

TOWN OF SAN ANSELMO

Minutes of the Town Council Meeting of September 25, 1990

6:50 p.m.

Closed session regarding pending litigation pursuant to Government Code Section 54956.9(a), (Ansari v. Town of San Anselmo).

7:15 p.m.

Interviews with applicants to the Volunteer Program Advisory Board and Historical Commission.

8:00 p.m.

1. CALL TO ORDER.

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

2. OPEN TIME FOR PUBLIC EXPRESSION

3. CONSENT AGENDA.

- (a) Approve Minutes: September 11, 1990.
- (b) Proclaim October as "Energy Awareness Month."
- (c) Proclaim October 1-5, 1990 as "Rideshare Week."
- (d) Authorize transfer from Contingency Fund for payment of dues for enrollment in the Association of Bay Area Governments for 1990-91.
- (e) Approve resolution amending criteria for rebates by Tax Equity Board.
- (f) Announce vacancy on the Robson-Harrington House Association Board of Directors.
- (g) Authorize transfer of \$5,000 from Contingency Fund to Capital Reconstruction Fund for emergency repairs to Scenic Avenue.
- (h) Appeal of Planning Commission approval of Variance V-2315 and Preliminary Development Plan PP-14, The Alameda Residences, filed by James Helfrich: CONTINUED TO OCTOBER 9, 1990.

Item (e) was removed from the Consent Agenda.

M/S, Kanis/Walsh, to approve the consent agenda with the exception of item (e). Motion passed unanimously.

(e) Approve resolution amending criteria for rebates by Tax Equity Board.

Tax Equity Board Member Peter Breen explained that the current application process is intrusive in asking details about how people spend their income, while the proposed process would be based on income and household size. He said the Board is also trying to increase the visibility of the tax rebate program for residents who have economic hardships.

M/S, Chignell/Kanis, to approve Resolution No. 3127 amending criteria for rebates of the Municipal Services and Pension Override taxes by the Tax Equity Board. Motion passed unanimously.

4. APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF A USE PERMIT ALLOWING THE ESTABLISHMENT OF TRANSITIONAL HOUSING FOR UP TO SIXTEEN WOMEN AND THEIR CHILDREN.  
APPLICANT: ANTHONY HOUSE.

Town Attorney Roth explained the legal opinion he had submitted advising the Town Council that a Anthony House is not required to obtain a use permit to operate transitional housing for women and their children within a single family residential zoning district. The basis for this opinion included his analysis of provisions of the Fair Housing Act of 1968 and its 1988 amendments, and provisions in the Land Use Element of the San Anselmo General Plan.

Colteaux asked whether a second unit use permit was required for this use, and questioned why the Planning Commission staff report was not included in the Council packet. He asked whether there was an analysis of whether the housing code was applicable to the proposed use, and whether any court cases had established that this type of use was exempt from the use permit process based on the Fair Housing Act.

Assistant Planning Director Anderson stated that the proposed use was addressed as a quasi-institutional use, not as a second unit. Roth said that no court ruling had been issued specifically concerning the proposed use, but it was his legal opinion based on the legislative history of the 1988 Congressional amendments and an opinion of the Attorney General of Kansas on a similar case, that a judge would make the interpretation that the persons who propose to live in this house are considered "handicapped" under the provisions of the Fair Housing Act.

John McGregor, 18 Rosemont, an attorney who was asked by neighbors of the subject property to speak to this issue, said he disagreed with Roth's conclusions. He said that in order for the Town Council to find that the Fair Housing Act applies to this application, the Council must make a finding of fact that the proposed residents are handicapped. He said a handicap is a physical or mental impairment that substantially limits life's activities, and questioned whether the potential residents who will be transitory who may in the future be subject to abuse who need shelter would be handicapped persons according to the Fair Housing Act. He said that persons who have been subject to abuse are not handicapped. The letters and testimony submitted from supporters state that the proposed residents are self-sufficient people who must be appropriate for the program and who only need a sanctuary, he said, and there is no suggestion in the application that these people are disabled. He said he did not have access to the records to make a judgment of whether they are disabled. Even if they are disabled, the Act states that it is unlawful to discriminate in making unavailable a dwelling due to the handicap of persons living on the premises. He said there was no suggestion that the people will be buyers or renters, but instead will have their legal residence elsewhere and will be using this site solely as a sanctuary. He questioned whether this could be considered housing, or whether it was actually a temporary respite. He said the Kansas ordinance concerned a group home for the mentally disabled.

McGregor said that Anthony House is not a licensed activity, and therefore does not fall within the provisions of the San Anselmo General Plan. He said the proposed use was not a single housekeeping unit, but there were two different households present.

Roth said that he has never seen restrictions imposed concerning type of residency - whether one is a buyer,

tenant or in a transitional situation, and that the proposed use seemed generically to be a group home.

It was the general feeling of the Councilmembers to first make a determination on whether a use permit was required for the proposed use. Roth advised that it was appropriate for the Council to take evidence to make a legislative decision on the use permit issue.

Fay Yople, member of the Board of Directors of Anthony House and an attorney, said that included in the Council's consideration of whether a use permit was required should be provisions in the General Plan related to land uses permitted in single family residential zones.

Yople said the issue is equal protection under the law, including equal protection under the laws of San Anselmo. She said a number of similar uses had been addressed in other cities, such as by Innovative Housing in Larkspur, but this particular proposed use had not been tried or tested. They did not have experts present this evening to support the argument that a woman who has been battered is disabled. She said representatives of Anthony House had met with Mr. McGregor.

Peter Ramsey, 35 Carlson Court, project manager for Innovative Housing, said he was present to state the same information given by Roth. He said they have similar management arrangements in their group homes as Anthony House uses, and they have had no problems. He said the Innovative Housing had received legal advice from McCutchin, Doyle and Curtin that its project in Larkspur did not require a use permit. He said they will make the same arguments to the City of Larkspur for their project, which is a single family dwelling with six bedrooms and 12 people.

Cherilyn Gilboy, 404 San Anselmo Avenue, said she has been in recent discussion with the federal department of Housing and Urban Development (HUD), and questioned whether there a use permit could be required for some uses that are defined as family and not other uses defined as family, above and beyond the question of whether the inhabitants would be considered handicapped and protected under the Fair Housing Act.

Walsh said she was convinced that a battered individual is handicapped, both physically and emotionally. She said any decision the Council makes can have a far reaching impact. The Council has a responsibility to improve the quality of life for all individuals in San Anselmo.

Kanis said he believed there may be questions beyond the issue of handicap that are relevant to this issue. He said that while he was inclined to agree with the Town Attorney's advice, he asked whether the Council needs to find that persons who will live in this home will be handicapped.

Zaharoff said she has not received enough information on the definition and issue of handicap to make a determination as to whether the inhabitants of the subject property should be considered handicapped. She said the Council should be concentrating on whether a use permit is required under its own codes, such as the provisions concerning the definition of family in the General Plan.

Colteaux said he does not doubt in a general sense that someone who is escaping from an abusive situation to a safe house is handicapped. However, it was a serious issue to say that as a matter of public policy, the Town cannot regulate a use in a residential area. If Congress had

intended battered persons to be considered handicapped, that could have been included them in the legislation. He said there was no intention by this Town Council to do anything unfair, and that the applicant has agreed to all the conditions imposed by the Planning Commission. In a use permit process, they would turn to questions of how to be fair to applicants and neighbors.

Theresa Allen, 14 San Francisco Boulevard, said that all children in shelters are disabled.

Chignell said he feels he has to rely on the Town Attorney's advice in this process, and that his General Plan analysis states that no use permit is required. He said he thought the Council has received the legal advice needed to proceed, and take action that is fair to the applicant and neighbors.

In response to questions and comments from Council concerning the General Plan and zoning ordinance, Roth said that if the zoning ordinance was inconsistent with the General Plan, the General Plan would take precedence.

M/S, Walsh/Chignell, to accept the opinion of the Town Attorney as presented this evening, that the applicant is not required to obtain a use permit to operate transitional housing for women and their children within a single-family residential zoning district. Motion failed by the following vote:

AYES: Walsh, Chignell

NOES: Colteaux, Kanis, Zaharoff

M/Colteaux, to find that the Fair Housing Act 1988 amendments does not bar the Town of San Anselmo to require a use permit for this application. Motion died for lack of a second.

M/S, Zaharoff/Kanis, to direct staff to do research and analysis of the General Plan and zoning ordinance regarding the issue of whether a use permit is required for this application, and whether a use permit for a second unit is required. Motion passed by the following vote:

AYES: Colteaux, Kanis, Zaharoff

NOES: Chignell, Walsh

The item was continued to the meeting of October 23, 1990.

5. APPOINTMENTS:

(a) Volunteer Program Advisory Board. (3 seats)

M/S, Zaharoff/Walsh, to appoint Jennifer Shaw, Dick Crooke, and Sheri McNear, to terms to expire September, 1994. Motion passed unanimously.

(b) Historical Commission. (5 seats)

M/S, Zaharoff/Walsh, to reappoint William Franchini, Alan Creighton, and Katherine Coddington, and appoint Charles Swenson, to terms to expire September, 1994. Motion passed unanimously.

6. REQUEST FOR WAIVER OF FEE TO HANG SIGN ANNOUNCING DRAKE HIGH SCHOOL DRAMA EVENT.

M/S, Kanis/Walsh, to waive the \$50 banner fee. Motion passed unanimously.

7. HEARING ON ABATEMENT OF A PUBLIC NUISANCE AT 94  
BERKELEY AVENUE.

Public Works/Planning Director Kottage reported that the proposed agreement was the result of mediation between the applicant and the neighbors with the help of Mayor Chignell and Councilmember Kanis.

Cyrus Ansari acknowledged that he had read, understood and agreed to the terms and conditions of the agreement. Neil Bloomfield, Mr. Ansari's attorney, acknowledged that he had read, understood, and advised his client to agree to the terms and conditions of the agreement.

Marlene Kawahata, 84 Berkeley Avenue, thanked the Council and staff for the work they had done on this issue.

Ansari and Bloomfield thanked everyone involved in bringing this issue to closure.

Chignell thanked John Kottage, Councilmember Kanis, Mr. Ansari and the Kawahatas for their help in resolving this issue. Other Councilmembers also stated their appreciation for development of the agreement.

M/S, Kanis/Walsh, to approve the agreement, and continue the nuisance abatement hearing for 60 days. Motion passed by the following vote:

AYES: Kanis, Walsh, Zaharoff, Walsh

NOES: (None)

ABSTAIN: Colteaux

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

Bald Hill - Colteaux asked to refer to planning staff the idea of a cooperative study on Bald Hill involving Ross, San Anselmo and neighboring jurisdictions.

Homeless - Colteaux said the report of the Marin County Council of Mayors and Councilmembers (MCCMC) Blue Ribbon Homeless Committee will be received at the MCCMC meeting the next evening, and referred to city councils for approval or disapproval. Colteaux, the San Anselmo representative to the Committee, asked that the item be scheduled for the October 9 Council agenda.

Smoking - Kanis asked that an item be placed on the agenda as soon as is reasonable concerning smoking in public places, and that the Council entertain the idea of expanding the provisions of the ordinance.

Low-flow toilets - Chignell noted that the water district had developed an ordinance requiring low-flow toilets as a water saving measure and asked that this issue be agendaized when appropriate.

Long-term Finance Committee - Walsh asked that the Committee's report be placed on a future agenda.

9. ADJOURNMENT.

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

Beth Pollard