

TOWN OF SAN ANSELMO

Minutes of the Town Council Meeting of December 2, 1992,
5:00 p.m.

1. Call to order.

Mayor Kanis convened the special meeting, with Councilmembers Breen, Chignell, and Yarish present, and Zaharoff not present.

Kanis announced that the following items were considered during closed session that preceded the open session:

- (1) Pursuant to Government Code Sections 54956.9(a), San Anselmo v. Michael Gill, et al, Marin Superior Court #155116, Council discussed the adjudicatory proceeding before a court, initiated formally by the Town of San Anselmo as a party to the suit; and
- (2) Pursuant to Government Code Section 54956.9(b)(1), based on existing facts and circumstances, there is a significant exposure to litigation against the Town of San Anselmo.

2. Consideration of demand for correction or cure of alleged violation of Government Code Section 54957.7 concerning Town Council meeting of October 1, 1992. See letter of October 30, 1992 from Neil Sorensen.

Town Attorney Roth advised that the Council should consider demand for correction or cure. The claim was made that the reasons for the closed session were not given at the public meeting that night. As the records will show, the agenda did contain reference to the closed session, and in his legal opinion, is legally adequate to meet the requirements of the Brown Act in terms of advising the public of the closed session and the reasons for the closed session. But, it is unclear from Mr. Sorensen's letter whether he was complaining that it was not orally stated, or that it was not sufficient. In order to make sure that every possible interpretation of the Brown Act is covered, Roth recommended that the Mayor indicate orally the reasons for the closed session on October 1.

Mayor Kanis announced that the reason for the closed session on October 1, 1992 was the following:

- (a) Pursuant to Government Code Section 54956.9(b)(1), based on existing facts and circumstances, there is a significant exposure to litigation against the Town of San Anselmo; and
- (b) Pursuant to Government Code Section 54956.9(c), based on existing facts and circumstances, the Town Council has decided to initiate or is deciding whether to initiate litigation.

3. Consideration of demand for correction or cure of alleged violations of Government Code Sections 54957.7, 54956.9, 54954.2, and 54953 concerning Town Council meeting of October 27, 1992. See letter of November 25, 1992 from Neil Sorensen.

Roth advised that it was his opinion that the agenda for October 27, 1992 was legally adequate, but to avoid any possible misinterpretation, or overlook any possible interpretation of the Brown Act, he recommended that the Mayor orally state the reasons for the closed session.

Kanis announced that the reasons for the closed session on October 27, 1992 were:

(a) Pursuant to Government Code Section 54956.9(b)(1), based on existing facts and circumstances, there is significant exposure to litigation against the Town of San Anselmo.

Roth stated that another item complained about in the letter from Neil Sorensen about the October 27, 1992 meeting was that non-litigation decisions were made the closed session during that meeting. Following that letter, because it was unclear, Roth asked Mr. Sorensen to what he was referring in that letter. He responded that they considered that decisions had been made in closed session regarding a specific plan and matters concerning an environmental impact report for the water tank. He asked Council to state whether or not there were any non-litigation decisions made or actions taken in the closed session.

Kanis stated that no non-litigation decisions were made during the closed session of October 27, 1992, and Councilmembers Breen, Chignell and Yarish expressed their agreement with this statement.

(b) Pursuant to Government Code Section 54956.9(c), based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

The next item raised in the letter from Mr. Sorensen was improper placement of an item on the October 27, 1992 agenda, specifically entering into negotiations with the Marin Municipal Water District and the property owners regarding the costs related to the selection of an environmental review consultant for the water tank and/or specific plan for Bald Hill, that was placed on the agenda on the basis that the need to place the matter on the agenda arose following the posting of the agenda, and it was taken up, and action was taken at that meeting.

Roth advised that it was his opinion that the facts supporting that determination were adequate under the law; but nonetheless, this is a matter that has not been construed by any appellate court, therefore it could not be stated authoritatively what constitutes a legal need to place something on an agenda after it has been posted, nor can it be said what constitutes a proper determination of the need. It was his recommendation that notwithstanding his view that it was legally done, that the Town Council rescind that action effective tonight, and if desired, place the matter on a regular agenda for the next regular meeting.

M/S, Chignell/Yarish, to rescind the previous decision made on October 27, 1992 with respect to entering into negotiations with the Marin Municipal Water District and the property owners regarding the costs related to the selection of an environmental review consultant for the water tank and/or specific plan for Bald Hill. Motion pass unanimously, Zaharoff absent.

4. Consideration of request for public disclosure of the confidential memos for the closed sessions of October 1 and October 27, 1992.

Roth advised that under the law, these items are not subject to public disclosure, they are specifically excepted from the Public Records Act, and advised against disclosure in light of the fact that the Town is in litigation with the clients of Mr. Sorensen.

Kanis commented that there was a request for the minutes of the closed sessions, but there were no minutes taken.

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M/S, Yarish/Breen, to deny the request for the confidential memos for the closed sessions of October 1 and 27, 1992. Motion passed unanimously, Zaharoff absent.

M/S, Chignell/Breen, to direct the Town Attorney to respond counsel for Mr. Gill no later than the end of business day December 3, 1992 regarding these matters. Motion passed unanimously, Zaharoff absent.

5. Adjourn.

The meeting was adjourned at 6:22 p.m.

Beth Pollard