

TOWN OF SAN ANSELMO
TOWN COUNCIL MINUTES OF JANUARY 9, 1990

Mayor Walsh convened the regular meeting at 8:00 p.m. with Councilmembers Colteaux, Zaharoff, Sharp and Chignell present.

2. OPEN TIME FOR PUBLIC EXPRESSION

Town Attorney Hadden Roth reported that *Nome vs Town of San Anselmo* was depublished, by the California Supreme Court which, in this case is equivalent to a reversal.

Police Chief Bernard Del Santo said that a speeding violation was recently been thrown out of court because the Kilometer signs seem to be too big and confusing for motorists. Commissioner Sharp suggested that this item be referred to the Traffic Safety Committee for further review.

3. CONSENT AGENDA

- (a) Approve Minutes: December 12, 1989
- (b) Acknowledge and file warrants: Nos. 1686-1948, in the amount of \$1,024,689.37
- (c) Adopt Resolution calling for Town election on April 10, 1990, requesting consolidation with other elections in the County, requesting election services by the County Clerk, and providing for candidates statement of qualifications.
- (d) Adopt Resolution approving the 1988/89 to 1992/93 major transportation projects in Marin County as recommended by the Marin County Urban System Committee
- (e) Adopt Resolution authorizing application for participation in the California Energy Commission Energy Partnership Program

Chignell requested clarification about warrant # 1765-CPOA/CPOERT which is listed as dues. He was under the impression that Council did not want the taxpayers money to go for this. Chief Del Santo clarified that it was for a legal publication, not dues.

M/S Sharp, Chignell, to approve the Consent Agenda. Motion passed unanimously.

4. INTRODUCTION OF ORDINANCE REPEALING CHAPTER 16 OF TITLE 4 OF THE TOWN CODE CURRENTLY ENTITLED "SOLICITORS AND PEDDLERS" AND ENACTING IN ITS PLACE A NEW CHAPTER 16 OF TITLE 4 ENTITLED "CHARITABLE SOLICITATION."

Town Attorney Roth reported that the proposed ordinance results from the settlement in the ACORN case. He noted that it makes clear that political fundraising is not subject to the provisions of the charitable ordinance and has a fast review time in the event of a dispute.

Chignell asked for (1) clarification on Section 4-16.12 Violations, and; (2) wondered if the Plaintiff's attorney had requested any specific inclusions. Attorney Roth said he would like to give the Town the option to decide on either an infraction or a misdemeanor depending on the circumstances however, normally it would be an infraction. He also stated that the plaintiff's attorney and he have corresponded back and forth and has not responded to the last draft. Therefore he was satisfied that there is no basis for challenge.

Joyce Warrenstein, 60 Magnolia, was interested in this topic because she is a manager of an apartment building and therefore wanted to know the details of the ordinance and how and why it has been changed.

Attorney Roth prefaced by stating it is a very complicated ordinance; that the law is constantly changing in this area and this ordinance is an update. Also the ambiguity in the prior ordinance as to whether political fund raising was a charitable fundraising have been clarified. Lastly, procedures have been worked out for issuing licences or permits and appeals.

M/S Sharp, Chignell, to waive reading. Motion unanimously passed.

M/S Sharp, Zaharoff, move introduction of ordinance repealing chapter 16 of title 4 of the Town code currently entitled "Solicitors and Peddlers" and enacting in its place a new Chapter 16 of title 4 entitled "charitable Solicitation." Motion unanimously passed.

5. PRESENTATION OF WORKERS' COMPENSATION SAFETY AWARD

Darryl Heppner, representing the Marin County Risk Management Authority, presented a Silver Award to the Town and to the San Anselmo Police Department. Mayor Walsh accepted the awards on behalf of the Town.

William Jellinek, 53 Florence requested clarification on why the Ross Valley Fire Department figures were so high. Administrator Camuglia stated that she will be happy to meet with Mr. Jellinek to discuss this issue.

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6. APPEAL OF PLANNING COMMISSION APPROVAL OF V-2308, LIVING FOODS, 218 AND 222 GREENFIELD AVENUE, AP 6-173-16, PARKING VARIANCE TO EXPAND THE EXISTING STORE, WHICH CURRENTLY OPERATES AT NO. 222, INTO THE ADJACENT BUILDING KNOWN AS NO. 218.

Jan Rubenstein, owner of Living Foods and Walter Robb, General Manager, were present.

Director of Public Works/Planning Kottage, presented the staff report. Given the existing excess demand for parking spaces in the vicinity of this store, staff strongly recommended against expansion of this store and for Council to uphold the appeal.

Police Chief Del Santo said that there have been many citations issued because of the continuing traffic problems on Greenfield Avenue. The delivery trucks for Living Foods continues to double park at all times during the day which caused additional traffic problems. He felt that the intensity had not decreased.

Sharp asked if the Goodrich Report specifically addressed any alternatives for additional parking between Spring Grove and Sequoia. He also wondered if there have been other studies done of the area.

Walsh stated that on behalf of the Parking Committee, she asked for the Consultant. The traffic study addressed various parking alternatives. There has only been one study done because of the cost factor.

Abe Froman, owner of Bravermans Furniture, 208 Greenfield Avenue, said that Bravermans is a family owned operation that has been there for 50 years. He has appealed the approval of the use permit because he wants to assure the survival of his business in San Anselmo. The Goodrich Traffic Study said that 90% of the traffic is generated by Elan's Fitness Center and Living Foods. That leaves only 10% left over for all the other businesses on Greenfield. He felt that there is currently a serious parking problem in the area and to increase the intensity of use for Living Foods would increase an already bad parking situation. He noted that his specific objections are included in his letter of appeal to the Town Council dated November 14, 1989.

Walter Robb, General Manager of Living Foods, said the store has been in San Anselmo since 1985 and is also family owned. He stated there have been comments that Living Foods started out as a produce store and has grown considerably. There is no documentation in the Town files to verify that and the owner does not agree with that statement. He feels the use has never changed. With regard to the Goodrich Study, he said that only one time did the total demand exceed the maximum and that was on a Saturday. He did not feel the Study was very creative or provided accurate information relative to the staff of Living Foods. He did not feel the Staff Report accurately addressed the number of people based on the transaction counts of the Store. He did not agree that there would be an increase of 90 cars per day because of the proposed 1,500 square foot increase in space. Mr. Robb felt that Living Foods draws customers for the other merchants on Greenfield. To his knowledge there has been no record of complaints about parking except for Mr. Froman. He stated that he agrees there is a parking problem but did not think the increase in space would add to that problem. He felt the increase in space would only allow Living Foods a chance to spread out, but he did not anticipate the clientele will increase.

Kathy Quinn, Magnolia, felt that Living Foods brought additional business to San Anselmo and felt that they should be allowed to expand.

Dan Thomas, 224 Greenfield, stated that his office is on Greenfield and there is a major traffic problem associated with Living Foods. When this use permit was approved in the beginning the business was very small. The Town did not anticipate the volume of trucks that would need to make deliveries to the site. He said that he has trouble parking every day and is amazed that there have not been serious accidents because of the volume of traffic. He thought the reason the Cancer Society Thrift Shop vacated the premises was because patrons were unable to find adequate parking.

David Froman, Bravermans, said that the peak volume of customers for Bravermans and Living Foods take place at the same time and therefore it is difficult for Bravermans' customers to find parking spaces. He also stated that many of the Planning Commissioners approved the use permit for Living Foods because they frequent the store and he requested that the Council be objective in their decision.

Charles D. Jenkins, Attorney representing Nigels Furniture, stated he had no objection for expansion of any of the business on Greenfield Avenue as long as the parking is not adversely affected. He stated that Nigels was also interested in expanding in the future and hoped the Council would recognize similar situations in the future.

Jan Rubenstein said the expansion of Living Foods will not generate additional delivery trucks of passenger vehicles. He stated that they are not putting in a new line of products therefore the

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clientele will not change. He challenged the Council to find another use to occupy the proposed site that will generate no deliveries.

Roger Pearce, son of the owner of the building, said the space has been vacant since last March. He said that two parking spaces were allocated for the Cancer Society which were used by the employees. Living Foods does not allow their employees to park on site and this would increase additional parking for the customers of Living Foods.

Alyssa Hall, 183 Tunstead, said that although she uses all of the businesses on Greenfield Avenue, the traffic situation is dangerous and parking needs to be addressed.

Sarah Nome, 77 Alder, asked if there has been a study as to which business brings in the most sales tax for the Town.

Kottage said the parking has been an ongoing problem for the last four years and it would be a disservice to the residents of San Anselmo if this appeal is denied. He stated that preliminary figures were obtained last year by the past Town Administrator that stated Bravermans generates more sales tax dollars for the Town than Elan or Living Foods.

Sharp was unable to make the appropriate findings to grant the variance. Based on the testimony, he agreed there is a problem but he is not satisfied with the scope of the Goodrich Traffic Study. He would like to explore the possibility of a "Master Plan" of the area that would address alternative solutions to the parking problem. He wondered if there might be a mechanism to extract parking mitigation fees that could be applied to a study for a universal approach to the parking problem on Greenfield Avenue.

Colteaux was not able to make the findings for the variance because of the existing parking problems in the area. He suggested the applicant take back the application and get together with the other merchants on Greenfield to put together a plan that would solve the parking problems. Suggestions might be diagonal parking, retaining walls to separate parking, decrease the width of the sidewalk, grading, designating more parking on Red Hill. He felt there were solutions that could be worked out and perhaps a contribution from the merchants and the Town applied to solving the problems.

Zaharoff felt that all the businesses on Greenfield are valuable and provide necessary services but she feels that the current situation not only provides inconvenience but has also become an unsafe situation. For that reason she could not allow the expansion of Living Foods. She would like to see diagonal parking explored as a possible solution.

Chignell agreed with his colleagues and that the appeal should be sustained. He would like to see Living Foods stay in San Anselmo but there is a significant traffic problem and any expansion will exacerbate the problem. He suggested the applicant contribute to researching the possibility of diagonal parking.

Walsh said that the Parking Committee researched several alternatives but came to a stand still because Living Foods was not able to cut back on the delivery times.

Jay Rubinstein said he was at a loss to see how the Council determined there would be an increase in intensity of use by the expansion. He is expecting no new customers or no added deliveries and therefore did not think there would be an increase in the use. He stated that there was a vacant building waiting to be rented and asked what use would be acceptable for the site.

Colteaux said that perhaps the applicant could take the application back and come up with some solutions to the parking problem.

Attorney Roth said that a determination must be made on this application prior to February 18, 1990, or the application will be deemed approved by action of law. He recommended that the variance application be denied and the applicant be given a chance to reapply without fee. Also, the EIR becomes moot if the Council chooses to deny the variance.

M/S Colteaux, Chignell, to grant appeal of the Planning Commission's approval of V-2308 - Living Foods, 218 and 222 Greenfield Avenue, A/P 6-173-16, parking variance to expand the store into an adjacent building and deny the variance because of the time frame of 2/18/90 and with the understanding that the applicant can reapply with no additional fee. Motion unanimously passed.

7. DISCUSSION REGARDING POLICY ON DISCLOSURE OF COSTS OF PENDING LITIGATION.

Administrator Camuglia presented the staff report stating that a draft policy regarding disclosure of litigation expenses was reviewed by the Council at the November 28, 1989 Town Council meeting. Council requested that staff survey surrounding communities to determine if such a policy was consistent within the region, and report back to Council regarding staff's findings. Staff has completed that survey and none of these communities have policies regarding disclosure of litigation

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expenditures because the issue has not arisen in their jurisdictions. The League of California Cities was contacted also and they had no record of litigation expense disclosure policies in their files. Staff continues to recommend that council establish a policy regarding litigation expense disclosure. Even though no other city in the area appears to have established a written policy, it behooves Council to do so as it is an issue in the community.

Sarah Nome, 77 Alder, felt that Attorney Roth was hiding the amount of money he is charging the Town for legal fees. She wanted to know what he was hiding.

Colteaux does not see a need to establish a policy regarding disclosure of litigation expenses. He did not feel that the Town would be hurt in anyway if information was provided. It was his feeling that this proposed policy is based on a personal antagonism.

Attorney Roth said that is not the basis for the policy.

Chignell did not want to disclose the costs on less than a quarterly basis.

Sharp said the nature of litigation is that people do read into the billings and information can be revealed. The general policy should be full disclosure except for those people who are in litigation against the Town, and then the information should not be disclosed.

Zaharoff said she will go along with staff's recommendation but also feels the Town Council should continue to keep a close monitor on all litigation fees.

Walsh felt there was enough protection already and was not in support of the policy. She noted that this was all brought about because of a clash of personalities.

Attorney Roth stated that it is clearly legal not to disclose attorney fees while litigation is pending. More specifically, there is no reason to give that information to a person who is suing the Town because counsel does not want to give the opposition any leads. This information is supplied on a quarterly basis to the public and that normally is sufficient information to be on top of what is being done.

M/S Zaharoff, Chignell to approve Town Administrators policy on disclosure of costs of pending litigation.

Ayes: Zaharoff, Chignell

Noes: Colteaux, Sharp, Walsh. Motion denied.

Administrator Camuglia said if Council has no objection staff proposes, for the sake of documenting this informal policy, to redraft the policy and bring it back as a consent calendar item. The informal policy would state that there are two payments made for Town Attorney services, one for legal counsel and one for consolidated monthly payment for litigation expenses. That information is to reflect as two totals on the monthly warrants register. Staff would like to document this because it seems to be an area of confusion.

Roth explained that although litigation expenses would be cumulative if there was only one litigation against the Town the information would be revealed to the public.

Sarah Nome said that for a long time Attorney Roth did not submit itemized bills until she requested it four years ago. She asked how long it would take to make information accessible after a case has been adjudicated.

Roth explained that he used to be on a monthly retainer and therefore did not itemize his bills. Now that he is on an hourly basis he itemizes his bills. The change had nothing to do with Ms. Nome.

The consensus of the Council was to have staff bring back an informal policy for clarification purposes.

8. DISCUSSION REGARDING OPTIONS FOR LEGAL SERVICES.

Camuglia presented the staff report and stated that staff did not make a recommendation to Council regarding legal counsel and litigation options. It is her understanding of the Municipal Code is that it is not within the range of the Administrator's authority. She did however has some suggestions for Council. She suggested that Council consider forming an ad hoc subcommittee to establish Council policy regarding legal counsel and litigation management. Council might also wish to conduct an annual performance review and evaluation of the Town Attorney to make certain that the Council and the Town Attorney understand and agree upon the issues to be handled, and to establish the performance objectives of the Town's legal counsel/litigation management program. This process could be handled with little expense to the Town by the Town Attorney and a subcommittee of the Council. Camuglia also suggest that her staff prepare a brief, bi-monthly confidential report to

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Council indicating the status of each case in litigation, the expenses incurred and the balance remaining so Council has easy access regarding the status of litigation activity and expense.

Roth thought the report was well prepared by the Administrator and that he said he would like to remain as the Town Attorney. He concurred with the Administrator's two suggestions. He wanted to add for the record that over the last seven years the average hours worked for the Town has been 33 hours per month on legal consultation.

Colteaux asked if Roth was familiar with the case about Farin vs. San Francisco.

Roth said that was a case where the Brown Act did not apply. However, he did not see any problem with making the meetings public and regarding litigation and attorney/client relationship, the Town could use the Brown Act.

Chignell think the Town is fortunate to have Mr. Roth and would urge his colleagues to continue to employ him. He has the reputation as exemplary in the legal community and leaders of the community. He agreed that the Council needs to become more involved in the maintenance of litigation. He would be willing to serve on the sub committee and agreed that the meetings should be open to the public.

William Jellinek, 53 Florence, was told at a Long Term Finance Committee that 50% of litigation fees relates to damages to storm drain. He asked the Town Attorney to comment on that.

Roth said that these cases are almost phased out because they related mainly to the 1982 storm.

Sarah Nome, 77 Alder said she came up with 88 hours a month from the bills she has collected from Roth over the last 4 years. She said currently Roth is working more than half time for the Town.

Roth commented that the Administrator made a good observation on page 3 of the staff report that states "...the best ways to reduce the potential of litigation in the future are to properly maintain our infrastructure, establish clear, understandable policies and guidelines for the administration of the Town and implement them...". He would like to see this included in the sub committee.

Colteaux wondered how Camuglia arrived at the number of hours worked for the Town Attorney over the ten year period.

Camuglia said the figures were taken from the budget for actual dollars spent.

Colteaux would like to have a mechanism whereby the Town has good control over attorney fees. In addition, he agrees there is a need for an accumulation of guidelines for staff to follow. In summary, he would like a complete breakdown on legal fees, has no problem with a sub committee and open hearings but feels that the Town will have to look outside of Marin County for other hourly rates as well as for candidates to bid on the position. He said he would be willing to serve on the sub committee.

Camuglia noted that the hourly rate for the south bay was higher than Marin County. She also suggested that the Council might consider the amount of legal experience required by the Town and that if a full time attorney is hired there would be additional expenses such as office space, a legal secretary and a law library.

Chignell noted that the reason our legal fees are so high is because a certain individual constantly suing the Town. That is a situation unique to San Anselmo.

Walsh said the legal fees have increased and it is time that the Town took a look at the alternatives available. She was in support of the sub committee.

M/S Sharp, Zaharoff, a subcommittee consisting of Councilmember Colteaux, Chignell, and Zaharoff to work with the Town Attorney and Town Administrator to make suggestions on ways to reduce litigation and reduce the Town's annual attorney fees. Motion unanimously passed.

9. APPLICATION TO REZONE PROPERTY GENERALLY LOCATED AT 49 CEDAR AVENUE, A/P 7-222-44, FROM R-2 TO SPECIFIC PLANNED DEVELOPMENT R-1 AND PRELIMINARY PLANNED DEVELOPMENT MULTI-UNIT.

The applicant was present.

Ms. Barker, Consultant, pointed out the highlights of this application.

Zaharoff wanted clarification on the zoning. If Council was inclined to agree with the Planning Commission recommendation PPD R-3, with a maximum use of 3 for lot 2, could the zone change at the SPD level?

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Ms. Barker said that her understanding of the General Plan is that the presumptive use can change at any time. That is the reason why multi-unit was staff's recommendation.

Mr. Harnsberger said this proposal has been recommended by both the Planning Commission and the Planning Consultant.

Sandy White, 196 Tunstead, thought there was already excessive noise in the neighborhood because of the apartment buildings and would like to see the parcel zoned R-2 PPD so that a lid could be placed in the number of buildings on the dwelling.

William Jellinek, 53 Florence, thought that the parcel abuts Robson Harrington and was concerned about how the increase in density would affect Robson.

Joyce Warrenstein, 60 Magnolia, said the street is already congested with traffic from the downtown area. The Council should look ahead to the future to address the parking problems. Also, she felt there was already too much noise in the neighborhood. She agreed there should be a mix of densities in the neighborhoods but does not want more congestion.

Kathe Quinn-Hem, 72 Magnolia, was in favor of one more unit but did not want to increase density any further.

Klaus Werner, Cedar Street, wants to see as few units as possible on the sight because there is already too much noise.

Colteaux thought that two units on the parcel would be sufficient. He said the lot is unusual and 23,000 square feet. The lot split makes sense so they can develop the second lot. The SPD is logical because it gives the maximum flexibility in protecting the neighbors.

Chignell agreed with Colteaux. The neighborhood is fragile and there are already existing parking problems. The noise is already a problem.

Roth said that normally during the PPD process a limit is not placed on the number of units on a site. That is done during the SPD process.

Sharp was bothered by the process because it seems that because the Planning Commission has approved the lot split, the Council has to buy into the zoning change.

Colteaux said that the Council is not really buying into the zoning change if the intent is not to allow more than two units on the site.

Walsh had nothing further to add other than she supported the applications with no more than two units on lot two.

M/S Colteaux, Chignell, to adopt the mitigated negative declaration for A/P 7-222-44 for 49 Cedar. Motion unanimously passed.

M/S Colteaux, Chignell, to introduce an ordinance to rezone the property at 49 Cedar to Preliminary Planned District - Multi-unit with the understanding that at the present time the view of the Council is that the density on the lot will be presumed to be a maximum of two units with adoption by ordinance to be heard at the next Town Council meeting.

Because of the late hour the consensus of the Council was to continue all items except item 12.

M/S Colteaux, Chignell, to continue items, 10, 11, and 13 to the meeting of 1/23/90. Motion unanimously passed.

10. REQUEST FOR APPROVAL OF JOB DESCRIPTION FOR PARKS AND RECREATION DIRECTOR, AND AUTHORIZATION TO RECRUIT AND HIRE TO FILL VACANCY.

Administrator Camuglia stated that a job description is enclosed in the staff report. At this time staff would like comments from Council on the job description and delay consideration of her recommendation of recruiting a Parks and Recreation Director. She wants to delay the actual recruitment until a mid year financial report is prepared to determine whether or not this position and the services would be financially feasible.

Zaharoff said that the additional analysis by the Administrator may have some bearing on the future of this position. Therefore she felt it was premature to determine what the job description should include.

Colteaux was inclined to have the position disappear at the present time and review it at a future date.

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Camuglia said that in some point in the future she would like to get an understanding on what the Council envisions for the structure of the department.

Colteaux would like see the current structure remain and over a period of time decide what course of action to take.

Sharp said he was persuaded by Colteaux's comments.

Chignell agreed to wait for sometime in the future to determine the structure of the Parks and Recreation Department.

Camuglia wondered if Council would consider outside consultants to prepare an evaluation of the Parks and Recreation Department. She feels that the Administrator's office was spending a disproportionate amount of time on handling Parks and Recreation issues. And from an organizational perspective the situation needs immediate attention.

The consensus of the Council was not go outside with an outside Consultant.

Walsh wanted more time to decide on the future of the position but does not want an outside service to help the Town.

11. REQUEST TO TRANSFER FUNDS FROM THE ISABEL COOK RENOVATION FUND FOR INSTALLATION OF SPRINKLER SYSTEM AT THE RECREATION CENTER.

12. ADOPT ORDINANCE AMENDING TITLE 9 OF THE MUNICIPAL CODE, ADOPTING THE 1988 UNIFORM BUILDING, MECHANICAL, PLUMBING HOUSING, SOLAR ENERGY, SWIMMING POOL, SPA, AND HOT TUB CODES, WITH LOCAL AMENDMENTS.

13. INTRODUCTORY DISCUSSION REGARDING PROPOSAL FOR A COUNTYWIDE PLANNING AGENCY. (ZAHAROFF)

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

A. Status on the Tree Committee.

Administrator Camuglia said the first meeting will take place within the next few weeks.

B. Report on the School District and the use of their sites (Colteaux)

15. ADJOURNMENT.

The regular meeting of the Town Council was adjourned at 11:14 p.m. to the next meeting of January 23, 1990.


BARBARA CHAMBERS
ADMINISTRATIVE SECRETARY-TECHNICIAN