

TOWN COUNCIL MINUTES  
JULY 25, 1989

Mayor Walsh convened the regular meeting at 8:00 p.m., following a closed session beginning at 6:30 p.m. regarding personnel matters, regarding pending litigation pursuant to Government Code Section 54956.9(a), (ACORN v. Town of San Anselmo, Ansari v. Town of San Anselmo, and Nome v. Town of San Anselmo), and pursuant to Government Code Section 54956.8 (22 Magnolia). Present were Councilmembers Chignell, Colteaux, Sharp and Zaharoff.

2. OPEN TIME FOR PUBLIC DISCUSSION

Steve Emery, 385 San Francisco Blvd. wanted to know who was responsible for maintaining and preserving the natural beauty of the parks in San Anselmo. He recently noticed that the Town crew dumped the remains of a demolished building at Sorich Park and he felt it is an insult to him and others who enjoy the parks in town. Staff will report back on this matter to the Councilmembers.

Colteaux asked that item number 8 be heard out of order after items number 6.

M/S Colteaux, Chignell, to hear item 8 after item 6.

All ayes. Motion unanimously passed.

3. CONSENT AGENDA

- (a) Approve Warrants: Nos. 287-628 in the amount of \$1,167,529.54.
- (b) Approve Resolution approving the Ross Valley Paramedic Authority tax levy for 1989-90 fiscal year.
- (c) Approve Resolution establishing management salaries.
- (d) Waive reading and adopt Ordinance No. 903 adding Chapter 6 to Title 8 of the Town Code relating to claims and suits for refunds of taxes, fees, assessments and levies.
- (e) Accept status report on nuisance abatements.
- (f) Announce expiration of term on Planning Commission.
- (g) Appeal of Planning Commission's decision to issue a Notice of Violation in creation of the lot, and approval of a Conditional Certificate of Compliance, for Nancy L. Thurmond, etal, and Robert L. Thurmond, etal, end of Oak Springs Drive, A/P 5-291-06: CONTINUE TO AUGUST 22, 1989.

Town Attorney Roth asked that item 3(d) be taken off of the agenda and be heard at the next meeting.

M/S Chignell, Sharp, to approve the Consent Agenda, with the exception of item "D". Motion unanimously passed.

4. DISCUSSION OF THE TOWN'S RESPONSE REGARDING NOME V. TOWN OF SAN ANSELMO

Town Attorney Roth explained that he has been authorized by Council to file a petition for a rehearing to the Court of Appeal. The petition has to be filed by July 26th and the Court of Appeal must respond by August 10th. The Council will not take any action on this case until after the Court of Appeals responds. If a signatory vote of the Supreme Court were to be filed with the opposition of the Council it would have to be filed by August 21st. The basis for asking the Court of Appeals to reconsider the decision is that the Court has exceeded its jurisdiction in directing entry of judgement for the appellant. This is a case in which the appellant brought an action to injoin the second salary resolution and the Town, in response, made a summary

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judgement motion contending that the two salary resolutions in question were substantially different. The Trial Court accepted that position and entered a summary judgement for the Town. The appellant then appealed that decision and the appellant Court said no, not only are the salaries not substantially different, they are essentially the same and appears to have directed the Trial Court to enter judgement for the appellant. Mr. Roth's analysis is that the Appellate Court has exceeded its authority in doing that, and the most they could do was to return the case to Judge Breiner for trial.

Colteaux said it is currently unclear as to what action should be taken therefore he advises that the Council wait to make any decision until all the facts are known. He noted that Nome has not requested a judgement and currently the League of California Cities is also looking into this matter.

Chignell supported the majority opinion and suggested the Council convene on August 11th to discuss the response for August 21st. Sharp concurred with Chignell.

Zaharoff concurred with her colleagues and added that the language is unclear as to whether the case goes back to the Trial Court or if a judgement has already been rendered. There seems to be an ambiguity.

Mayor Walsh said she was of the minority opinion and has always questioned the raise of Mike Garvey. In this particular case she admires Sarah Nome for following this as far as possible on behalf of the voter support on this issue.

William Jellinek, 53 Florence Avenue, asked what the benefit was to the Town to incur additional costs by pursuing this issue.

Herman Kramer, 1 Allemand Lane, asked if this issue will go to trial or will the Council elect to drop the issue.

5. APPEAL OF PLANNING COMMISSION DENIAL OF V-2282 AND C-2223, JAMES R. AND DONNA M. HASTINGS 18 SAN RAFAEL AVENUE, A/P 7-162-15, A 5 FOOT WEST SIDEYARD VARIANCE, A 6 FOOT EAST SIDEYARD VARIANCE, AND A 2'8" REARYARD VARIANCE TO PROVIDE ON-SITE PARKING FOR A PROFESSIONAL USE WITHIN 3 FEET OF THE WEST SIDE PROPERTY LINE, 2 FEET OF THE EAST SIDE PROPERTY LINE, AND 17'4" OF THE REAR PROPERTY LINE; A PARKING VARIANCE FOR THE REQUIRED NUMBER OF PARKING SPACES; AND DESIGN REVIEW OF THE PARKING PLAN.

Public Works/Planning Director Kottage presented the staff report stating that at the end of the July 11, 1989 meeting, the Council requested that staff review the off-site parking spaces proposed by Mr. Hastings in lieu of the 3 additional on-site parking spaces required by the code. Mr. Hastings has located three spaces at 6 Bridge Street. The code required number of parking spaces for this size building is 10 spaces. In staff's opinion, the use of three of these spaces for Mr. Hastings will not cause code or practical problems for 6 Bridge Street. Staff's opinion is that the employees of 18 San Rafael should park at the Bridge Street lot, while the three on-site parking spaces should be reserved for clients. With regard to enforcement of the spaces, Mr. Kottage said the staff report provides an agreement for parking and other pertinent issues as it relates to the building at 18 San Rafael Avenue. This agreement has been reviewed and modified by the Town Attorney.

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Roth said that Mr. Hastings has reviewed and agreed to the modifications of the Agreement.

Colteaux asked if the last paragraph in the Agreement includes lessees and sublessees. Roth said that could be added by including the words "...including, but not limited to..." and include the word "lessee". Now that there is a contract Colteaux wondered if the conditions could be placed as a general legal restriction on the property. Roth said it will be part of the variance as conditions placed on the approval. In addition, the agreement can include the comments that "...this agreement in no way is intended to lessen the Town's legal authority to bring an action to abate a nuisance."

Cheryl Mondeaux, 16 San Rafael, said that the parking off-site only creates more problems for the Town. Who will enforce the parking, what if the Bridge Street parking is discontinued and Mr. Hastings is unable to find new parking elsewhere? He is now asking to put a sign in the back yard. She feels the rear of the property will continue to look like a parking lot. She is requesting Mr. Hastings construct a 6 foot solid fence on the east property line to shield her property from the property at number 18.

Leonard Thoelecke, 30 San Rafael Avenue, presented photographs to the Council that showed the lack of parking available on San Rafael Avenue. He did not think that the agreements proposed by staff could be enforced. He cited Stop N' Go as an example of a use that has far exceed its limits with no regulation by the Town. He thought that if this application was approved it would create more traffic and increased parking problems on San Rafael Avenue in addition to taking away from the downtown parkers.

Mark Salsberg, 855 San Anselmo Avenue, disputed Chignell's comment about the amount of available parking on San Rafael Avenue. He did some research and said there was a significant amount of traffic. He was also concerned about enforcement of the parking agreement if this application was approved. It is easy to make rules but difficult to enforce. What would happen if the business increased? He did not want to see a business operate in a residential neighborhood.

Barbara Trenam, 22 San Rafael, thought the Town was bending over to find parking for Mr. Hastings. She asked if the variance is transferable with the property who will monitor the use in the future?

Paul Chourre, 44 San Rafael, said if the parking variance goes with the property it will be hard to monitor as it transfers to other businesses. He feels the location is too small to accommodate the business.

Mr. Hastings said the issue before the Council is not to change the zoning on the parcel. He has tried to find solutions to the concerns of the neighbors and now that he has satisfied the concerns of the neighbors he should be able to work and live in the Town peacefully.

Nancy Scarola, 67 Tamalpais Avenue, was representing herself and her neighbor Leigh Yafa, who could not be present but submitted a letter of support for Mr. Hastings. She noted that all the people that live close to the downtown area elected to do so knowing that it is a mixed commercial and residential area. The proposed use of the site by Mr. Hastings will be no more intense than that of a 4-5 member family.

Raymond Mondeaux, 16 San Rafael, feels the main issue is the use of the site as "Professional" and that it is over

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Fran Briggmann said that if Mt. Baldy is acquired we will have to live with the laws of legal public access which is owned by the Water District. She feels the land will be better cared for under public control because it can be controlled and watched carefully

Johnathan Braun said if the property remained in private ownership there is a high potential for development which would certainly change the character of the area. He said they are talking about keeping the area status quo but with better management through the Marin Open Space Commission.

Colteaux said the present situation is that the Town of Ross and private owners control everything and San Anselmo is asking to have control with Ross so the present open space can continue.

Mayor Walsh said this agreement before the Council is only a conceptual agreement and suggested Mr. Cary meet with the Open Space Committee to resolve the questions

M/S Chignell, Zaharoff, approve in concept signing the Joint Powers Agreement, authorizing the Board of Supervisors to form this district for the purpose of raising money for the purchase of Mt. Baldy with the matter to be brought back to the Council at the next regular meeting for formal action.

Motion unanimously passed.

Sarah Nome asked if this means the Town has excluded the Marin Town and Country Club and the Town of Fairfax.

Herman Kramer, 1 Allemond Lane, wanted to obtain a list of all residents that will be affected by this measure.

6. PUBLIC HEARING ON ADOPTION OF AN INTERIM ORDINANCE EXTENDING ORDINANCE NO. 902, AN INTERIM ORDINANCE PROHIBITING THE ISSUANCE OF DEVELOPMENT PERMITS FOR CONSTRUCTION OF DEVELOPMENT PROJECTS THAT ARE CONSISTENT WITH THE CURRENT ZONING REGULATIONS BUT INCONSISTENT WITH THE GENERAL PLAN.

Public Works/Planning Director Kottage said the purpose of this ordinance is to protect the public safety, health and welfare by controlling, on an interim basis, development applications which would be contrary to, detrimental to, or jeopardize, the zoning proposals which the Town Council and Planning Commission are considering, all with public participation. The purpose of said zoning proposals is to make the zoning ordinances consistent with the General Plan as required by section 65880 of the Government Code of the State of California. Therefore, during such time as this ordinance is in full force and effect, no applications for subdivision, building, use, grading, variance and design review where such application is consistent with the current zoning of the property but inconsistent with the adopted San Anselmo General Plan will be accepted or processed, except as provided for in Section (d) of this ordinance. An application for an exception shall be made to the Town Council and the Council may grant an exception if it can make the required findings.

Roth noted that the extension can be for 10 months and 15 days and if the Council was in support of the extension, the motion should be to extend the ordinance to the maximum time allowed.

Mayor Walsh asked if remodels and additions are exempt. Kottage said that the Zoning Subcommittee is trying to work on a policy addressing those issues and by extending the

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Interim Ordinance will allow the Sub Committee time to develop a policy.

Bill Benz, Attorney representing Mr. and Mrs. Hitchner of 200 Oak Springs, would like to exclude additions to the clause in the Interim Ordinance. He said his clients have a one story, 1,100 square foot home surrounded by 2 story homes and because of their setbacks will have to build up. Mr. Hitchner began plans for his addition 4 years ago and has always tried to conform to all zoning regulations of the Town. He filed his plans with the Building Department last week and now is told he has to wait because of this Interim Ordinance. He has \$75,000 already invested in designs, equipment and furniture and now is told there will be additional delays. Mr. Benz felt that the interim ordinance is not legal based on his interpretation of the Government Code.

Roth said he was familiar with the point Mr. Benz referred to however he does not agree with him on the legal interpretation.

Colteaux said this matter is currently being addressed in the Zoning Sub Committee and under discussion are exceptions that the Town can apply to certain parcels.

Chignell asked if there was a current remedy for Mr. Hitchner. Colteaux said that the application was only filed last week and the recourse would be to file for an exception and if the addition does not disrupt the neighbors he may not need a design review.

M/S Colteaux, Zaharoff, to waive reading of Ordinance 903. Unanimously approved.

M/S Colteaux, Zaharoff, to adopt Ordinance 903, extending interim Ordinance 902 to June 9, 1990.

Ayes: Chignell, Sharp, Zaharoff, Colteaux  
Noes: Walsh

Motion carried.

7. PUBLIC HEARING REGARDING 54 MIWOK DRIVE, A/P 177-263-01, A SINGLE FAMILY DWELLING, JACOB FRIEDMAN - APPLICANT, TO DETERMINE WHETHER THIS DEVELOPMENT APPLICATION, SUBMITTED BEFORE ADOPTION OF ORDINANCE NO. 902, SHOULD BE EXEMPTED FROM THE INTERIM ORDINANCE TO ALLOW PROCESSING OF THIS APPLICATION UNDER A CERTAIN SET OF CONDITIONS, I.E. DESIGN REVIEW.

Kottage stated that an incomplete application for a new residence was received by the Building Department and some processing of the application was initiated prior to the passage of the Interim Ordinance. Staff did not notice that this application was in conflict with the General Plan until approximately 2 weeks after the passage of the Ordinance and at that time informed the applicant that staff could not continue to process the application until it received clarification on how to proceed from the Town Council. Staff is asking for direction from Council on whether this application should fall within the guidelines of the Interim Ordinance prohibiting building of a new home within the R-1C area at this time or, allow an exception to the Interim Ordinance with the condition that the design of this home be subject to the R-1H Design Review guidelines. It should be noted that the building falls within the R-1 guidelines and if Council approves an exception then no design review would be necessary and the intent of the R-1C is to protect the hillside. Staff therefore recommends that the Council consider the applicant's request for both an exemption and an exception and deny the exemption and grant the exception.

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intensity of use of the site. He would like to see the site continue to be R-1. What is being proposed would change the character of the neighborhood. He feels the use at number 11 San Rafael Avenue is appropriate but the use at number 18 or 16 is inappropriate because they would require too many variances.

Kottage noted that the variance does go with the property but in addition, the conditions go with the variance and any future uses have to be the same.

Colteaux asked what modifications had been made to the agreement since the last meeting. He said the Council has no parking diagram indicating where parking is proposed at 18 San Rafael or at 6 Bridge Street. He thought that the Planning Commission needed to view the parking configuration rather than have it approved at staff level if it was the desire of the Council to approve this application. In reference to a comment made about majority ruling, he said there are also rights of the individuals and Mr. Hastings bought the property in good faith thinking that he could use the building as "Professional" and is now willing to make additional changes to satisfy the neighborhood. He has provided 6 spaces, three actually outside of the neighborhood and Colteaux said he was inclined to support this application as long as the final parking plans are reviewed and approved by the Planning Commission.

Sharp thought it would be hard to enforce item "E" of the agreement if the property is transferred and the next attorney has increased business. He thought it should be more clearly defined otherwise he approved of the rest of the Agreement.

Kottage suggested that reference to the Town Council minutes could be included. Roth suggested wording that reflects the intensity of use in item "E".

Chignell asked if Mr. Hastings was agreeable to constructing the 6 foot east sideyard fence as requested by Mrs. Mondeaux at 16 San Rafael Avenue. To which Mr. Hastings replied yes. With regard to enforcement of parking, Chignell asked how it would be handled by staff.

Kottage said that parking can be monitored and enforced with regard to the clients and employees and that staff will have to handle each complaint or situation on a case by case basis as they come in. However, staff will not monitor the parking unless a complaint is filed.

Chignell said he will support the application, adding that the applicant has provided parking, screening, landscaping and a fence for the neighbor. He also supports the idea that the parking configuration be reviewed by the Planning Commission. In addition he would like to have staff look at the Stop N' Go conditions because of the earlier comments.

Sharp asked why staff suggests a 90 day time frame for the applicant to provide new off-site parking if the current spaces no longer exist or become unacceptable. Kottage said it was a judgement call and felt 90 days would provide Mr. Hastings adequate time to secure additional parking.

Zaharoff agreed with what had been already stated by her colleagues and added that the applicant has found the additional parking spaces necessary off site, not the Council, and she is therefore now able to approve the application because the detriment has been removed and this will minimize the impact of the neighborhood. With respect to the zoning of the parcel, the General Plan was just recently updated and that was the time for concerned individuals to attempt to make changes in the zoning.

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Walsh had nothing to add.

M/S Colteaux, Sharp, to approve in concept V-2282 and C-2223 for James R. Hastings, and refer the application back to the Planning Commission for final review of the parking variances, final review of the contract and conditions on the variances, and for final design review of the site.

Sharp wanted to be certain that the variance embodies the conditions separately from the agreement that contains the conditions and terms of the contract

Motion unanimously passed.

At this time there was a short break and Mayor Walsh presented Ernie Dickens with a Certificate of Merit and commended him on the excellent job he did as Administrator for the Town and that everyone would be sorry to see him leave San Anselmo. Coffee and cake was served in honor of Mr. Dickens.

8. RECOMMENDATION FROM MT. BALDY STEERING COMMITTEE TO FORM A JOINT POWERS AUTHORITY FOR ESTABLISHMENT OF A MELLO-ROOS COMMUNITY FACILITIES DISTRICT TO ACQUIRE THE SUMMIT PARCEL ON BALD HILL. (Taken out of order)

Johnathan Braun said that planning for the acquisition of Bald Hill as permanent open space began in 1976 and the San Anselmo 1989 General and Open Space Plan and the Ross 1988 General Plan identified the parcel for future open space. To achieve this goal, discussion last year between Ross and the Open Space Committee resulted in the formation of the Mt. Baldy Steering Committee. The Committee defined its goal to be the creation of a greenbelt from the summit of Bald Hill along the ridge to Fairfax. The Marin County Open Space District accepted responsibility for acting as the lead agency for this project and they consider Bald Hill a top priority. Johnathan said that Ross signed the Joint Powers Agreement last Saturday by a 4-0 vote.

Fran Brigmann, Marin County Open Space District, said she is pleased that San Anselmo and Ross are interested in preserving the hillside and would like to see this on the 1990 ballot. A rough estimate that would be assessed per parcel would be lower than \$60 per year and the Open Space District is hoping for it to be approximately \$15 per year.

Barry Spitz 155 Los Angeles Blvd, was concerned about access to the property and would like to see a clause in the agreement that there will be no restrictive use of access.

Sarah Nome, 77 Alder Avenue, said that has been private open space for years and the Town has never had to incur any costs. She thought it would be a wiser use of funds to acquire Birds Nest Glen for recreational purposes.

Herman Kramer 1 Allemand Lane, asked about the zoning for the 60 acre parcel. Johnathan Braun said it is zoned 1 house per acre, therefore, 60 houses.

Bob Cary, Ross, said he was the major landowner that abuts the parcel in question and he owns the water rights in this area. He said approximately 80% of this land is a nature reserve and was concerned that it will not remain that way if turned into public land. He thought the only access to the parcel was through Phoenix Lake and wondered if the access would be restricted. If there was no restrictions Mr. Cary said there will be a network of trails, fire problems lavatories and picnic tables and wondered who would maintain and police the area. He felt he could support this issue and even donate to it if the access was restricted.

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with a condition that the application be subject to the R-1H design review process.

Mr. Friedman asked for an exemption from the Interim Ordinance because his application was accepted by the Building Department a considerable time ago. He has spent a considerable amount of money already and was just recently informed that there is an ordinance that prohibits him from building. He said that Section 1 D of the Ordinance only speaks about the filing of applications, not the processing of applications. He has spoken to his neighbors and has lowered the height of the house, changed the color to conform, moved the driveway changed the placement of the house on the lot and added trees to screen based on the concerns of the neighbors. He therefore does not think his plan will cause a hardship to the neighborhood. In addition, it would be a hardship to him if there are additional delays because it is a steep lot and unsafe to build during the winter.

The general consensus of the Council was to allow Mr. Friedman to continue to process his application.

M/S Colteaux, Sharp, to grant an acceptance for Jacob Friedman, 54 Miwok Drive, A/P 177-263-01, on the condition that this be forwarded to the Planning Commission for Design Review, using the R-1H Design Review as a guideline but pointing out that this is in a R-1C Conservation zone, and that this should be heard on the August 7, 1989 Planning Meeting and the Commission should process this application speedily to protect the rights of the applicant.

Ayes: Zaharoff, Sharp, Colteaux, Walsh  
Noes: Chignell

Motion carried.

9. 1989-90 BUDGET:
- (a) Resolution setting Pension Override Requirement for the 1989-90 fiscal year.
  - (b) Resolution setting the amount of the Municipal Services Tax for the 1989-90 fiscal year.
  - (c) Set dates for public hearings.

Administrator Dickens said that this year's proposed budget is very much a continuation of last year with the exception of the new position of the Assistant Director of Planning.

M/S Chignell, Colteaux, to approve Resolution setting Pension Override requirements for the 1989-90 fiscal year.

Unanimously passed.

M/S Chignell, Colteaux, to approve Resolution setting the amount of the Municipal Services Tax for the 1989-90 fiscal year.

Ayes: Zaharoff, Sharp, Colteaux, Chignell  
Noes: Walsh

Motion carried.

The Council was given an itinerary of the dates and times of the 1989-90 Budget Hearings. It was the consensus of the Council that the Budget Hearings be noticed.

10. SELECT COUNCILMEMBER'S(S) TO PARTICIPATE IN INTERVIEW OF APPLICANTS FOR ASSISTANT DIRECTOR OF PLANNING.

M/S Chignell, Sharp to select Councilmember's Zaharoff and Colteaux to participate in the interview of applicants for the Assistant Director of Planning.



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Unanimously passed.

11. UPDATE ON LONG-TERM FINANCES COMMITTEE.

William Jellinek, 53 Florence, said there is no update at this time.

12. DISCUSSION ON SETTING A PUBLIC HEARING ON A PROPOSAL TO PLACE STOP SIGNS ON SAN ANSELMO AVENUE AT TUNSTEAD AVENUE.

Administrator Dickens said that the Traffic Safety Committee has been very pleased with the effect of placing stop signs on the San Anselmo Avenue at Tamalpais Avenue. Based on the success at this location, the committee now recommends the placement of stop signs on San Anselmo Avenue at Tunstead Avenue. Dickens said because this is on the main intersection in the downtown area, a public hearing could be set on this proposal for the purpose of finding out what the public's reaction to this proposal is.

Chignell thought that this would back traffic onto Sir Francis Drake Blvd and was therefore opposed to the stop sign.

The rest of the Council thought the signs should be put up for a trial period of 90 days and then be reviewed again.

M/S Sharp, Colteaux, to erect stop signs on San Anselmo Avenue at Tunstead Avenue for a 90 day trial period.

Ayes: Zaharoff, Colteaux, Sharp, Walsh  
Noes: Chignell

Motion carried.

13. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS, COMMENTS AND DIRECTIONS TO STAFF; STAFF MISCELLANEOUS ITEMS.

1. Express of appreciation to the Town Administrator by Town Council

Colteaux said that Dickens was a dedicated public servant and stepped into a uncomfortable situation when he assumed the Administrator position. San Anselmo owes him a great debt and he will be missed.

Zaharoff said there have been comments made to her that recently there has been good community spirit and that Ernie should get the credit.

Sharp said that Ernie has done a masterful job.

Chignell said he will miss Ernie's style.

Walsh said Ernie gets her hero of the year award and added that the Town Council has been so much better with Ernie as the Administrator.

Administrator Dickens said the credit goes to the Town Council for keeping harmony in the Town and to the employees of the Town.

2. Incineration of Toxic Waste of Livermore Waste. Walsh said she received a letter from Johnathan Allfarmer regarding the above subject. The consensus of the Council was to put this item on the agenda to be heard at a future meeting.

3. Stop N' Go Use Permit

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The Council would like to have a status report regarding the current use permit for Stop N' Go and whether or not it is in compliance with the use permit.

14. ADJOURNMENT.

The regular meeting of the Town Council was adjourned at 11:05 p.m. to the next regularly scheduled meeting of August 8, 1989.

BARBARA CHAMBERS  
ADMINISTRATIVE SECRETARY-TECHNICIAN