

TOWN OF SAN ANSELMO

Minutes of the Town Council Meeting of September 11, 2012

Present: Coleman, Greene, Kroot, Lopin, McInerney

7:00 p.m.

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

ANNOUNCE ACTION TAKEN, IF ANY, IN CLOSED SESSION

Mayor McInerney announced there was no closed session.

OPEN TIME FOR PUBLIC EXPRESSION

Woody Weingarten presented the Quality of Life Silver award to Phyllis Ostrander for her fifteen years of service to the Town as a volunteer receptionist.

Katie Cartwright, San Anselmo resident, asked for Council to put a discussion regarding Proposition 37 on the September 25, Town Council Agenda.

Donovan Cartwright, San Anselmo resident, supports the request for a discussion regarding Proposition 37 on the Town Council agenda for September 25, 2012.

Sonja Walters, San Anselmo resident, requests Council consideration to make GMO food labeling a Town policy.

COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

Kroot feels GMO concerns are a quality of life issue. Kroot acknowledged Proposition 37 as being on an upcoming ballot which people will be able to vote on and proponents of the proposition should go door-to-door in support of the issue to get the votes.

Lopin reported on the San Anselmo Chamber of Commerce actions regarding the America's Cup and funding for Safe Routes to School. Lopin volunteered for Fire OPS 101 on October 15, 2012.

Stutsman acknowledged Lopin's interest in Fire OPS 101 and invited interested parties to contact Rick Marshall at the Fire Department.

Lopin asked for an update on the Butterfield project. Condry said the project is approximately 80% complete; they are winding down, as are most of the 2012 projects. Lopin expressed gratitude for the fine performance as the project has turned out very well.

Greene supports a future Council discussion on Proposition 37 in the context of whether or not to approve a Town resolution.

Greene gave reports on the following items:

- Marin Energy Authority (MEA) –drafting and approval of future resource plan; MEA's contract with Shell Oil will end in 2016.
- Transportation Authority of Marin (TAM) hosting National Plug-In Day, Sept 23, 2012 at the Farmers Market.

- TAM phase out a few of the routes by Golden Gate Transit District in 2014. Routes 10, 70 & 80 which impact Strawberry, Ignacio, Marin City, are being phased out. Marin Transit is looking at picking the slack so not to have a disruption in transit service.

Lopin left the meeting at 7:30 pm.

Coleman reported on discussions at the recent Annual Meeting of the League of California Cities.

McInerney reported on the recent meeting and preliminary discussion with Twin Cities Police Authority regarding police consolidation. Discussions are ongoing.

Kroot asked for clarification regarding San Anselmo's Safety Fund and possible \$100,000 to \$200,000 payments to PERS.

Stutsman said that because of PERS's poor returns in the stock market, and in order not to bankrupt the Towns and Cities, PERS is trying to make the rates more reasonable by utilizing a smoothing process to spread the loss out over 20 years; a payment estimated between \$100,000 to \$200,000 per year from San Anselmo for their Safety Fund obligations prior to the consolidation. PERS is looking into the possibility of merging the two plans.

1. CONSENT AGENDA: ITEMS ON THE CONSENT AGENDA MAY BE REMOVED AND DISCUSSED SEPARATELY. DISCUSSION MAY TAKE PLACE AT THE END OF THE AGENDA. OTHERWISE, ALL ITEMS MAY BE APPROVED WITH ONE ACTION.

- (a) Approve minutes of August 7, 2012.
- (b) Acknowledge and file warrant numbers 73293-73568 issued during the month of August 2012, in the amount of \$1,751,247.25.
- (c) Approve Resolution No. 3999 setting the Statement of Investment Policy for fiscal year 2012-2013.
- (d) Approve Resolution No. 4000 amending the Town's Conflict of Interest Code.
- (e) Approve Resolution No. 4001 continuing implementation of all the requirements of the Brown Act during the State of California's three-year suspension of State mandates as contained in AB 1464 and SB 1006.
- (f) Approve Resolution No. 4002 authorizing the use of Citizens Option for Public Safety (COPS) grant funds to pay for a portion of the salary of one Police Officer.
- (g) Approve downtown event application for the Goblin's Parade, scheduled for Monday, October 29, from 5-7 p.m. on San Anselmo Avenue.
- (h) Approve downtown event application for Country Fair Day scheduled fore Sunday, September 30, 2012 from 10 a.m. to 4 p.m., San Anselmo Avenue and a portion of Tunstead for the event.
- (i) Approve appropriation of \$22,000 from the Robson Fund ending balance to do repairs to the caretaker's apartment.

There was no comment from the public regarding the consent agenda.

Greene pulled item (a) from the consent agenda.

M/s, Kroot/Coleman, to approve items (b) thru (i) of the consent agenda. AYES: Coleman, Greene, Kroot, McInerney. NOES: None. ABSENT: Lopin.

Regarding item (a) Minutes Aug 7, 2012, Greene requested the minutes be amended to reflect his full comment regarding "bicycles passing through town needing to be registered" to include "*it is an example of a San Anselmo Ordinance that is out of touch and impractical because it is not feasible to apply the ordinance*".

M/s, Green/ Kroot, to approve item (a) of the consent agenda with noted changes. AYES: Coleman, Greene, Kroot, McInerney. NOES: None. ABSENT: Lopin.

2. 2012-2013 BUDGET

A) APPROVE RESOLUTION NO. 4003 APPROVING THE 2012-2013 BUDGET AND WORK PLAN.

Finance and Administrative Services Director, Daria Carrillo presented the staff report.

There was no comment from the public.

M/s, Greene/ Kroot, to approve Resolution No. 4003 approving the 2012-2013 Budget and Work Plan. AYES: Coleman, Greene, Kroot, McInerney. NOES: None. ABSENT: Lopin.

B) APPROVE RESOLUTION NO. 4004 ESTABLISHING THE APPROPRIATIONS LIMIT FOR FISCAL YEAR 2012-2013.

Finance and Administrative Services Director, Daria Carrillo presented the staff report. Carrillo stated under Proposition 4 of the State of California, municipalities are limited in the amount of revenue that they may spend each fiscal year. The limit is calculated using a formula that includes change in population and inflation as defined by the State. The calculation shows that the amount of revenue the Town estimates it will collect in 2012-2013 is \$650,863 below the limit it is allowed to spend.

There was no comment from the public.

M/s, Kroot/Greene, to approve Resolution No. 4004 establishing the appropriations limit for fiscal year 2012-2013. AYES: Coleman, Greene, Kroot, McInerney. NOES: None. ABSENT: Lopin.

C) APPROVE RESOLUTION NO. 4005 PROVIDING FOR THE BORROWING OF FUNDS FOR CASH FLOW PURPOSES FOR 2012-2013 FROM THE COUNTY OF MARIN, TO BE REPAYED IN DECEMBER WHEN PROPERTY TAX REVENUES ARE REGULARLY PAID OUT.

Finance and Administrative Services Director, Daria Carrillo presented the staff report.

McInerney asked how often this happens and if there was something different or unique from previous years that have triggered the cash shortage.

Stutsman replied that it does happen frequently with jurisdictions. Stutsman explained that 80% of the Towns revenue is received in December. In the past the Town had reserves in the Road Maintenance Fund. Stutsman explained that a number of the road projects are grant funded and it takes time to be reimbursed from the State, but we are now getting those projects done. Stutsman anticipates the Town

will also have to do this next year. The Town does road projects in the summer and fall when the weather is good.

There was no comment from the public.

M/s, Greene/Coleman, to approve Resolution No. 4005, providing for the Town of San Anselmo to borrow \$1.7 million dollars from the County of Marin at 3.5% per annum, calculated on the basis of a 360-day year composed of twelve 30-day months, to be repaid in December when property tax revenues are regularly paid out. AYES: Coleman, Greene, Kroot, McInerney. NOES: None. ABSENT: Lopin.

3. ADOPT RESOLUTION NO 4006 INTENT TO ABANDON A PORTION OF THE RIGHT-OF-WAY ADJACENT TO 15 ALLYN AVENUE IN SAN ANSELMO AND SET A PUBLIC HEARING FOR OCTOBER 9, 2012.

Deputy Town Attorney Megan Acevedo presented the staff report.

Greene requested confirmation that his understanding is correct in that the Town only has rights to the easement over the property and not the property itself. If the resolution of intent is approved the Town would be abandoning an easement and government code prohibits the Town from obtaining monetary value from it.

Acevedo confirmed Greene's understanding and stated the original subdivision map kept the fee with the subdivision.

Greene asked if it is a path that neighborhood kids would use as a short cut from one street to another. Condry stated historically this path has not been used; it is very steep at bottom end of the path.

Doug Kelly, 138 Floribel, gave confirmation that people walk down on the front portion of Allyn Ave., including neighborhood kids. The property in question is not used as a pathway or shortcut.

Condry stated the property owners are hoping to acquire an eight foot setback which would enable them to build onto their current home.

Greene asked if there are any requirements the Town should require. Condry said the Town is requiring that it retain ownership of the upper portion of the property.

Scott Couture, 15 Allyn Avenue, owner/resident, explained that the property has no potential use for a walkway, is unsuitable for a pathway or even a stair case as it has a 70% slope. Couture explained his intention is to have to proper zoning and conforming setbacks and the Right-Of-Way of abandonment is the first process.

Kroot is in support of the resolution that approves the abandonment as it will resolve of the house being built over the easement. Kroot opposes a deed restriction.

Greene and Coleman support the intention of abandonment of a portion of the right-of-way.

M/s, Greene/Kroot to adopt Resolution No. 4006, the Intent to Abandon a portion of the right-off-way adjacent to 15 Allyn Avenue in San Anselmo and set a public hearing for October 9, 2012. AYES: Coleman, Greene, Kroot, McInerney. NOES: one. ABSENT: Lopin.

4. CONDUCT PUBLIC HEARING AND ADOPT RESOLUTION NO. 4007 DETERMINING THE EXISTENCE OF A PUBLIC NUISANCE AND ORDERING THAT THE PROPERTY OWNER AT 437 SCENIC AVENUE ABATE THE PUBLIC NUISANCE EXISTING AT THE PROPERTY AND REIMBURSE THE TOWN OF ITS COSTS AND FEES.

The staff report was presented by Deputy Town Attorney Megan Acevedo.

Deputy Attorney Megan Acevedo stated tonight Council will conduct a public hearing that is quasi-adjudicatory in that Council will decide, based on the evidence, whether the condition of the property located at 437 Scenic Avenue constitutes a public nuisance. Acevedo explained that Council should receive and consider the information and only use that information for its determination. Acevedo announced if there is a representative of the property owner that is present at the meeting that person needs to be heard and have his/her due process rights preserved by allowing them to present their side. Sworn testimony will be presented by Keith Angerman, Building Official, Town of San Anselmo and Sean Condry, Public Works Director, Town of San Anselmo.

Acevedo stated the property is currently dangerous and harmful to persons who go upon it and the potential for further sliding on the property is a violation as it may obstruct the free use of the street below it and threaten other properties. The existing slide has resulted in discharge of muddy water and non-storm water into the storm water system. Any one of these violations on its own could constitute a public nuisance.

Greene asked staff if there is anyone here tonight at the meeting who is here on behalf of the property owner, Mr. Malik.

Acevedo replied no and stated staff has tried everything they can to locate the property owner.

McInerney asked if staff has knowledge that the property owner is in receipt of the notice and that he is merely not expressing intent to participate in the process.

Acevedo said Malik's sister resides in Mill Valley and she has received the notices.

McInerney asked if staff is knowledgeable of this because they have spoken to Malik's sister.

Angerman stated Malik's sister acknowledged receipt of one letter to Malik and also acknowledged the fact that Malik was out of the county at the time. Angerman understands Malik and his sister have conversed and the sister has passed the information on to Malik regarding the notice.

Angerman stated staff has attained three addresses for Malik over the past four years as staff has tried to trace Malik down over a previous nuisance regarding the house on the subject property. Angerman stated all correspondence sent by the Town to the property owner, Mr. Malik, has been sent to all three addresses. In addition, staff sent the notices to Carl Shapiro, an attorney who represented Mr. Malik in past proceedings involving the property.

Greene asked if staff has any proof of personal service on the property owner. Acevedo's response was no.

Acevedo said the address that is on file with the assessor's office is the legal address that we are required to use for nuisance abatement proceeding notices. Acevedo acknowledged in her conversations with the assessor's office they have stated they are in the same situation; they too are unable to contact the property owner. The assessor's office has indicated there are unpaid liens on the property as well as unpaid property taxes on the property for the past few years. Acevedo stated that no one has been able to locate the property owner.

Condry added that when the landslide first occurred he had called the property owner and he spoke with the person who answered the phone. He spoke with the real estate agent and the next day the real estate for sale sign had been removed. Condry stated as far as he can tell the property owner is aware of the situation and he is just not handling it.

Joanne Kessel, Administrative Services Technician for the Town of San Anselmo and person recording the minutes of the meeting, swore in Keith Angerman, San Anselmo Building Official and Sean Condry, San Anselmo Public Works and Building Director.

Acevedo asked Condry what his position is with the Town of San Anselmo and what his professional credentials are.

Condry stated he is the Public Works Director and the Town Engineer for the Town of San Anselmo and he is a licensed civil engineer in the State of California.

Acevedo asked Condry at when he became concerned with the property at 437 Scenic Avenue.

Condry stated on March 21, 2011 he received a phone call from the San Anselmo Police Department stating there was a small landslide adjacent to 250 Scenic Avenue. Condry responded to the call and went to the site. When he arrived he saw that part of a stone wall from 437 Scenic Avenue had collapsed into the streets. This was at the back side of the property and is adjacent to 250 Scenic Avenue. At that time Condry instructed the Town's Public Works crew to clean it up, which they did the next day. Following this he received a phone call from a neighboring property owner who said it looked like there was something else going on. Condry went back to the site and saw that the soil on the property had shifted to a degree to where there was a landslide into the street. The soil had dropped about 2 to 3 feet about two-thirds of the way up the property. A big portion of the property, due to the March rains, had failed, cleaved-off and started moving down hill.

Acevedo asked how the Town responded to the situation.

Condry stated he immediately contacted a contractor who came out and cleaned up all of the soil, mud, water and debris and installed k-rails along the property to prevent the hillside from moving further. Town staff also went to the property and installed visqueen over the soil to keep water from further saturating the hillside and to keep the hill from further sliding.

Acevedo asked Condry to define k-rails and visqueen.

Condry stated k-rails are the concrete barriers you typically see on a freeway to divide the lanes and each k-rail weighs a couple thousand pounds. The idea of installing the k-rails was given to him by one of the Town's consultants, Miller Pacific Engineering. Condry defined visqueen as a plastic barrier.

Acevedo asked of the current condition of the property.

Condry replied the property currently has the k-rails in front portion of the property along with the plastic tarp. Plastic tarp is falling apart. It was only a temporary measure and he is worried that when it rains again there may be potential problems. His professional judgment is that the hillside could move again if there are heavy rains.

Acevedo asked Condry to speak about the storm water discharge from the property.

Condry explained that when the site was saturated with water there was a lot of muddy water coming off the property which is in violation of Marin County Storm Water Pollution Prevention Plan (MCSTPPP). If the muddy water gets into the storm drains it can cause fish and other animals to die.

Acevedo asked Condry to describe what a permanent fix to property condition would look like.

Condry explained a permanent fix would consist of retaining walls on piers; also installation of a mesh over the soil and hydro seeding on the top. Condry stated the work needs to be done before this winter as two-thirds of the hillside has already started shifting down the hill.

Acevedo asked Keith Angerman to give his credentials and his position with the Town.

Angerman stated he is the Building Official for the Town of San Anselmo. He is a graduate of the University of Maryland with a B.S. in Civil Engineering with a specialty in structures. He is a registered licensed engineer in California, Maryland and Alaska.

Referring to Angerman's letter dated April 24, 2011 to Mr. Malik, Acevedo asked Angerman to describe his experience regarding the correspondence and contact with Malik.

Angerman stated a couple weeks after the slide occurred he wrote a letter to the owner informing him of the slide and advising him to contact a civil engineer to come up with design criteria in a retaining wall to stabilize the hill. There was no response to the letter. Angerman noted that in each of the letters he sent to the property owner he requested that he contact him, call him, come into Town Hall offices or contact Sean Condry. Angerman stated approximately four months later he sent another letter to Malik reminding him about the slide and the necessity to remediate the slide situation as soon as possible. Again there was no response from Malik. Approximately two months later he sent another letter to Malik, similar to the previous ones. However, this letter also included bills which the town incurred for the slide abatement work. After that particular time, giving him two weeks to thirty days to call or contact him with no response at all it was turned over to the Town Attorney.

Acevedo asked Angerman to explain Exhibit B, the Restricted Use Notice dated May 2011.

Angerman explained that a Restricted Use Notice is a policy that is set by the Office of Emergency Services set in the State of California. It is primarily set up for disasters and unsafe conditions. It is a process for an area that is unsafe, with a standard form that is put up to establish notice of a hazard. In this particular instance it was put up for restricted use meaning that it was a hazard area; do not go onto the property without talking to us or having an engineer with you.

Acevedo asked Angerman what has been done to work on a permanent fix for the property.

Angerman stated after no response at all we retained the services of technical engineer to design a retaining wall. The engineering firm has designed a retaining wall; we are ready for the next step which is to solicit bids for the slide remediation.

Acevedo asked Angerman if he knew the approximate cost of remediation.

Angerman said the engineers estimate to repair is between \$88,000 to \$250,000.

Acevedo asked Angerman if it is his opinion the remediation needs to be done immediately, before winter rains.

Angerman stated something has to be done as it cannot go through another winter. We have seen movement in the hill even though it was covered with a tarp. The remedial plan is a highly stable fix for the hill; it will protect the road and will protect the downhill. Angerman opined that something needs to be done soon.

Acevedo asked Angerman if he could give the sense of money that has been spent by the Town to date.

Angerman said costs incurred to date by the Town, with exception of the k-rails, is \$26,175.26. This amount includes the contractor clean up, town staff time, engineering time and geotechnical time.

~~Acevedo added that the costs to date for the Town Attorney for this project are \$ 5,421.~~

Acevedo asked the Council to adopt the resolution which includes the costs of \$26, 175.26 and the \$5,421 for the Town Attorney for a total of \$31,956.

Angerman noted his figure of \$26,175 does not include the cost of the k-rail rental. The Town has been renting k-rails on a monthly basis since March 2011.

Acevedo stated staff will get a final calculation of costs for the resolution, one that includes the costs of the k-rail.

Angerman described the various angles of the photographs in the staff report.

Greene requested confirmation that the hillside slid into the road (Scenic Avenue) and blocked the road for a period of time.

Angerman said that is correct; Scenic Avenue was closed for a portion of time.

Greene asked when the photographs were taken.

Angerman replied the picture was taken approximately two months ago and as you can see from the photographs the tarp has deteriorated.

McInerney asked if there is a house on the property.

Angerman explained the Town went thru a nuisance abatement hearing in 2008. The house was moving and the hill was shifting; it was a danger to the neighboring properties and their structures. The Town went to Superior Court and received a Condemnation Order. The house was condemned and torn down.

Angerman noted the photographs clearly show the visqueen is deteriorating. Angerman said that something needs to be done before this winter, either we need to re-do what has been done as a temporary fix or do it right and install a retaining wall, a permanent fix.

Greene asked Angerman if he personally posted the notice.

Angerman responded yes, he personally posted the notice.

Kroot asked for the name of the engineering firm who designed the geotechnical and structural plans for the retaining wall.

Angerman replied Miller Pacific Engineering.

McInerney said by approving the resolution Council would be able to place a lien on the property and asked if the Town intends to foreclose on the property and if the Town intends to obtain the property.

Acevedo responded yes there is potential for seeking foreclosure once the Town has made the repairs. At this cost it may be something the Town would want to pursue. The Town would have to turn it into a judgment lien and then it would be all in the court at that time.

McInerney asked if that is the expectation of the Town to acquire the property as this is the second time we have had an issue with the property owner and it seems like he has skipped town.

Condry said that by installing the retaining wall it will be a permanent fix and make the property buildable.

Kroot asked if there are previous liens on the property, such as tearing down the house, and if so what is the amount of the lien on the property.

Acevedo said she believes the lien is approximately \$12,000.

Kroot estimates the Town will have incurred costs of approximately \$140,000 to \$150,000 in the property if they go through with the permanent remediation.

Public comment

Jo McPeak, 435 Scenic Avenue, is concerned about her neighboring property at 437 Scenic Avenue. McPeak hopes that a retaining wall will be installed as well as hydro seeding and also feels the property is a fire hazard. She thinks the property owner, Mr. Malik has gone back home to his family in Pakistan because he could not build on the property and lost interest in the property as property values decreased and the stock market failed.

Laurie Wright, 427 Scenic Avenue, stated most of the neighbors on the street are very concerned about the possibility of a potential slide coming down from the property in addition to being a fire hazard it is an eye sore.

Doug Kelly, Floribel Avenue, feels it is a lot of cash the Town will have expended on the property and hopes that the plan is to sell the property.

Greene requested confirmation that Council should make the judgment determining a public nuisance based on the preponderance of evidence.

Acevedo said yes.

Acevedo confirmed that the figure to be included in the resolution would be \$35,356. This is the total of the k-rail rental fees of \$3,400, attorney fees of \$5,421 and Town costs of \$26,175.26.

M/s, Kroot/Coleman, to adopt Resolution No. 4007 determining the existence of a public nuisance and ordering that the property owner at 437 Scenic Avenue abate the public nuisance existing at the property and reimburse the Town of its costs and fees. AYES: Coleman, Greene, Kroot, McInerney. NOES: None. ABSENT: Lopin.

5. DISCUSSION REGARDING THE MISSION OF THE ECONOMIC DEVELOPMENT SUBCOMMITTEE AND CONSIDERATION OF EXPANDING THE SCOPE AND MEMBERSHIP OF THE COMMITTEE.

Community Services Director, Dave Donery, presented the staff report. Donery explained staff's recommendation that the Town Council direct staff to prepare a resolution for review at a subsequent meeting that would outline the parameters for an Economic Development Committee, with a charge, goals, objectives, purpose, organization, membership guidelines and to move the committee from a subcommittee to a full committee. The positions on the committee would potentially reflect a broader spectrum of folks that could bring different expertise to the committee, such as commercial realtors, contractors, small business finance expertise, commercial property owners and developers.

There was no comment from the public.

Coleman commented on current Economic Development Subcommittee meetings stating it has been very helpful having San Anselmo Police Captain, Nick Valeri and Town Manager, Debra Stutsman at meetings because they have been able to address and answer some of the concerns that have been brought forward at the meetings.

McInerney said it will be a unique committee that requires some expertise and he feels it is important for Council and staff to recruit quality people and it is important to have an aggressive outreach in the recruitment.

Kroot feels it is important for Council to establish the goals of the committee and that the Council should carefully consider what they will be setting in motion.

Council supports staff recommendation of expanding the scope and membership of the Economic Development Subcommittee and to move the committee from a subcommittee to a full committee. Council directed staff to come back with a draft resolution that would outline the parameters for an Economic Development Committee.

6. UPDATE ON THE HOMELESS POLICY STEERING COMMITTEE AND CONSIDERATION OF APPOINTMENT OF A COUNCIL REPRESENTATIVE TO THE COMMITTEE.

Town Manager Debra Stutsman presented the staff report. Stutsman acknowledged Mayor McInerney as Council's current representative to the Homeless Policy Steering Committee. McInerney has indicated that his time constraints make it difficult for him to attend the meetings and that Council may wish to appoint another representative.

There was no comment from the public.

Acknowledging Coleman's strong interest in the Homeless Policy Steering Committee McInerney asked Coleman if she would be interested in being Council's representative on the committee.

Coleman confirmed her interest as Council's representative on the committee.

M/s, Greene/Kroot, to appoint Councilmember Coleman as a representative to the Homeless Policy Steering Committee. AYES: Coleman, Greene, Kroot, McInerney. NOES: None. ABSENT: Lopin.

7. ADJOURN.

Mayor McInerney adjourned the meeting at 9:35 in honor of the men and women who died at the September 11, 2001 attacks.

Respectfully submitted,

Joanne Kessel