

TOWN OF SAN ANSELMO

Minutes of the Town Council Meeting of December 22, 1992

7:00 p.m.

Closed session regarding labor negotiations.

8:00 p.m.

1. CALL TO ORDER.

Mayor Kanis convened the regular meeting, with Council Members Breen, Chignell, Yarish, and Zaharoff present.

2. OPEN TIME FOR PUBLIC EXPRESSION.

Michael Driscoll said recent Supreme Court decisions have paved the way for religious symbols to be placed on public property, and inquired about the possibility of placing a nativity scene on Town Hall lawn. He said that perhaps money could be raised to finance it, that perhaps a menorah could be incorporated, and said his attorney, Rudolph Renson, could be contacted for legal information. Staff was asked to look into the matter and report back in advance of the next holiday season.

3. CONSENT AGENDA.

- (a) Approve minutes: October 27 and November 10, 1992.
- (b) Acknowledge and file financial reports through November 30, 1992.
- (c) Approve resolution establishing the fee for police services to respond to an event where alcohol, narcotics or dangerous drugs are being used and/or an event is a threat to the peace, safety or general welfare of the public.
- (d) Appropriate \$2,800 from the Isabel Cook Renovation Fund for renovation of Recreation office ceiling.
- (e) Appropriate \$3,000 from Contingency for renovation of police communications office.
- (f) Adopt ordinance adopting the water conservation ordinance of the Marin Municipal Water District.
- (g) Approve resolution approving the application for licensing of child care programs.
- (h) Approve resolution supporting an end to unfunded federal mandates on local and state governments.

M/S, Zaharoff/Yarish, to approve the consent agenda with the exception of items (f), and (g). Motion passed unanimously.

(f) Adopt ordinance adopting the water conservation ordinance of the Marin Municipal Water District.

Planning Director Chaney explained that the ordinance incorporates by reference any changes MMWD makes in its landscape ordinance, which is the process being followed by other Marin cities. The Planning Directors of the cities in Marin have been involved in the development of MMWD's ordinance, and would encourage their continued involvement.

M/S, Chignell/Yarish, to adopt Ordinance No. 935 amending Title 10 to add Section 10-3.702(1) and establish water conserving landscaping requirements. Motion passed unanimously.

(g) Approve resolution approving the application for licensing of child care programs.

Chignell inquired as to whether the resolution related to one licensing issue, or was valid on an ongoing basis; if

it was an ongoing basis, he would prefer that the Town Administrator be the authorized agent. The item was continued to January 12, 1993 for clarification.

4. RESPONSE TO COMMENTS REGARDING SAN ANSELMO GARBAGE DISPOSAL COMPANY NOISE, EARLY PICKUP, AND NEWSPAPER RECYCLING.

Staff recommended the item be continued to allow for a meeting between the Lincoln Avenue residents, the garbage company, and staff to work towards resolving the issues, and to complete a reading on the noise level with a sound meter. The staff report was corrected to reflect that the early pickup problem was on Woodside Drive, not Woodland Avenue.

Council Members expressed concern about the length of time to conduct a noise test and respond to the concerns, and Town supervision and management of complaints to San Anselmo Garbage Disposal.

Gail Fowler, 5 Lincoln Avenue, said she has received no response from San Anselmo Garbage or the Town on her complaint, and asked that for an interpretation of the ordinance with respect to sound levels.

5. RESOLUTION REGARDING COUNTY OF MARIN'S ISSUANCE OF A PERMIT TO BUILD MAUSOLEUMS AT THE MOUNT TAMALPAIS CEMETERY.

Marin County Supervisor Harold Brown, who represents San Anselmo on the Board of Supervisors, said that following the community meeting with the neighbors of the project, he met with County Planning staff. Approval for two of the mausoleum buildings has expired, and the County has pledged to re-evaluate the project and look at alternative sites. A letter is being sent to the property owners explaining that they no longer have permits for the two other sites. He said the County will make sure that the public has an opportunity for input into the project.

Paul Giompoli wanted the Town to take a legal position stronger than passing a resolution with its concerns. He expressed concern that if the process of Town notification was not addressed, a misnoticing could happen again; and the Town's opposition to building on ridgelines should be made known to the County.

Jane Marion, San Anselmo resident, said the issue of fences and securing access to Sorich Park should also be addressed.

Nancy Bennett, 405 San Francisco Boulevard, thanked Supervisor Brown and the Council for their intervention in this project.

Jerry Draper thanked Supervisor Brown for his efforts, and noted the amount of work accomplished in the past four days.

Supervisor Brown suggested that the County Planning Director, Town Planning Director and Mr. Giompoli meet to go over what areas there may be problems with development on ridgelines or hillsides between the two jurisdictions.

The Council Members thanked Supervisor Brown for his work to address the concerns of the residents and Council on the project.

The Council modified the second paragraph of the resolution to read, "Whereas, the San Anselmo Town Council believes that these mausoleums, if constructed, would be a visual

eyesore throughout the Ross Valley and might obstruct access to open space;" The last paragraph was amended to include a clause to "urge Supervisor Brown and other County officials to work with property owners on other community issues with respect to this area."

M/S, Chignell/Zaharoff, to approve Resolution No. 3214 regarding County of Marin's issuance of a permit to build mausoleum at the Mount Tamalpais Cemetery, as amended. Motion passed unanimously.

6. RESOLUTION SETTING FEE SCHEDULE FOR BUILDING INSPECTION AND PUBLIC WORKS SERVICES.

The fee schedule was introduced at the last regular meeting and scheduled for adoption by resolution this evening.

Yarish expressed concern that some items under the electrical permit were redundant and meant there would be a double charge for a point of inspection.

Herb Nienstedt, Marin Builders Exchange, said that with the exception of the concerns expressed by Council Member yarish, he felt that the fees are comparable to fees in other cities.

Michael Driscoll asked if there could be information provided to first time home buyers about requirements for building permits, explaining that he was charged for twice the amount of a building permit when it was discovered that a contractor he had hired had performed work on his house without a permit.

Yarish noted that the Uniform Building Code specifies the doubling of fees when work is done without a permit, and allows cities to charge more than double; San Francisco will charge up to ten times the permit fee.

M/S, Breen/Yarish, to adopt Resolution No. 3217 setting and amending fees for permits under Titles 5, 7, 9 and 10 of the San Anselmo Municipal Code. Motion passed unanimously.

7. ADOPT ORDINANCE AMENDING THE GENERAL PLAN AND ZONING ORDINANCE TO ESTABLISH REGULATIONS FOR WATER WELLS.

Planning Director Chaney reported that staff recommended the ordinance be amended as follows: the term "potable" be used rather than "domestic" since the latter can refer to either drinking or irrigation water; use Sausalito's language on requirement/enforcement; permit no more than two homes per well; and add the term "test well" to the permit section of the ordinance. Staff noted that a letter had been received that afternoon from Scott Hochstrasser, Planning Consultant. Town Attorney Roth recommended the item be continued to allow Chaney, Hochstrasser, Yarish, and himself to meet to frame the issues for Council.

M/S, Yarish/Breen, to approve the Mitigated Negative Declaration as presented to the Town Council December 8, 1992. Motion passed unanimously.

Scott Hochstrasser, Planing Consultant, said his letter did not provide new information about the issues. He reiterated the comments previously made on the unclarity in the ordinance regarding "feasible." He said Policy 13.2 is an opportunity to make the issue clearer, and recommended it read, "New homes shall connect into MMWD's potable water system where feasible." (underlined is his recommended addition).

Chaney said the added language was too specific for the General Plan, whereas the ordinance can be more specific.

A representative from MMWD expressed his concurrence with the potable water requirement.

M/S, Yarish/Zaharoff, to approve Resolution No. \_\_\_\_\_ amending the Land Use Element of the General Plan to allow the construction of potable water wells as a temporary alternative to the public water system, as included in the staff report for tonight's meeting. Motion passed unanimously.

Action on the ordinance was continued to January 26, 1993.

8. RE-INTRODUCE ORDINANCE AMENDING BUSINESS LICENSE FEES AND REGULATIONS.

Town Attorney Roth reported that the Government Code prohibits a public official from using his/her official position to influence a government's position, which he or she has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial affect distinguishable from its affect on the public generally on the official personally or upon a member of his or her family. He did not think there was a material financial interest on the ordinance, because the maximum financial impact would be \$250 a year. Even if there were a material financial interest, all three Council Members with businesses in San Anselmo are affected in a substantially similar manner as a significant section of the public; they are not going to be affected differently from the other persons in town with business licenses. One exception is that Mr. Yarish, in all innocence, spoke with staff on the ordinance section on contractors; because he is a contractor, he might want to abstain from the ordinance decision, but Roth did not think he was prohibited from discussing other parts of the ordinance.

On the issue of businesses licenses for real estate businesses whose offices are located outside San Anselmo but doing business in town, Roth noted that staff recommended a flat fee for the sale of property. Roth read from a Supreme Court decision which stated that as long as business license taxes are apportioned in a manner by which the measure of tax fairly reflects the proportion of the taxed activity which is actually carried on within the taxing jurisdiction, no constitutional objection appears. Roth said that it seemed that what was proposed is proportional, that there is a nexus between the tax and the activity, and was legal.

Bob Holmes, Governmental Relations Committee, Marin Board of Realtors, said that all of the \$45 fee is put just on the selling agent, and he felt the fee should be broken up proportionately between the buying and selling agent in order to be legitimately proportional. He said in his meeting with Assistant Administrator Pollard, the gross receipts structure was discussed, and that structure was preferred at that time, but he said there was no discussion about adding a flat fee. At its meeting of December 16, the Board of Directors of the Marin Association of Realtors unanimously voted to oppose the gross receipts structure that is talked about in the memo, because it sets up a double structure. He said the \$9,000 estimated revenue from the \$45 business license tax was too high; not all properties sold in San Anselmo are sold by realtors from outside the Town, and over the past four years, between 150 and 193 properties were sold in town. He said the same uncertainty that contractors face in paying on a gross receipts schedule is true for real estate, and perhaps the Town should look at that for realtors as well.

Shary Loots, realtor in Marin County, said there are alot of realtors who disagree with charging \$45 per transaction. She said no other cities charge extra to do business in their town, they already pay other fees and taxes everywhere, they are just trying to make a living, and would appreciate not being charged extra to do business outside wherever we are based. It is important that realtors bring people into San Anselmo from other areas as well as the sellers can go and buy other places, and placing it all on the selling agent is unfair. The standard 6 percent made by realtors does not get paid to one agent; agents get approximately one-quarter of that and have to pay their own expenses. She said she did not think it was fair to pay the city on top of everything else she pays to sell a house.

Herb Nienstedt, Marin Builders Exchange, expressed appreciation in the amendment for the out-of-town contractors from \$50 to \$30 per quarter as a fair compromise.

Zaharoff said she felt that it was fair to charge realtors from outside San Anselmo if San Anselmo realtors are being charged, that \$45 should be charged to the selling agent, and that it was between the buying and selling agent as to who paid what amount of the fee. She added that San Anselmo is generally strict about the signage it allows, and allowing realtors to put out numerous signs when other businesses, such as downtown merchants were restricted, was not fair.

Chignell said he would not vote for the ordinance, that it was unfair to tax the realtors when the sign regulations are unfair to realtors. He said that the Town could be more hospitable to realtors in allowing signs.

Kanis said that marketing success is primarily based on the quality of the product and the ability of a salesperson, and that the quantity of signs did not sell a property.

Zaharoff and Breen supported levying the fee on the broker for the selling real estate agent, rather than the agent.

M/S, Chignell/Yarish, to introduce the ordinance without the \$45 fee to real estate agents or brokers. Motion failed by the following vote:

AYES: Chignell

NOES: Breen, Kanis, Zaharoff

ABSTAIN: Yarish

M/S, Breen/Zaharoff, to waive reading and introduce the ordinance amending the business license fees and regulations. Motion passed by the following vote:

AYES: Breen, Kanis, Zaharoff

NOES: Chignell

ABSTAIN: Yarish

9. APPEAL BY JEAN BRUNSWICK OF A PLANNING COMMISSION DECISION TO DENY A USE PERMIT TO ALLOW TWO RESIDENTIAL UNITS ON PROPERTY LOCATED AT 22 MAGNOLIA AVENUE WITHIN THE P (PROFESSIONAL) ZONING DISTRICT. THE APPLICANT IS ALSO REQUESTING THAT THE TOWN COUNCIL APPROVE AN ACCESS AGREEMENT TO ENABLE THE APPLICANT TO ACCESS THE SUBJECT PROPERTY THROUGH THE TOWN-OWNED PARKING LOT NORTH OF MAGNOLIA AVENUE.

Planning Director Ann Chaney presented the staff report.

Council Member Yarish commented that there was a group of business owners who were in the embryonic stages of forming an assessment district, and this property adjacent to the Town-owned Magnolia Avenue parking lot was an obvious target for acquisition. However, they were likely to be a year from bring the district to fruition.

Fred Peterson, attorney for the applicant, said a floating easement for access over the Town owned lot would allow the easement to be placed wherever the Town wanted it on the Town owned lot.

Chaney noted that the present configuration of the project did not allow for access other than over an easement.

Peterson said that granting the easement would not enlarge the Town's burden that it currently has in the easement it has granted to 25 Tamalpais Avenue. He said the first proposal was for an office and residential project, which was a better project for the property but did not make sense economically. Regarding its designation as moderate income housing, Peterson commented that units of that size, location, limited outdoor area, noise, and other factors, did not command high rent. He said there was more demand for low and moderate income housing than office use. He said that the property owners were willing to enter into negotiations for the sale of the property. They purchased the property for \$195,000, have had architectural fees, and Peterson said that it would be less costly for the Town to condemn this property with the current project than office use.

Zaharoff said that if it was the Town's objective to get more affordable housing, the project was fine, and she would be willing to grant an easement for low income housing, but wanted satisfaction that the Town would not be compromising its position on the parking lot.

Breen offered that Ross Valley Ecumenical Housing was looking for another facility.

Yarish said it would not be a hardship if the easement condition on 25 Tamalpais was lost, but it would be a hardship if 22 Magnolia lost parking.

Peterson said the easement and use permit were two different issues, and asked that Council approve the use permit this evening and leave the easement for a subsequent meeting.

Chignell commented that this project appears to be the best for the property thus far submitted, but more information was needed on the access easement.

Yarish expressed support for the concept of two units, did not see the Magnolia lot as being used for anything other than a parking lot, felt the neighbors would want residential use of the property, and the easement has to be something with which everybody is comfortable.

Kanis said he would prefer to see the property used for low-cost housing or parking, but needed more information on the easement.

M/S, Chignell/Zaharoff, to continue the item to the meeting of January 12, 1993. Motion passed unanimously.

Peterson said he would meet with staff and develop a plot plan locating the two easements.

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

There were no items.

11. ADJOURN.

The meeting was adjourned at 11:30 p.m.

Beth Pollard