

TOWN OF SAN ANSELMO

Minutes of the Town Council Meeting of October 1, 1992

1. CALL TO ORDER.

Mayor Kanis convened the special adjourned meeting at 8:10 p.m., following a closed session beginning at 7:00 p.m. regarding pending litigation pursuant to Government Code Section 54956.9(b) and 54956.9(c), with Council Members Peter Breen, Paul Chignell, Tim Yarish, and Maria Zaharoff present.

2. APPEAL OF PLANNING COMMISSION APPROVAL OF PDP-9201;DR-9210;LLR-9202;MICHAEL AND LINDA GILL, A/P 7-154-07 AND 08; PRECISE PLAN, DESIGN REVIEW, AND LOT LINE RELOCATION FOR REDEVELOPMENT OF A 3.25 ACRE LOT IN THE R-1 H DISTRICT TO CONSTRUCT A SINGLE-FAMILY RESIDENCE AND 40,450 WATER TANK AT 663 OAK AVENUE.

Town Attorney Roth: It is my legal opinion that the environmental assessment of the 120,000 water tank was not appropriate as part of this project. He prepared proposed language to add to condition #12, and requested a response on agreement or disagreement from the applicant.

Neil Sorensen, attorney for the applicants, said he did not receive the language until that afternoon, he did not have alot of time to deal with it, and that it still has some of the issues they had raised in their appeal; specifically, the issue of ambiguity, of what some of the proposed changes mean and how they will affect Mr. Gill and the other property owners on the hill forever, since it will be recorded and run with the property in perpetuity. There is also the unresolved issue of nexus; they have repeatedly asked what is the connection between the proposed condition and what Mr. Gill is doing on the property. Some of the parcels listed are not connected with the roadway (7-191-07, & 06), and are no where near the roadway. Mr. Gill has offered to the Town what they would accept in terms of a condition on the easement.

He said the applicant was unclear about the words "interfere" and "development."

Roth recommended the cross appeal be granted, the first part of their offer be accepted, with the addition of Roth's language, with the clarification of which parcels would be affected.

Chignell asked whether the applicant would agree to a condition of approval for the project that the 40,000 gallon water tank would remain private, and not become a public tank.

Sorensen said he did not think Marin Municipal Water District (MMWD) would accept it because it is under 50,000 gallons. He noted that Mr. Denfield owns one-half the property on which the tank is located, and he would have access to using the water tank. Sorensen offered that condition #11 limited use of the tank to two property owners.

Chignell responded that condition #11 did not specifically meet the condition he proposed, and asked for new language for a condition #16.

Staff prepared the following proposed condition #16: "The 40,450 water tank shall remain private and shall not be conveyed or converted for public use or ownership."

Sorensen said that without knowing the specific concerns the Council was trying to address, it was difficult to suggest alternative language. Mr. Gill is willing to not have his water supply system turned over the MMWD for them to run; that is a different idea from selling the land which sits under the water system. The condition as worded seems to prohibit selling the land, and Mr. Gill is not willing to agree to that type of condition.

Regarding the public access issue, Roth said he believed that any action taken by Mr. Gill or his successors which interferes with that easement would pass the Nolan test because of the development would become a burden on the existing right of way, and that it was a legal condition.

Planning consultant Lisa Newman explained that the language on the proposed condition prohibiting the tank from being used or conveyed to being a public tank referred to the tank, not the land.

Yarish inquired as to whether the condition would prohibit the land from being conveyed to MMWD, have the tank torn down, and the tank replaced. Roth said it was his interpretation that the condition did not prevent that from occurring.

Sorensen said that if the intent of the condition was to prevent the tank from being conveyed to MMWD, and MMWD operating it, then that is the way the condition ought to be worded. That's not the way it is worded; the wording speaks to the tank being conveyed to a public agency. The language also needs to include "the tank and the water system being conveyed and operated..." If the Council is trying to prevent the water district from running his water system, the Council should say that. If the Council is trying to prevent him from conveying his land to MMWD, it should say that; the applicant will object to any condition preventing him from conveying his land to anyone.

Kanis said the Council was not talking about conveying the land; what was being discussed was the tank.

The Council Members discussed continuing the matter for preparation of exact language on the condition.

Roth said the applicant has agreed to the following language on the easement: "The applicant shall agree as the current owner of A/P 7-154-07 and for future owners of A/P 7-154-07, that the owner of said parcel shall not object to or contest (a) any court action filed by the Town to establish implied dedication rights for pedestrians over the following described parcel; or (b) an access plan that is approved by a majority of the property owners with rights in the following described parcel and the Town Council; that portion of A/P 7-154-05 shown in exhibit A attached hereto; this agreement shall be recorded."

Roth suggested the following additional language: "Additionally, applicant shall agree as the current owner of said parcel and for the future owners of said parcel that no development of that parcel shall occur which shall in any way interfere with whatever rights the public generally has now acquired by implied dedication of real property known as A/P 7-154-05." Roth said that what has been said in 7-154-05 is the piece of land from Worn Springs down to just short of the paved portion of Oak Avenue, and he wanted to add "and the adjacent real property used for access between that particular piece of land and the end of the paved portion of Oak Avenue, crossing certain parcels which are described therein." It concludes with "the provisions of condition #12 shall be set forth in an agreement acceptable to the applicant and

the Town and which shall be recorded in the official records of the Marin County Recorder prior to the issuance of a building permit."

Roth explained that the differences were that the applicants are only agreeable to conditions (a) and (b) over the easement described as 7-154-05, but not the full length; and they are not willing to agree that they will not take any physical action in that area that will interfere with the rights acquired by the public over the years. He said he felt that the language met the Nolan test.

Regarding whether the applicant had revised language to propose, Sorensen said they had not had time to deal with this issue, which will have effects in perpetuity. They still had the basic problem of where the nexus was. He felt they were at the point of agreeing to disagree.

Based on the legal questions raised this evening, Council Members questioned whether they were prepared to take action that evening.

Chignell said that rather than agreeing to disagree, why not agree to work to resolve the language on this issue.

Zaharoff said the Council tried to accommodate the applicant by having a special meeting this evening, but that they should not compromise the Town's position by rushing into a decision this evening, because based on all that they have heard, all the information is not available, which is not fair to either the Town or the applicant.

It was the consensus of the Council to continue the matter for presentation of language on the conditions.

The public hearing was opened for persons who were present to testify this evening, and could not present their testimony at a continued meeting.

Barbara Schmidt, Austin Avenue, expressed concern about fire danger and emergency access in that neighborhood. She said Oak Avenue is very curvy, woody, and there were many eucalyptus trees and bay trees. She recounted a fire that occurred two years ago on Oak Avenue. She said the 40,000 water tank was too large for two parcels. She questioned whether the water source was a well or MMWD. She said if it was a well, it will affect other people who want to build wells, noting she had heard that the water pressure was low. Access was limited in that neighborhood, cars go too fast in that area, there have been three accidents there, she was concerned that fire personnel were not enough for a big fire that could happen there, and urged that catalytic converters be required for fireplaces in new construction because of smog settling in the valley. She said her kids had walked the easement for years.

Jerry Draper, 11 Sacramento, questioned why the 120,000 gallon water tank is not considered part of the application.

Roth said it was a novel issue, he could not find anything that would definitely conclude these facts as part of the project, and given the uncertainty of it, and the uncertainties involved in the 120,000 water tank, he did not feel it was appropriate to place an EIR burden of that significance and that time consuming on this project; that would be an extraordinary burden for the applicant to bear under these facts. But it was a close question.

Kanis noted that the Council had not taken any action this evening, other than to listen to the Town Attorney's

advice.

Draper questioned whether there could be an agreement where the applicant would agree that the 120,000 gallon tank would be subject to environmental review paid for by the applicants to the 120,000 gallon tank before he conveys the property to MMWD. That way, the Town could be the lead agency and do a study of the 120,000 gallon tank. What is happening is that MMWD will not be able to do a complete review of the water tank, because as lead agency, they do not have any right to do the review. Since Mr. Gill owns the land, Draper felt he would promote the idea that an EIR on the 120,000 gallon tank be done. That would satisfy alot of concerns.

Roth questioned whether Mr. Gill could agree to a condition that would apply to another applicant, the applicant for the 120,000 gallon water tank.

Sorensen said he was not sure there was any more negotiation to do on the easement issue. Mr. Gill has made an offer to the Town which he believed he did not have to offer, which is giving up his rights to protest in court or challenge in court of law the implied dedication rights that may or may not exist on this easement. No court has said these rights exist. Some people say they do, the property owners up there seem to say they don't; he felt they had to have a court decide the issue. Mr. Gill has the right to oppose that, but he is giving up that right voluntarily. The applicant wanted to know why that did not satisfy the Council's needs. They were not willing to any restrictions on the conveyance of the triangular tank parcel, and unless some information is conveyed from Council to the applicant, he is not willing to go any further on the issue of the easement. Rather than putting this off, and letting nothing happen until 3:00 the afternoon of this meeting, which was basically nothing, to avoid that again, the Council should act this evening. The applicant objected to any further continuance of this item, there has been a reasonable amount of time for the Town to consider the appeal; it has been two months since the appeals were filed. Mr. Gill is due a decision on this matter, he said.

Kanis noted that the Council heard this application just one week prior, and they had taken the extraordinary measure of conducting a special meeting. He said this was a serious matter to the Town, they had some serious questions about some legal interpretations and language, and they were not prepared to act until they were certain about what the language was and what it meant. They had an obligation to the citizens of the community to act with caution. This was a significant situation with respect to water tanks and access, and they needed more time to get more clarification. They would not be there this evening if they did not want to accommodate the applicant.

M/S, Zaharoff/Chignell, to continue the matter to the meeting of October 27, 1992. Motion passed by the following vote:

AYES: Breen, Chignell, Zaharoff, Kanis

NOES: Yarish

3. RESOLUTION TO COMMIT TO PROVIDE MATCHING FUNDS WITH THE ISTE A (INTER-MODAL SURFACE TRANSPORTATION EFFICIENCY ACT) GRANT, AND APPROPRIATE \$17,012 FROM THE CAPITAL RECONSTRUCTION FUND FOR THE CENTER BOULEVARD RECONSTRUCTION ISTE A PROJECT.

Assistant Administrator Pollard made some corrections to

the draft resolution.

M/S, Breen/Yarish, to adopt Resolution No. 3202 as amended this evening. Motion passed unanimously.

4. ADJOURNMENT.

The meeting was adjourned at approximately 9:00 p.m.

Beth Pollard