Town Council September 20, 2013 Weekly Digest – None

Town Attorney Prince announced the two closed sessions that are on the agenda. The first closed session item is conference with labor negotiators. The designated representatives are Mayor Richards and Vice Mayor Wengert with regard to town staff and benefits, and the other is regarding disputed litigation.

CLOSED SESSION [8:30 p.m.]

(9) Conference with Labor Negotiators

Government Code Section 54957.6
Agency Designated Representatives: Mayor Richards and Vice Mayor Wengert
Unrepresented Employees: Town Staff

(10) Conference with Legal Counsel: Anticipated Litigation

Government Code Section 54956.9(b)
Significant Exposure to Litigation: one case

REPORT OUT OF CLOSED SESSION

No reportable actions.

ADJOURNMENT [10:15 p.m.]

Mayor

Town Clerk