

TOWN OF SAN ANSELMO

Minutes of the Town Council Meeting of July 23, 1991

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.

Barbara Schmidt, 53 Austin Avenue, said the proposed animal control fees are outrageous, that there must be another way to have a county pound, that animals are important to the elderly, and why cannot the cities and County of Marin tell the Marin Humane Society to loosen its regulations.

3. CONSENT AGENDA.

- (a) Approve minutes: July 9, 1991.
- (b) Nominate applicants to the Parks and Recreation Commission and schedule interviews.
- (c) Nominate applicants to the Planning Commission and schedule interviews.
- (d) Approve annual contract for sidewalk and other concrete repairs.
- (e) 16 Ivy Lane: Approve resolution approving the architectural review and variances for a single family dwelling; Jef Pederson, applicant.
- (f) Issue Notice of Completion, Sir Francis Drake Boulevard Improvement Project.
- (g) Approve technical adjustments to 1990-91 budget.

Items (d) and (g) were pulled from the consent agenda.

M/S, Chignell/Walsh, to approve the consent agenda, with the exception of items (d) and (g). Motion passed unanimously.

(d) APPROVE ANNUAL CONTRACT FOR SIDEWALK AND OTHER CONCRETE REPAIRS.

Colteaux inquired about the origin of the prevailing wage, and whether the Town should add provisions for equal opportunity. He expressed concern about the arrangement made between the Town and private property owners, wherein the Town advances the funds to repair sidewalks that owners do not repair, subject to recouping the funds via a lien, when streets may be a higher maintenance priority. There could be an inequity between one property owner who is notified of sidewalk repairs, while the neighboring property has potholes in the street.

M/S, Chignell/Walsh, to approve the contract, subject to its review and approval by the Town Attorney, and subject to a list of the sidewalks to be repaired being placed on the Council consent agenda. Motion passed unanimously.

(g) Approve technical adjustments to 1990-91 budget.

Town Administrator Camuglia explained the revised purchase price of the computer.

M/S, Chignell/Kanis, to approve the technical adjustments to the 1990-91 budget. Motion passed unanimously.

4. PUBLIC HEARING ON ABATEMENT OF A PUBLIC NUISANCE, 33 AND 35 PARK WAY.

Town Administrator Camuglia presented the staff report.

Michael Denning, Building Inspector, was sworn in to testify on this matter. He stated that if he were to testify, he would testify to the accuracy of his written report, which was submitted for the record.

There was no further public comment.

M/S, Colteaux/Chignell, to approve Resolution No. 3152 declaring that the failed retaining wall and damaged sidewalk guardrail located at 33-35 Park Way to be a public nuisance, and ordering the repair thereof. Motion passed unanimously.

5. 47 ELM AVENUE: PUBLIC HEARING ON APPEAL OF THE PLANNING COMMISSION'S DECISION TO REQUIRE A DEED RESTRICTION PROHIBITING CONVERSION OF SPACE INTO AN ADDITIONAL LIVING UNIT; VINCENT AND CHARMAINE DERHAM.

Camuglia reported that although the Town met the noticing requirements of the appeal and the Council previously took action on this item, the appellant's attorney had not received notification and Council had determined the appeal should be reheard.

Town Attorney Roth explained that historically, San Anselmo has imposed deed restrictions in certain situations. In response to an objection that the condition for deed restriction was not in the form of a written policy, the Planning Commission adopted a resolution providing for deed restrictions. Roth advised that the resolution was a proper mechanism for this action, and noted that the Commission's adoption of the resolution was not appealed to the Town Council.

Colteaux questioned whether information in the residential building report conducted by the Town upon sale of property could substitute for the deed restriction in giving notice to buyers.

Herbert Hawkins, attorney for the appellants, thanked the Council for rescheduling the matter, and said that Roth had given him adequate notice that the resolution was being considered by the Planning Commission. Hawkins said the Commission has no authority to pass such a resolution in that only a legislative body, not an administrative body like the Commission, may pass laws. A deed restriction was required on this property because of an administrative suspicion that this property might change into an illegal second unit. He said the deed restriction seems to be personally directed. He said there have been only four deed restrictions recorded since 1989.

Hawkins said the deed restriction constituted a taking of property which was prohibited by state law and the federal constitution. It was a forced dedication in that they were being required to dedicate their property to the Town without compensation, and what was being required did not have a reasonable relationship to the issue.

Roth said the deed restriction procedure has been in place for a number of years, and there are not many cases where the planning staff has reason to believe the law will be violated. The planning staff had strong feelings that past evidence about this property warranted asking for the deed restriction. The deed restriction issue was brought to the Planning Commission as a townwide policy issue on deed restrictions.

William DeBisschop, Elm Avenue, relayed problems with second illegal second units in his neighborhood, said it was the first deed restriction he had seen in a long time,

and if the Town was going to write a ruling, it ought to be applied more broadly.

Mr. Hawkins was asked if he would agree to a continuance, to which he replied that his clients were anxious for the issue to get resolved but he would agree to a continuance.

M/S, Colteaux/Chignell, to continue the matter to the meeting of August 27, 1991, for a staff report on whether the same information could be put in a residential building report and meet the same purpose as a deed restriction, and on the issue of requiring a single family deed restriction as a condition of a permit. Motion passed unanimously.

6. 96 BROADMOOR: APPEAL OF PLANNING COMMISSION DENIAL OF V-9113, AN AFTER-THE-FACT PARKING VARIANCE TO CONVERT A PORTION OF A GARAGE TO LIVING AREA, THEREBY PARKING WITHIN 3 FEET OF THE FRONT PROPERTY LINE AND WITHIN 3 FEET 6 INCHES OF THE SIDE PROPERTY LINE; CHRISTOPHER JOHNS, APPLICANT.

Mark Helminger, attorney for the applicant, asked if two the neighbors could testify immediately because they had to leave and their testimony before the Commission was not accurately stated in the Commission minutes. It was the consensus of the Council to take up the matter in its proper order.

Planning Director Chaney presented the staff report.

Diane Cokeley, 98 Broadmoor, who knew the previous residents of the property, said there was a bathroom and workbench protruding into the garage at that time, the previous owners never parked in the garage, she did not park in her garage, nor do other neighbors park in their garages. She said she was having trouble with the Town's argument about building instead on top of the house or parking on the grass; what he is doing with the use of his garage does not bother her.

The resident at 92 Broadmoor said the bathroom was there before Mr. Johns bought it. The homes in the neighborhood are very small (790 square feet), and to think people can live in there and not use the garage for storage is a fallacy. There is at least one home in the neighborhood where the garage was converted into a living room and dining room. People do not want to put their cars in a garage because of trying to get out of it with all the traffic on that street. He said people cannot do with their homes what the Council is asking them to do.

Christopher Johns, applicant, said that one of the items not in the minutes was the Planning Commission's concern there was an inequity in retroactively applying the statute. Many Commission members wanted to support the application, but could not make the findings. He said there was confusion about the length of the driveway; it was 40 feet long, and two cars could park there.

Johns said that Planning Commissioner Julin had said a second story would create a greater impact. It would not work to put the bathroom near the hot tub, and he is now estopped from putting it there. He showed a photograph of the driveway, which he said was 42 feet long and could accommodate two cars. The length inside the garage is 19 feet. He said the workbench, which he replaced with an addition to the existing bathroom, was permanently affixed; Johns just made better use of the bathroom and workbench space. The space in front of the bathroom was not a parking space before he bought it, as much as it was not a parking space afterwards.

Mark Hemlinger, attorney for the applicant, said that the statutes do not apply in this situation. It was noted by the Building Inspector when Johns bought the property that the garage had been modified; all Johns did was rely on the previous report and put in a permanent bathroom where there had been a bathroom and workbench. The workbench was so permanent that it required a contractor to pull it out. Johns had the right for use of the property with what he felt was implied approval. There is a fundamental principle that the government cannot deprive a property owner of property rights without due process. Regarding the estoppel, Hemlinger said the old building that comes in prior to enactment of certain codes allows property to stay in its present condition. No variance was required under the zoning ordinance in place when the application was made on November 7, 1990.

Hemlinger said it was not a conversion or elimination of a garage space. When looking at the number of spaces required, the setbacks can be ignored, in which case Johns still has two parking spaces. The same interpretation can be made under the new ordinance.

Hemlinger said the Planning Commission did not make the finding that this was a special privilege. However, unless the Town gives everyone a ticket for parking in their driveway, it is not going to change that practice. Regarding the finding on adverse affect, he said the Council could make that finding based on the statements of the neighbors. The planning staff made legal fiction that people will park on landscaping; people will park on landscaping when they use their garage for storage. If the Council denies the application, it is denying a several thousand dollar investment. Johns did not act without forethought or disregard; he relied on the Building Inspector's report, and took care to limit the bathroom to the old space. The Commission members expressed concern it was an unfair application, but that their hands were tied.

Walsh said she would support staff and the Planning Commission. If the application was approved, it would be setting a precedent. The Council took off-street parking into account in the review of the zoning ordinance. The residents in that neighborhood take pride in the appearance of the neighborhood, and noted that the Town has an overnight parking ordinance.

Town Attorney Roth advised that he agreed with the staff analysis on the matter.

Kanis said the Town has gone to great lengths on the zoning ordinance to clarify the policy on what the community wants on present structures and what will be the future use of structures. There were many public hearings on changes to the ordinance and regard for the future of San Anselmo, and how the neighborhoods will grow and change. If the Town begins violating the ordinance so soon after it is adopted, it would be abusing the trust. There is nothing to persuade him that the appeal is justified.

Chignell asked whether the Building Inspector's report was an implied approval. Roth said that any representation by a public employee is not binding on the Town Council. He added that the ordinances that apply are those that are in place at the time of the hearing. He did not see any vested rights or taking of property in this case.

Chignell said he appreciated the presentation, reviewed the staff report, and remembered draft minutes wherein it was stated that they had to obey the current ordinance.

Zaharoff said she was troubled by removal of the 3'9" intrusion that was previously there, but if there was no problem from a legal viewpoint, then there was nothing to add. Regarding comments that equated storage use of a garage with this bathroom addition, she noted that items put in a garage for storage can be removed easily, unlike this addition.

M/S, Walsh/Chignell, to support the staff recommendation and deny the appeal, and require the applicant to remove the encroachments, and direct staff to bring this action back to the Council in the form of a resolution. Motion passed unanimously.

Johns said he would not remove, nor did he think the Council could make him remove, the whole bathroom.

7. PUBLIC HEARINGS ON 1991-92 BUDGET:

- (a) Police Department.
- (b) Engineering & Inspection
- (c) Street Maintenance
- (d) Library
- (e) Parks
- (f) Recreation
- (g) Isabel Cook Complex

It was the consensus of the Council that due to the lateness of the hour, to continue the hearings on the Parks and Isabel Cook Complex to July 25, 1991.

The Councilmembers discussed the Town's surplus funds credit with the Public Employees Retirement System (PERS).

M/S, Kanis/Colteaux, to appoint Councilmembers Kanis and Chignell to a subcommittee to become more knowledgeable about PERS. Motion passed unanimously.

Library

Camuglia reported that she had a copy of a legal contract from the Town Attorney, and she will be drafting a proposed contract for the Town of Ross to join the San Anselmo library. If a decision is made to temporarily relocate the library this fiscal year, this budget would be affected.

Edith Stump, 13 Calumet, member of the Library Advisory Board, expressed hers and the Board's concern about the safety of staff working in that building and the public using it. She urged the Council to do as much as possible as soon as possible.

Cynthia Barrows, 265 Crescent Road, spoke in favor of adding more funds to the book budget.

The Councilmembers discussed whether staff costs may be reduced if the library is in temporary quarters, whether to increase the appropriation for books, and discussing the future of the library at the next meeting.

Police

Camuglia reported that there were no new positions or programs proposed. The State of California has passed two other laws that will take cigarette tax revenue, and fine revenue from moving violations and parking citations away from cities.

The proposed capital outlay items were one replacement vehicle, two computers, and car band radios.

Regarding reducing overtime and number of positions by not backfilling vacancies, Police Captain Schmidt said that

there are times when they do not backfill, but it is not advisable to do on shifts other than the day shift. The radios cannot be replaced gradually because they should be compatible with one another. They are in need of replacement due to safety concerns that there are areas in town where a police officer is unable to get radio reception or call for help.

Colteaux suggested that services and supplies in this budget, and in others, could be reduced, and the overall result would be more funds available for capital reconstruction projects. Camuglia said that this was a hold-the-line budget which has been reviewed and has no frills.

Walsh said it was not a hold-the-line budget, that what is safety becomes subjective, and expressed concern about the number of capital outlay items for police in that it reflected 50% of the equipment replacement fund. She suggested that the radios not be replaced, that vehicles could be replaced less frequently, and other items that were frills could be cut.

Chignell said the community he knew in San Anselmo wants a public safety presence, the Administrator has already cut back police budget requests, and buying a new vehicle saves costs in the vehicle maintenance budget.

Colteaux said this was not a hold-the-line-budget, but a business-as-usual budget. The message is that the Town has enough money, when the taxpayers want the Town to live on existing funds.

Camuglia said that hold-the-line means keeping the service levels the same, which the staff has attempted to do in accordance with the direction of the majority of the Council.

Kanis said that level of service is not a precisely defined term, that the proposed budget meets a level of service necessary but which is less than desired. Kanis said he had found ways to cut 5%, and was concerned that the Council approach the deep concern with holding the line with a spirit of cooperation rather than adversity. He wanted to see the spirit of discussion be to find ways to cut the budget in order to apply those funds to capital improvements.

Zaharoff requested more information on the vehicle replacement schedule. Schmidt explained the timing between ordering and delivering, the mileage on the cars in use, maintenance costs, and the officers' efforts in doing their own maintenance. He said two new vehicles are needed every year.

Colteaux said he expected to see a program for maximizing the use of one car so that the Town may replace only one police vehicle per year.

Camuglia said the consensus from the last year was to come forward with a request to replace on vehicle this year.

#### Engineering & Inspection

Camuglia said the proposed budget eliminates the positions of Director and Assistant Director of Public Works, and proposes a one-year contract with the County of Marin for public works management services at the rate of \$43 per hour. The one-year arrangement allows the Town alot of flexibility, and time to address future plans for public works. If the Town decides to go with a major capital program, it may consider more staffing in the future. An

alternative is to talk now about what kind of staffing is desired. The intent of the proposal is to try to save money. The County will not settle for less than a one-year contract.

The Councilmembers discussed the benefits of having an in-house employee, the hourly costs to contract for temporary services, and proceeding with hiring a permanent employee.

It was the consensus of the Council not to contract with the County, but to recruit for a permanent full-time Public Works Director.

#### Street Maintenance

The proposed budget included a smaller dump truck that is more maneuverable than what is currently owned by the Town, and a replacement radio system for the 20+ year old radios.

Public hearings on the remainder of the proposed 1991-92 budget was continued to Thursday, July 25, 1991. An extra budget meeting was scheduled for Monday, July 29, at 7 p.m.

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

Cafe Nuvo film night: Colteaux asked whether this activity was permitted.

#### 9. ADJOURNMENT.

The meeting was adjourned at 11:45 p.m.

Beth Pollard