

TOWN OF SAN ANSELMO

Minutes of the Town Council Meeting of May 14, 1991

7:30 p.m.

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

8:00 p.m.

1. CALL TO ORDER.

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

2. OPEN TIME FOR PUBLIC EXPRESSION.

There was no public comment.

3. CONSENT AGENDA.

- (a) Approve minutes: April 23, 1991.
- (b) Acknowledge and file warrants: Nos. 5870-6163, in the amount of \$1,335,574.52.
- (c) Announce expiration of terms: Library Advisory Board.
- (d) Nominate applicants to the Parks and Recreation Commission and Historical Commission, and schedule interviews with applicants.
- (e) Adopt ordinance amending Chapter 3 of Title 4 of the Municipal Code regarding curfew regulations.
- (f) Approve request from the Chamber of Commerce for street closures for the Art and Wine Festival on June 22 and 23, 1991.
- (g) Approve changes in membership of the County Waste Management Advisory Committee.
- (h) Authorize the Mayor to execute a quit claim deed to Kevin P. Shea and Laura M. Shea for abandonment of right-of-way, 51 Laurel Avenue.
- (i) Approve recommendation of the Legal Services Subcommittee of the Town Council.
- (j) Approve San Anselmo's participation in Marin County's recognition of troops returning home from the Desert Storm military operation.
- (k) Conditionally grant appeal of the Planning Commission's approval of Variance V-9101, 14 Ross Avenue, a parking variance for the construction of a new commercial building located in a C-2 zoning district, by the Ongaro brothers.

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

(i) Approve recommendation of the Legal Services Subcommittee of the Town Council.

Colteaux amended the report to clarify that the Legal Services Subcommittee will continue to study legal costs and alternatives for legal services, including other communities' experience with in-house counsel. A report will be made to Council in the fall, after budget hearings.

Chignell said there was no need to continue to study the issue, that the Town had excellent legal services.

Sarah Nome, 77 Alder Avenue, said she wanted the issue discussed before the budget was finalized, and said she will do an initiative petition to create an elected Town Attorney.

M/S, Colteaux/Walsh, to approve the report as amended.  
Motion passed by the following vote:

AYES: Colteaux, Kanis, Walsh, Zaharoff

NOES: Chignell

4. REQUEST FOR WAIVER OF FEE TO HANG BANNER PUBLICIZING A FUNDRAISING AT SIR FRANCIS DRAKE HIGH SCHOOL.

Jenny Davison, Leadership and Physical Education teacher at Drake High School, explained that the purpose of the "Cowabunga" event at Drake High School was to raise funds for athletics and other activities.

Sarah Nome, 77 Alder Avenue, expressed concern about sending the wrong message to youths that all they have to do is to go to the Town Council for funds, when they are going to graduate and find that the real world is different.

Kanis clarified that the request for not for a donation but waiver of a Town fee.

M/S, Kanis/Colteaux, to approve the request for a waiver of the banner fee, with a commendation to Drake High School for doing its own fundraising. Motion passed unanimously.

5. REQUEST FROM THE SOLID WASTE AND RECYCLING ADVISORY COMMITTEE TO SET A DATE FOR A JOINT MEETING WITH THE TOWN COUNCIL.

The meeting was scheduled for July 11, 1991, at 7:30 p.m. (Subsequently changed to June 25, 7:00 p.m.)

6. PUBLIC HEARING ON RECONSIDERATION OF THE TOWN COUNCIL'S DENIAL OF V-2315/PP-14, JAMES HELFRICH, BETWEEN 444 AND 500 THE ALAMEDA, A NEGATIVE DECLARATION FOR VARIANCE V-2315 AND PRELIMINARY DEVELOPMENT PLAN PP-14, A VARIANCE FOR ACCESS, AND A PRELIMINARY DEVELOPMENT PLAN, ALL LEADING TO THE DEVELOPMENT OF FOUR SINGLE FAMILY DETACHED RESIDENTIAL UNITS, IN PROPERTY LOCATED WITHIN THE R1-H ZONING DISTRICT.

Town Attorney Roth summarized the history of the project, and explained that the Town and the applicant had entered into a tentative memorandum of understanding regarding the preliminary development plan and the settlement of the applicant's lawsuit against the Town. The MOU allows for a public hearing, after which the Council is will make a decision on the application. The Council is free to make a decision contrary to the MOU, but upon such action, the applicant would be free to pursue the pending litigation.

Jayni Barker, the Town's planning consultant on this project, presented the planning staff report.

Chignell inquired about the differences between the Planning Commission's approval and the project currently before the Council - specifically, the drainage improvements previously included, and whether the development relocations into the ridge zone were consistent with the General Plan. Barker responded that the drainage improvements included in Commission's approval were not part of the MOU, and that these drainage improvements were not necessary to mitigate the impacts of this project but were designed to improve existing drainage problems not related to the proposed development. In the General Plan, development is permitted in the ridge zone if there is the finding that other areas of the site are not appropriate

due to the amount of grading and vegetation removal that would occur if developed. Barker said the locations previously approved by the Commission required more vegetation removal and grading than the current proposal. The General Plan has policies that focus on different areas, with no rules on which policies are more important than others. She said that Site F will have more of an affect on the immediate neighborhood and those passing by on The Alameda.

Colteaux said that moving Site B forward and Site C up under the prior plan was said to be more visible from the San Anselmo side and less for Sleepy Hollow, and asked if there was any way to quantify that determination. Barker said it would be difficult to quantify without removing vegetation.

In response to an inquiry from Kanis, Roth said it was not possible to require the drainage line improvement since it was more than was needed, and the law requires there be a connection between impact and exaction. Barker noted that the mitigations in place would mitigate the drainage of the development.

Colteaux said that under the MOU, the applicant is required to submit facts to support the variance findings. He asked if there were sufficient facts for granting a variance, if the Council could restrict that the access easement could not be used for future development. Roth replied that if anyone wanted to obtain access off that easement in the future, they would have to apply for a variance.

Roth advised that the General Plan designates the density at one unit per acre, and three of the proposed sites are more than an acre, while the parcel in the County is legal non-conforming and a developable site that is less than one acre. A General Plan amendment was needed to allow less than one unit per acre overall, on the grounds that good planning dictates that they all be under one agency. Pre-zoning, annexation and rezoning applications were required.

James Helfrich, applicant, said the easement was necessary to access the site. The drainage improvements that were a part of the Planning Commission's approval were never offered by him, but instead were required of him. He said his annexation application and fee have been complete for one year. The easement is the only legal access to his parcel, he said.

Chignell and Walsh expressed their disagreement with the process and MOU.

Zaharoff explained that the MOU was tentative, and was subject to a public hearing.

Dan Goltz, 107 Holstein, said he wanted Helfrich to show why he cannot access the property above, and why the other three houses could not be located on The Alameda frontage, from an engineering point of view.

Mary Mitsui, 423 The Alameda, voiced her distress that the Councilmembers could change their opinion on this project as a result of a lawsuit. The plan before the Council this evening was substantially different from the prior plan, and she wanted the matter continued so that they could scrutinize it. She said it would be helpful for the developer to put up story poles to see the location of the houses. The ridge zone is a physical amenity, and that this property was in her backyard. She was a concerned about the applicant withdrawing the drainage improvements, was concerned about the quality of San Anselmo, and questioned why it was not possible to build three houses on

The Alameda. She said what was needed was not large, expensive homes but affordable housing. She questioned why a variance was needed to access his property if he has an easement to get to his lot.

Roberta Stoddard, said there was a landslide under the proposed road, and that not enough geotechnical work had been performed.

Mary Kirk said she severely opposed any building there.

Katie Schwartz, Deer Hollow Road, expressed concern about construction trucks going down Deer Hollow road.

Laurel Ferrar, said she has been coming to these meetings for four years, was against the sites above, was opposed to building that affects a lot of people, and was not sure about this proposal.

Mike Nachlin, 443 The Alameda, said he could not understand why the applicant would take back the offer to perform drainage improvements, and said it was because the Town delayed the project.

Ms. Schwartz said the Council denied the appeal for a variance, and after the applicant filed a lawsuit the Council changed its mind, and she could not understand how that can work.

Charles Richardson, The Alameda, said he concurred with what Nachlin said. The project was causing residents considerable concern, and the idea of construction on The Alameda without mitigation is ridiculous.

Bob Cary, owner of 20+ acres near the sites, said the road has been there many years, and that he has a legal right-of-way over that road. He said he was not a subdivider, that the neighbors have all enjoyed the park-like surroundings of his property, and said he took great exception to anyone intimating that he did not have a right of way. Helfrich has the fee title to this road. It was his road and Cary saw no reason why he could not use it to make improvements, and that the development and road improvements to be made by Helfrich will be assets to the neighbors below. Everyone would benefit from Helfrich paving the road and improving the drainage, and Cary was all for it. He said the Council's decision to approve the project was very practical, and that the easement proposed to be used by Helfrich could not be changed because Cary had the right to use it.

Jan Yack, 439 The Alameda, said the Planning Commission worked on this project for several years, and the Council just acted as if they did not know what the Commission was doing. The project would result in the razing of hundreds of trees and foliage, whereas the other proposals required minimal removal of trees, and trees were needed for our air.

Helfrich responded there were nine separate soils study areas, and that 17 to 18 borings were taken on Site B. He said they are avoiding very deep slide areas, and instead, are shoring up the slide areas. He said he sympathized with the Mitsui's flooding problems, and that they will channel their drainage contribution, but it would not resolve existing drainage problems elsewhere in Sleepy Hollow that were unrelated to the development. Regarding building lower on The Alameda, there are slide areas, and the easement is located there, and development would require retaining walls. He said the building pads are flat, and therefore there will be less visible frontage. They will not be removing undergrowth vegetation, and the

size of the house will conform to the Town's zoning ordinance. They will be taking advantage of the existing bedrock pads, which will be compacted down, and taking advantage of keeping existing vegetation.

Stoddard said the infrastructure could not handle the development.

Goltz said that if the slide areas make it impossible to build on The Alameda frontage, and Helfrich does not want to do slide repairs, then the slide areas will remain, except that perhaps a retaining wall will be built. He questioned why the applicant was not being required to repair the slides. Goltz said four houses could be placed along The Alameda if the easement did not exist. The applicant is saying the slides are bad, Goltz said, yet he was willing to build a road above the slides.

Colteaux said that more factual legal and geotechnical information was needed from the applicant for the variance, that addresses why the access cannot be made on The Alameda and only the easement could be used for access to the County parcel. Furthermore, the MOU was just approved this evening, and the public should have an opportunity to review the materials.

Chignell said he could not support this arrangement; the movement of Sites B and C violate the General Plan, and the drainage improvements approved by the Commission were significant for the residents, yet have been removed.

Walsh said she would not support this application, that the neighbors have expressed a lot of concerns that the plan before them does not address. She said she did not support moving Sites B and C, and did not support building in the ridgeline. She said she was disappointed that the drainage improvements had been removed.

Kanis said he would not want to insist that they act this evening, that the public should have the opportunity to examine the MOU. He said he supported this configuration after spending a great deal of time reviewing this issue, probably more than anyone else. He came to the conclusion that this is the best possible configuration given that the applicant has the right to build, and that he was convinced that the new Sites B and C were better sites than the previous Sites B and C in terms of their impact in San Anselmo.

Zaharoff said she was in favor of continuing the item, that the public needs the opportunity to think about this plan. Regarding the movement of Sites B and C into the ridge zone, Zaharoff stated that the land was very important to her, that she has ridden horses on that road and understands the importance she and others place on that land. She said she would prefer to see it stay as open space, but the property owner has the right to develop the land. Her responsibility was to make sure that it is disturbed as little as possible, given that the owner has the right to develop. The prior Sites B and C required a great deal of grading and removal of a lot of mature vegetation. Siting the houses just inside the ridge zone on level pads, on the contrary, would require little grading, no removal of vegetation, and the saving of an entire line of mature bay trees at Site C. She invited any resident to call her to discuss the issue further.

M/S, Colteaux/Chignell, to continue the matter to June 11, 1991, for the reasons previously described concerning documentation needed on the necessity of the access over the easement, and to allow the public the opportunity to

review the plan explained in the MOU. Motion passed unanimously.

7. APPOINT COUNCILMEMBERS TO A ZONING SUBCOMMITTEE TO REVIEW CHANGES TO THE TOWN'S ZONING ORDINANCE.

The Zoning Subcommittee will consist of representatives from Council and the Planning Commission to work with planning staff.

M/S, Chignell/Walsh, to appoint Councilmember Kanis and Mayor Zaharoff. Motion passed unanimously.

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

Elm leaf beetle spraying - Colteaux suggested that cars that park on the street not be cited during the spraying project.

Administrative variance notice - Councilmembers inquired as to why they received notice of the variance hearing. Interim Planning Director Macris said she would investigate and respond.

Letterhead - Walsh wanted to work with staff on revisions to the Town's stationery.

Countywide Planning Agency - Kanis will report on a future agenda the highlights of the committee's work.

Chevron Station - Colteaux inquired about what was happening at that site with respect to the soil and the activity taking place.

9. ADJOURNMENT.

The meeting was adjourned at 10:05 p.m.

Beth Pollard