

**TOWN OF SAN ANSELMO**  
**Minutes of the Town Council Meeting of September 12, 1995**

Present: Breen, Chignell, Hodgens, Kroot, Yarish  
Absent: None

6:30 p.m.

Announce adjournment to closed session for conference with real property negotiator regarding negotiations with Peter and Pamela Fraser, on the terms and exchange of real property in the vicinity of Bald Hill, Redwood Road, and Oak Avenue, A/P 7-154-04; 7-101-02; and 7-071-03, pursuant to Government Code Section 54956.8.

6:35 p.m.

Closed session for conference with real property negotiator regarding negotiations with Peter and Pamela Fraser, on the terms and exchange of real property in the vicinity of Bald Hill, Redwood Road, and Oak Avenue, A/P 7-154-04; 7-101-02; and 7-071-03, pursuant to Government Code Section 54956.8; regarding appointment of interim Volunteer Coordinator; and regarding pending litigation pursuant to Government Code Section 54956.9(a), Heinemann, Sias, and Casey v. Town of San Anselmo.

8:00 p.m.

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE.

2. ANNOUNCE ACTION TAKEN, IF ANY, IN CLOSED SESSION.

Mayor Yarish announced that no decisions were made during closed session.

3. OPEN TIME FOR PUBLIC EXPRESSION

Howard Nemerov, 1380 San Anselmo Avenue, said he is concerned about the noise from a construction site on Elm Avenue. His neighbors have signed a petition in agreement. The work goes on seven days a week, at all hours. He has been advised of the Town's authorized construction hours by the Building Inspector. Residents have complained to the police about this, but the allowed hours are very lenient.

Chignell said that the Public Works Director has been working with the property owner and staff has also been working to modify the approved hours. Public Works Director Bush said they will be coming back with a staff report on a future agenda.

Breen asked about the difference between these regulations and Mr. Fraser's more restricted work hours. Fraser's hours were specifically limited to weekdays.

Jocelyn Olivia, 34 Elm Avenue, said the construction work has been extremely aggravating. She asked why the neighborhood was not noticed regarding any variance for this construction project. Yarish said the sideyard variance is 8 feet. Planning Director Chaney said these homes were designed to meet all of the Town's codes. Future homes there will be subject to design review, however.

Molly Ollen, White Hill Student, said she has a friend on Elm Avenue who woke up early today because of the construction noise.

4. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS, QUESTIONS AND COMMENTS TO STAFF; STAFF MISCELLANEOUS ITEMS.

Chignell confirmed that the smoking issue will be on the next agenda, and asked about the status of the lighting issue at the Racquet Club. Town Administrator Pollard said a lighting test will be held tomorrow night.

Breen said he has been looking at the Town's retirement system and would like a review of the system and a comparison to other cities.

Yarish said he has an invitation for Council from the Rotary for a Forum on the Homeless. He also received a request from Ross Valley Community for Schools to waive the banner fee for their upcoming musical at the Marin Community Playhouse. Town Administrator Pollard said this will be on an upcoming agenda.

Pollard said the Library project is ahead of schedule and the work has been satisfactory. It should be completed by October 12, if not before.

5. CONSENT AGENDA: ITEMS ON THE CONSENT AGENDA MAY BE REMOVED AND DISCUSSED SEPARATELY. OTHERWISE, ALL THE ITEMS MAY BE APPROVED WITH ONE ACTION.

- (a) Approve minutes: August 22, 24, 28, and 29, 1995
- (b) Acknowledge and file warrants: 19649-20001, in the amount of \$604,641.14.
- (c) Authorize negotiations with Aryiis Foundation for renewal of lease at the Isabel Cook Community Center.
- (d) Approve Resolution No. 3320 supporting the principles of the Bradley-Burns Bill of rights regarding relations between cities and the State Board of Equalization concerning sales tax collection.
- (e) Approve Resolution No. 3321 establishing the Measure G Monitoring Committee.
- (f) CONTINUE TO SEPTEMBER 26, 1995: Public hearing on the Draft Bald Hill Area Plan.
- (g) CONTINUE TO SEPTEMBER 26, 1995: Introduce ordinance adopting Ordinance No. 3197 of the County of Marin, amending Section 8.04.179 of the Marin County code pertaining to animal noise.

Item (b) was removed for discussion.

M/s, Chignell/Kroot to approve the consent agenda item (a) and items (c) through (g).  
Ayes: All.

Regarding Item (b), Breen asked if the August 24 expenditures for Marin Abused Women and Mediation Services are from last year. Town Administrator Pollard said they are.

M/s, Breen/Kroot, to approve item (b). Ayes: All.

6. DISCUSSION REGARDING 37 YOLANDA AND SECOND UNIT CRITERIA AND REGULATIONS.

Planning Director Chaney said this involves an alleged second living unit at 37 Yolanda. When a new home was proposed two years ago, staff required that an existing rear unit have the cooking facilities removed and a single-family deed restriction recorded. The deed restriction said the owners promised that the unit would not be used for rent or other consideration or for separate, secondary living quarters. The rear unit is now being used by a nanny who has a child. Staff's interpretation of this deed restriction is that an au pair, nanny, or teenage child is acceptable as long as meals are taken in the main house. Council may question this interpretation. The nanny does eat in the main house according to the property owner. The neighbors, however, interpret the deed restriction to say that no one can live in the unit. Staff would like to clarify this so a similar misunderstanding does not happen again. Staff proposes changing "separate secondary living quarters" to "residential second unit," "cooking facilities" to "kitchen," and defining kitchen as in the draft deed restriction attached to the staff report. Staff also recommends that density review language be added to the Ordinance Code. Other language that could be added could define an employee for personal assistance and overnight guests. Staff has no specific recommendations on this 37 Yolanda issue, as this is a basic misunderstanding.

Breen asked if a place to live could be "other consideration" for a nanny. Town Attorney Roth said it probably is "other consideration" but it would have to be enforced equally across town.

Chignell asked how the nanny situation would be "other consideration." Roth said staff's intent was that the nanny would be an exception. Chignell asked about the cooking facility logic. Roth said in the definition of a second-unit, the touchstone is the cooking facility.

Chignell said there have been a number of different situations in this home. Planning Director Chaney said she knows of only one other situation when a friend was living there. Staff did feel that was in violation of the deed restriction. The only other exception would be a teenage child.

Yarish asked Town Attorney Roth if it is within the Council's power to interpret this anew from here on out, as "other consideration" being any other consideration, such as free housing. Roth said you could, or you could amend the ordinance to that effect. The problem is applying the rule uniformly to everyone.

Hodgens said this deed restriction applies to this resident only; how would this interpretation affect other residents? Town Attorney Roth said it is because the deed restriction language is standard.

Planning Director Chaney said they have a standard form for deed restrictions which is used uniformly, with blanks to customize it to the individual situation.

Kroot asked if we are now saying that not only kitchen facilities, but also receiving some consideration for the housing defines a second unit. Roth said we have always let people with maids, etc., use a detached building for living, but that language could be added to the regulations.

Linda Ross, 39 Yolanda, said the neighbors did not have the benefit of a variance procedure for this project. They had a contract and were not told a nanny was all right. She would have appealed if she had not thought that the deed restriction would take care of anyone ever living there. Neighbors should have a say on what happens in a residential neighborhood. The essence of the contract is that he promised not to use the room as living quarters in exchange for not having to have a variance.

Gerry Burroni, 33 Yolanda, said he was surprised when construction began on the property, but was reassured by staff orally that a deed restriction had been signed to take care of neighbors' concerns. He feels the language of the deed restriction is clear and unambiguous. If changes are necessary they should not be applied retroactively.

Carland Strand, 20 Yolanda, said they were concerned when construction began. Their main concern was the use of the second structure. She remembers being reassured by staff that the structure could not be used for rent or any other consideration.

Mr. Wasuta, 37 Yolanda property owner, said that he did not construe the deed restriction to mean that he would abandon the structure. The nanny is well-paid and it is to their benefit to have her living close by. Any ambiguity in the document is not his fault. This structure has historically been used; had he known this would be such a problem, he would have attached the two structures. He wants to be treated like everybody else in Town.

Hodgens asked what Mr. Wasuta's intention was initially for the structure. Wasuta said he didn't have any plans except as extra space.

Hodgens asked how he interpreted the deed restriction language. Wasuta said he interpreted it that he couldn't rent it out and couldn't have a stove, but anyone could live there, provided those terms were met.

Chignell said the action tonight is to look at the ordinance code wording.

Chaney said her recommendation is to try to clear up the ambiguity and to try to solve this problem.

Kroot asked if the deed restriction creates an unfair situation since some people don't have them. He feels we should look at an abatement hearing. We should look at revising the single family deed restriction and amending the definition section to the Ordinance. He is concerned about adding the Density Review of the Ordinance Code.

Breen said there is a larger issue that should be resolved first, and is in support of what's been said so far.

Hodgens said based on the language the nanny is not all right, but based on the code the nanny is all right. She is comfortable with staff working on a revised ordinance, while this issue is being resolved.

Breen said a second meeting of negotiations was attempted with one member of Council, but it did not come to anything.

Yarish said this dilemma needs to be dealt with before dealing with this specific case.

It was the consensus of Council to hold an abatement hearing and to look at the Ordinance Code to clarify this issue.

M/s, Chignell/Kroot, to notice an abatement proceeding regarding the deed restriction violation at 37 Yolanda, and direct staff to research possible changes to the Ordinance Code to clarify, to be held at separate hearings. Ayes: All.

Town Attorney Roth said he needs to research whether this can be handled through an abatement proceeding or a legal proceeding. He will get back to Council on this for the meeting of September 19.

**7. REPORT ON RECOMMENDATION TO PROVIDE ENGINEERING SERVICES FOR IMPLEMENTATION OF MEASURE G IMPROVEMENT PROJECTS, AND CONSIDERATION OF COUNTY ENGINEERING SERVICES.**

Town Administrator Pollard said staff has looked at various alternatives to handle the engineering services for Measure G work. An idea surfaced to contact the County of Marin to see if any services could be contracted. Rick Carlson, County Assistant Director of Public Works, is here to answer questions. Staff has no recommendation as we don't yet have a proposal on which to compare figures.

Rick Carlson, Marin County Assistant Director of Public Works, said they have reviewed the staff documents on Measure G, and feel they can provide a range of services to the Town. They have a staff of competent engineers, three of whom are registered professional engineers, and a survey crew.

Kroot asked if the Town would get primary use of an engineer, or would it be on an hourly as available.

Carlson said they make an agreement with towns they serve to give a certain number of hours per week, hopefully with the same engineer.

Yarish asked what the range of costs would be.

Carlson said Tiburon pays about \$65 an hour. Most of the Measure G work could be done at a lower assistant engineer level. The drainage portion would probably be more complicated.

Chignell asked if the same person could stay with the project to provide continuity. Carlson said he understands the concern. A commitment could be made on a year-to-year basis, or project-to-project.

Chignell asked if the scope of work would need additional staff from the County. Carlson said drafting would be done by a lower level employee, and oversight by a senior engineer.

Breen said he has been disappointed by overlay projects done throughout the County, as they are deteriorating rapidly. He would like quality built into the projects so they will last.

Hodgens asked what the benefit would be to the Town to do this. Carlson said the County can offer a full range of services, they are familiar with government work and have done a lot of consulting. They are familiar with the process and can short circuit a lot of down time.

Hodgens asked about hiring in-house for this work. Carlson said he would see this as a full-time job. The Town would make bidding decisions. She would like at least a three year commitment if the work is done by the County.

Kroot asked where, physically, the work would be done. Carlson said the work would be done primarily in the County offices. There would have to be coordination with the Town offices as well, with quarterly reporting due.

Town Administrator Pollard said a cost/benefit analysis will be done when a proposal is received, probably for the first meeting in October.

Hodgens said she would like this done as quickly as possible as there is a lot of dialog going on about this topic.

**8. CHANGES, ADDITIONS, AND DELETIONS TO 1995-96 PROPOSED BUDGET.**

Town Administrator Pollard said the Council has conducted the public hearings on the 1995-96 budget. The staff report lists all questions that came up during those hearings. Specific changes to the budget are listed below.

Revenues - In the area of Sales Tax, we experienced a substantial drop in the first quarter of the year. Pollard is now projecting a \$15,000 decrease in sales tax for the year. ERAF Shift Excess Funds could translate into about \$70,000, but this is not a sure thing; it would be a one-time increase.

Budget 411, Town Council - To develop a management evaluation and performance pay program was added to the work plan.

Budget 412, Object 20, Outside Services - Money has been included for five recruitments. Council wanted to add four more recruitments for a plan checker, engineer, dispatcher, and police officer, adding \$10,000 to this object.

Chignell asked if there will be any money savings with all these changes. Pollard said it was possible. She also said these recruitments would be separate from any County recruiting for deputy sheriffs.

Hodgens said there would be a total of \$22,500 budgeted for recruitments.

Yarish asked if some of this recruiting could be done in-house.

Breen this is a unique year with so many openings.

Budget 414, San Anselmo Volunteer Effort - Pollard said there was concern about an increase in salary money and she discovered an error in computing the Volunteer Director's salary at full time, rather than 4/5 time. Savings may be realized due to the resignation of the Director.

Budget 418, Planning - This will be changed to reflect streamlining and enhancing plan checking services.

Budget 421, Non-Departmental, Outside Services - Marin Abused Women's Services will be requesting \$3,000, Student Art Festival is budgeted for \$2,700 as requested by Council, and \$5,000 is added for the holiday lights. Chamber representatives are here to answer any questions.

Joan Crook, Chamber of Commerce, invited Council Members to a "Spirit of Marin" lunch, on Friday at noon at the Elks Club, honoring business persons of the year.

Hodgens said the bid for lights is \$7,000, with \$3,000 for entertainment. Connie Rodgers, Chamber of Commerce, said forty hours of entertainment are included to boost sales, and this is a new expense. Hodgens asked if businesses are committed to staying open in the evening. Rodgers said everyone is asked to do this.

Budget 430, Police - It is planned to use seized asset funds for police equipment/operations as related to drug enforcement. Pollard estimated the financial impact of the two dispatcher's maternity leaves will be about \$20,000.

Budget 432, Fire - The costs of installing the emergency generator at Station 20 will be at a cost to the Town of \$8,000 for the Town, with Sleepy Hollow Fire Protection paying \$8,000 as well. The Town is responsible as each Town in the District takes care of its own property.

Engineering & Inspection, Budget 441- The budget includes replacing outside plan checking services with an in-house person; staff will report back on dual system and ideas for improving services.

Budget 481, Parks - Sorich Park revenues and expenditures will be included in the budget. Hodgens said she feels it was assumed that some Parks' staff time would be included in the project. She would like to find out how the Town can be reimbursed for Parks' time. Dean Nyberg, Parks Superintendent, said they are keeping an hourly record of work, persons, and equipment being used at Sorich Park. Those funds can be used as in kind donations toward the matching grant. Hodgens asked if the Town should charge the grant for the time. Nyberg said that to achieve entire project, parks staff time may be making up the difference in matching requirements.

Recreation - The elimination of fund balance deficit (\$123,000) could be done one-time or multi-year.

Budget 482, General Fund - The Recreation Department accounting system is in question. For accounting purposes, Pollard proposes to include the Recreation Director and Robson Stop-by funds in the appropriation budget to track funds. In addition, the Robson Stop-by has requested an additional \$1,000.

Breen said he could not get a handle on what the additional \$1,000 would be spent.

Hodgens said she felt they were anticipating additional staffing. Their adult/child ratio is way out of line. She'd like to know what standards are being applied to this program as the Town is running it.

Breen asked if a subcommittee could be established with Hodgens and Breen, and hold the \$1,000 in reserve.

Hodgens said there are liability issues around this.

Budgets 484, 485, (Recreation) - This is in recognition of the accounting setup and computer upgrades. Add to the workplan the consideration of a Town-sponsored baseball program.

Chignell said the time is now to consider getting the baseball program in the Town.

Pollard said it would be at the top of the list for the workplan.

Hodgens said Recreation's new programs in the year have no budgeted revenues.

Hodgens asked if there was an operational deficit in Recreation last year. Pollard said that at the end of last year there was about a \$7,000 deficit that was added to the accumulated deficit.

Equipment Fund - Pollard said she foresees a net revenue increase in carryover of \$25,000, and it is proposed to buy the motorcycle, winches, and complete Town Hall emergency repairs for the air conditioner.

Breen asked about repair costs of patrol cars with lots of mileage. Pollard will look into patrol vehicle mileage.

Capital Projects - Additional revenue of \$86,000 is anticipated, but will be spend on Herrera Court and Halprin Park slides and the generator work.

Safety Fund - The issue of using the money for dispatch improvements was raised.

Pollard said initially she recommended eliminating the Recreation deficit in increments, but it seems reasonable to do it in one fell swoop.

Regarding the holiday lights, Hodgens said that she is going to go along with the expenditure, but she is disappointed that no real commitment is in hand from merchants to stay open in the evenings.

It was the consensus of Council to proceed along these lines.

9. INTRODUCE ORDINANCE MODIFYING THE MAXIMUM DWELLING UNIT SIZE REGULATIONS.

This item was continued to the meeting of September 26, 1995.

10. AWARD OF CONTRACT AND APPROPRIATION OF FUNDS:

- (a) Award contract for Herrera Court slide repair nuisance abatement, in the amount of \$63,369 to the Valentine Corporation.
- (b) Appropriate \$25,000 for Halprin Park mudslide repairs behind Angela Avenue.
- (c) Award contract for 1995 Street Digout Project to Ghilotti Brothers Construction, Inc., funded by Measure G proceeds, up to \$250,000.

Town Administrator Pollard said staff recommends Council appropriate funds and award contracts as noted. Reimbursement from FEMA will be pursued for both items (a) and (b).

Town Attorney Roth, regarding item (a), said this repair is for the Heinemann property. He said the Town has the right to go in and make the repairs. Roth feels the Town can go ahead and lien the property, but there is a small chance of a problem because the Heinemann's believe they are not at fault. A lien can be put on the property without a court order.

Hodgens asked if the insurance company has denied responsibility.

Public Works Director Bush said the Heinemann's insurance company has denied any responsibility for the slide.

M/s, Chignell/Kroot, to move that the Town Council (1) award the Herrera Court Slide Repair Project to the Valentine Corporation in the amount of \$63,369 and authorize the Mayor to execute Rights of entry for access to the Heinemann's and the Siases' property, and (2) authorize a transfer from the emergency fund in the amount of \$25,000 for mudslide repairs at Halprin Park behind Angela Avenue, and (3) award the 1995 Street

Digout Project to Ghilotti Brothers Construction, Inc. in the amount of a minimum contact of \$250,000, based on the bid unit prices. Ayes: All.

Breen said he is concerned that the same contractors are digging out work that they did some years ago. He wants the engineering and inspection work done carefully.

Public Works Director Bush said the new digouts were not the fault of the contractor, but rather because there wasn't enough money to do the job right.

Breen said it isn't right to look at it that way. Maybe those streets at issue have to be reconstructed rather than just patched. We should do it once and do it right.

Town Administrator Pollard said the Measure G work will have to be looked at with that in mind, perhaps limiting the number of projects in order to do those jobs in a more complete fashion.

Bush said Mike Hopp will be doing the digout inspections. If his workload is such that he can't do it, Bush would like to reserve the right for outside help.

**11. REPORT ON PROPOSED CHANGE IN DUAL ANNEXATION POLICY OF THE LOCAL AREA FORMATION COMMISSION (LAFCO).**

Planning Director Chaney said that unincorporated parcels adjacent to town boundaries are considered to be within a town's "sphere of influence." Under the provision of the County of Marin General Plan and the Local Area Formation Commission (LAFCO) policies governing annexation, the towns of Fairfax and San Anselmo are unable to require annexation of contiguous parcels within their sphere of influence to be annexed upon their development. This change would require annexation. If you are going to use the Town's services you should annex to the Town. This will primarily affect the Quarry Mountain area.

M/s, Chignell/Breen, to endorse the staff recommendation to revise the LAFCO dual annexation policy as it applies to Fairfax and San Anselmo, to allow the two towns to have the same control over their borders as other Marin towns, and require parcels that are contiguous to the Town, in unincorporated areas, which are under development, to be annexed to the respective Town. Ayes: Chignell, Breen, Yarish. Abstain: Hodgens, Noes: Kroot.

**12. APPROVE RESOLUTION ESTABLISHING APPROVAL AUTHORITY FOR CONTRACT CHANGE ORDERS.**

This item was continued to the meeting of September 26, 1995.

**13. REPORT ON THE EXISTING CONDITIONS AND CAUSES OF TRAFFIC CONGESTION AT THE INTERSECTION OF SAN ANSELMO AVENUE AND TUNSTEAD AVENUE, AND SUMMARY OF ALTERNATIVE AREAS OF ANALYSIS.**

This item was continued to the meeting of September 26, 1995.

**14. PROPOSAL FOR SPONSORSHIP OF THE 1995 MARIN ECONOMIC CONFERENCE.**

Town Administrator Pollard said that Jo Julin has recommended the Town endorse the Marin Economic Conference for \$250.

Chignell said all the tenets of the Marin Economic Conference may not be in the Town's best interest.

M/s, Breen/Hodgens, to sponsor the Marin Economic Conference for \$250. Ayes: Yarish, Breen, Hodgens, Chignell. Abstain: Kroot.



15. DESIGNATE DELEGATE TO THE 1995 LEAGUE OF CALIFORNIA CITIES CONFERENCE.

M/s, Chignell/Breen, to designate Town Administrator Pollard as the San Anselmo delegate to the 1995 League of California Cities Conference. Ayes: All.

16. ADJOURN.

The meeting was adjourned at 11:00 p.m.

Debbie Stutsman