

TOWN OF SAN ANSELMO
Minutes of the Town Council Meeting of January 9, 1996

Present: Breen, Chignell, Hodgens, Yarish
Absent: Kroot

7:15 p.m.

Closed session regarding negotiations with the Marin Association of Public Employees, Public Essential Services Unit.

7:40 p.m.

Interview with applicant to the Volunteer Advisory Board.

8:00 p.m.

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE.
2. ANNOUNCE ACTION TAKEN, IF ANY, IN CLOSED SESSION.

Mayor Breen announced that no action was taken during closed session.

3. OPEN TIME FOR PUBLIC EXPRESSION.

Jake Ours, 125 Saunders, said his neighbors at 123 Saunders have received a building permit to add a second story, but no design review was required. Work has already begun on the project. He feels the intent of the recently passed design review ordinance is to stop just this type of construction. He asked the Council to revoke this building permit and make it subject to the ordinance.

Planning Director Chaney said she has been discussing this with Mr. Ours. The ordinance went into effect August 10, and was not to be enforced retroactively. This permit was applied for before the August 10th date. Council's intent was to have the initial filing date be the date of retroactivity.

Chignell asked that Town Attorney Roth respond to this issue in writing. Time is of the essence as construction work has begun.

Hodgens said she thought no current projects were in process that would be affected by the design review ordinance. Chaney said that understanding was based on hearing comments from neighbors of pending projects.

Chaney described the project from the Ours perspective. The potential problem area is the one section where the second story has no setback in the middle of the addition.

M/s, Chignell/Yarish, to place this item on tonight's agenda as there is a need for the Council to take immediate action on this matter. Ayes: All. Absent: Kroot. This will be heard between items 9 and 10. (9A)

Mr. McClennan, 1540 San Anselmo Avenue, asked when the issue of traffic on San Anselmo Avenue will be on the agenda. Planning Director Chaney said Town Attorney Roth needs to be consulted on this issue, but it will be agendized for January 23.

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

Yarish said he would like to see the hiring of an in-house engineer on the agenda again. Council agreed that this should be discussed at an upcoming meeting when the full Council is present. The funding source for this could be discussed at this time as well.

Pollard said the only issue pending from the interrupted Measure G meeting is the funding source of the engineer. The staffing contract with the County will be agendized in five months to give an opportunity to review the County's track record.

Chignell asked that the Traffic Safety Committee look at the pavement markings on Meadowcroft and Morningside near Butterfield.

Chignell said he and Kroot met with representatives of SABA (San Anselmo Baseball Association) and the Recreation Department, and will report back as needed.

Breen said the newly initiated Saturday parking enforcement has revealed problems in loading zones; a special ordinance may be needed.

Breen said he and Pollard will be meeting with Braverman's representatives regarding their pending closure.

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: December 7, 11, and 19, 1995
- (b) Acknowledge and file warrants: Nos. 20707 - 21006, in the amount of \$566,147.86.
- (c) Acknowledge and file financial report through November 30, 1995.
- (d) CONTINUE TO JANUARY 23, 1996: Public hearing on approval of Negative Declaration of Environmental Impact and an amendment to the General Plan incorporating the Bald Hill Area Plan.

M/s, Chignell/Hodgens, to approve the consent agenda. Ayes: All. Abstain, Chignell (Item "a" only). Absent: Kroot.

6. APPOINTMENTS:

- (a) Volunteer Program Advisory Board (2 seats)

M/s, Yarish/Hodgens, to appoint Annmarie Brayer and Matthew Elkins to the Volunteer Advisory Board. Ayes: All. Absent: Kroot.

7. PRESENTATION BY THE YOUTH LEADERSHIP INSTITUTE ON YOUTH VOTE '95.

Danielle Duoy, Drake High School, presented the results of the recent Youth Vote '95 at Marin High Schools. The vote was sponsored by the Youth Leadership Institute. To focus on just a few issues, teens felt alcohol advertisement should be restricted, skateboarding should be legal someplace and there should be no curfew for teens. She asked the Town to keep youth opinions in mind and to come to a Youth Commission meeting. Youth Marin created its own ballot as there were no county wide issues on the November 1995 ballot, but they did include the College of Marin trustees election.

8. PUBLIC HEARING ON RESOLUTION AUTHORIZING THE POLICE DEPARTMENT TO ENFORCE THE STATE VEHICLE CODE ON THE TOWN UNMAINTAINED PORTION OF OAK AVENUE.

This item was continued to January 23, 1995.

9. APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF A MITIGATED NEGATIVE DECLARATION, A SETBACK VARIANCE FOR A BRIDGE TO BE WITHIN 0' OF THE EAST SIDE PROPERTY LINE, AND DESIGN REVIEW OF A SINGLE FAMILY DWELLING (INCLUDING A TENNIS COURT, RETAINING WALLS, GRADING, ALTERATION OF A PORTION OF A RAVINE TO A MEADOW, AND BRIDGE OVER ANCHO VISTA AVENUE, AND LANDSCAPING; 133 ESSEX AVENUE, A/P NOS. 6-121-21 AND 6-161-01; APPLICANT: SARITA PATEL FOR GEORGE LUCAS; APPELLANT; NANCY MORITA, SIGNED "ON BEHALF OF CONCERNED CITIZENS OF SEQUOIA PARK."

Associate Planner Wight said staff recommends that Council uphold the Planning Commission's decision and deny the appeal. The planned structure on the site has been reduced in size and moved to a less visible location from the original proposal. The tennis court has been moved to a lower elevation. The applicant proposes a drainage upgrade that will require neighboring properties approval, as well as a contribution to improvements on Red Hill Avenue. A solid wooden fence will be replaced with a transparent chain link fence with several jogs to reduce the tunnel effect. Openings for wildlife migration are included. Fourteen retaining walls are proposed with an average height of 7 feet. The proposed bridge will be fourteen feet above the roadway. Replacement trees will well outnumber those taken out. The grading will have a balanced cut and fill, which the original proposal didn't have. This ravine may have appeared to be open space as it is undeveloped, but it is surrounded by developed parcels. The waterway is alternately open and piped throughout the area. Concerns were raised by neighbors over noise and dust and a construction plan has been prepared addressing these issues. Planning Commission approval requires that the fence should have wildlife openings; clarification is needed if these openings should be large enough for deer.

Associate Planner Wight said some correspondence was received too late to be addressed in the staff report. Council has copies of this correspondence.

Council is being asked if they can approve a negative declaration. If a negative declaration is approved, the project can go ahead. If more information is needed, the applicant should be directed to get the information.

Yarish asked what other agencies must approve this project. Wight said the Army Corps of Engineers, the Water Quality Review Board, and property owners of 24" pipe must still approve the project. The Army Corps of Engineers issues a permit because of the waterway fill. The Water Quality Control Board issues certification on the quality of the water.

Chignell asked about noticing for this meeting. Wight said a separate notice was sent to neighbors within 300 feet.

Chignell asked for a recommendation on the fence openings for wildlife. Wight said there should be more than one opening, large enough for deer to pass through.

Chignell asked if Ancho Vista is a public or private road. Public Works Director Bush said Ancho Vista is not town-maintained; therefore, the Town has no authority over the roadway, as it is maintained by adjacent property owners.

Chignell asked about the heritage tree removal and whether the applicants will be doing blasting or drilling. He asked if it is impossible to avoid a variance on the bridge over the road. Wight said that a variance is required as the bridge is over the property line. One heritage tree is scheduled to be removed and the applicant doesn't plan on blasting or drilling.

Chignell asked if staff made any changes to the construction management plan. Wight said the plan seemed more restrictive than the Town's code.

Breen asked about the order of approvals. Wight said the Town waits to issue the permit until the other agencies have given their approval: first, the Army Corps of Engineers, second, Water Quality.

Nancy Morita, 6 Cypress Road, said drilling and ramming were said to be expected at Planning Commission meetings. The neighborhood group didn't get a copy of the staff report; they didn't know it would be left downstairs in the Police Department. In the future, people should be told this. A lot of her neighbors didn't get noticed. The neighbors feel there are more than just one heritage tree on the site. The creek in question does have water in it, evidenced by a video taken September 10, 1995, viewed by Chignell and Hodgins. Morita represents 24 neighbors. She would like all the parties to sit down and hash this out.

Dr. Ann Riley, Waterways Restoration Institute, said this is a very small issue for them. This is the first small stream fill call she has received. Their goal is to integrate the environment with development. Problems can be mitigated easily by building a bridge or utilizing other simple solutions. The check dams planned actually create more problems than solutions by damming water. She suggests the Council request staff meet with all parties to resolve the design issues.

Nancy Morita said she was involved in a culvert collapse in another Town and they were able to qualify for bond money. Council may want to contact them.

Bob Hogan, 222 Butterfield Road, representing the Audubon Society, said they are opposed to undergrounding any creeks. San Anselmo is committed to the Creek Restoration project; this plan goes against the General Plan. Council should address the cumulative effects of this plan.

Sophia Spencer, 18 Jordan Ave., said it is important that we take care of our Town. She is opposed to filling the creek, and concerned about the fencing of the property. Deer should be able to go through standing up.

Nancy Morita read a letter into the record from Larry Fishbain, P.E., from the Coalition to Restore Urban Waters, relating to the filling of the creek. She also showed several drawings of the original creek and what is left. She said the heritage tree ordinance measuring requirements are different in the ordinance than in Mr. Lucas' plans. They feel quite a few trees are heritage trees and they should be protected from the retaining walls.

Judy Leedy, 65 Sequoia, asked where the 300' noticing was measured from. Wight said it was done from the edges of the property. Leedy said she agrees with her neighbors.

Carol D'Alessio, Friends of Corte Madera Creek Watershed, reiterated three points from their previously submitted letter. They don't feel all the alternatives have been looked at and the cumulative impacts examined.

Nancy Morita said this project is on very large scale and we can't really envision some of the amounts involved. Dust could be a real problem for small children and people with health problems. They would like provisions for neighbors cleaning expenses from dust, compensation for neighbors for loss of enjoyment or alternative lodging, and assurances that no blasting is allowed.

Hodgens asked Morita about her educational background. Morita said she has a BA in Environmental Studies and Planning.

Hodgens asked Dr. Riley if it makes any difference that a substantial portion of this creek is already underground. Dr. Riley said most Towns are removing culverts, not putting them in. Culverts get easily clogged during storms. Open waterways don't really have that problem. Aging infrastructures are a problem too.

Hodgens asked if this is really a creek or a drainage canal. Dr. Riley said this is really a creek; it has a creek environment.

Doug Ferguson, representing the Applicant, said the benefits of this project are substantial. Open land is preserved with no big development. 117 trees will be added, and only one heritage tree removed. The open, black vinyl fencing will be very nice and the view down Ancho Vista will be preserved. He has personally been involved in creek restoration work and agrees in principal. This, however, is not a real creek, but rather a periodic flood channel. The Planning Commission, after much time and thought, agreed with him. They have had an open door policy with neighbors to the property. The experts here must be making their judgments from the parking lot or their offices as they have not requested entrance to the property. A number of changes have been made, substantially improving the plans, since the initial submission. Many, many hours have been spent

making changes, and now it is time to make a decision. He has a petition in favor of the project signed by 84 Sequoia Park neighbors.

Patrick Whistler, Landscape Architect, said he believes the project will have a positive effect on the neighborhood. Regarding the check dams, he said they could be eliminated if Council prefers. A bridge over the lower creek was looked at, but the land berm was more aesthetically appealing. On the construction management plan, heavy construction is to be allowed 9 a.m. - 3 p.m.; these hours were reduced by the Planning Commission. There are six heritage trees on the property and they propose to remove only one.

Roger Harris, LSA Associates Biologist, said he did an extensive survey of the area around the project site. In his walkover of the site, he determined it was a typical backyard site, not greatly ecologically sensitive. This creek area is unable to support much wildlife. He looked for herbaceous native plants, indicative of natural habitat value, and none were observed. Regarding regulatory issues, they have taken the conservative view when determining what regulatory agencies should be consulted. This is not a wetland with wetland vegetation. The cumulative impact of the creek filling has already happened as much of the creek is already filled. He takes exception to Dr. Riley's testimony regarding steep terrain and trees. This creek doesn't have a continuous flow and associated vegetation. Regarding the possibility of a spring, they did not see evidence of a spring in their studies.

Dr. Ross Gabardine, LSA Associates, said they are aware of the additional permits that are required and it is proper to receive Town review first. Regarding the Army Corps of Engineers permit, they do meet the requirements.

Larry Doyle, Civil Engineer, said the 36" pipe is the most likely to achieve maximum flood control. Originally plans called for a longer pipe, which was better because it must connect with a 24" pipe and can utilize more storage space, rather than overflowing into the parking lot.

Yarish asked how this design would work during a 100 year flood. Doyle said it would flood along with the rest of the pipes in town. This design has debris racks to help keep drains open.

Craig Herzog, soils engineer, said it is unlikely that any blasting will be needed and if it is, it may not be even noticeable to neighbors.

Doug Ferguson said their team has made every effort to meet the neighbor's concerns. This project will benefit the neighbors as well.

Charles Mehard, 25 Ancho Vista, Manager of Ancho Vista Apartments, said the debris during a storm can clog up the drains and flood quickly. He hopes this problem has been addressed with the drainage. He and his son have spent a lot of time on the property and he feels he knows it well. He feels this project would be an improvement.

Jeff Hvid, Cottage Avenue, said he supports the project. The alternative will be to sell the property with the possibility of five or six homes being built.

Planning Director Chaney said Council is asked to take action on the negative declaration, either approve it or direct staff to take further actions. Also, Council is asked to approve the project and a setback variance for the bridge at 0 feet.

Yarish said Lucas has done a good job listening to his neighbors and making changes. It boils down to the filling in of the creek. As a flood control management issue, the pipe seems to be the best choice. One heritage tree is to be lost, but 117 trees will be gained.

Chignell said he supports the project. He has respect for the neighbors who oppose it. He feels the project is eminently reasonable. Many changes have been made in light of neighbor's concerns. The construction management plan may have to be changed to better protect the neighbors from unwanted noise and dust.

Hodgens said she doesn't have the technical expertise to make this decision. Experts and neighbors have given testimony on both sides. She feels she can support the Planning Commission's decision because permits must still be gotten from significant government agencies.

Breen said life is a series of tradeoffs and the overall effect of the project will be very positive. He will support the applicant.

M/s, Yarish/Chignell, to deny the appeal and uphold the Planning Commission's conditional approval of the environmental review, DR-9516, and V-9551. Openings in the proposed fence should be deer accessible, per the Planning Commission, and left up to staff for a decision on how large. Only one heritage tree may be removed, with all other heritage trees preserved per the municipal code requirements. Ayes: All. Absent: Kroot.

9A. REQUEST FROM JAKE AND NICOLE OURS, 125 SAUNDERS AVENUE, TO REVIEW BUILDING PERMIT AT 123 SAUNDERS AVENUE, GREG LYMAN, OWNER.

Planning Director Chaney said the Lyman's architect came to the counter in May, knowing that the design review ordinance was upcoming. When the design review ordinance was before Council, they had two options on the ordinance, either making it effective the next day, upon the filing of building permits, or the issuance of building permits. Council based the decision on information that no projects were in the hopper that would be affected by the ordinance. Chaney spoke with Town Attorney Roth after reviewing the tapes of the meetings. From the tapes, it is clear that filings for permits before the effective date would not be affected by the ordinance. Roth's interpretation is that based on the intent of the Council, it would be unfair to issue a stop work order on an applicant who is working legally.

Jake Ours, 125 Saunders, said that the effective date of the ordinance must be changed retroactively.

Planning Director Chaney said technically if laws change and you don't have your building permit yet, you are affected by the new law. Language regarding the filing of the building permit didn't actually get into the ordinance. Mr. Ours has the option of serving an injunction on the Lymans, and then the Town can clean up the ordinance.

Jake Ours said he would like a stop work order and have the project subject to the design review as intended. If the Town doesn't take action he will have to get an injunction to have the work stopped; he has been advised by two attorneys that he could get one.

Town Administrator Pollard said that to her knowledge, the only way that a stop work order could be issued was for the Town to determine that the building permit was issued in error; she did not recommend this course of action without reviewing the matter further with the Town attorney. In the meantime, the Ours could file an injunction if they so chose.

Yarish suggested staff pursue this tomorrow with Town Attorney Roth and see what actions we can take to remedy this situation. The matter was continued to a special adjourned meeting on Thursday, January 11, at 5:30 p.m..

10. PUBLIC HEARING ON NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT ON:

(a) Proposed General Plan amendment to revise the text for the Limited Commercial and General Commercial land use categories to allow residential single family and multi-family uses.

(b) Introduction of ordinance changing the Land Use Table of the Zoning Ordinance to expand permitted uses in the C-L (Limited Commercial) and C-3 (General

Commercial) zones to include Residential single family (attached and detached) and multi-family uses subject to a Use Permit.

This item was continued to the next regular meeting of January 23, 1996.

11. PUBLIC HEARING ON NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT AND INTRODUCTION OF ORDINANCE AMENDING THE ZONING ORDINANCE TO RESTRICT THE RE-APPLICATION FOR A PERIOD OF SIX MONTHS OF A DEVELOPMENT APPLICATION THAT HAS BEEN PREVIOUSLY DENIED.

This item was continued to the next regular meeting of January 23, 1996.

12. RECOMMENDATION TO PARTICIPATE IN LOBBYING EFFORTS TO RESTORE PROPERTY TAX CUTS TO THE CITIES, COUNTY, AND SPECIAL DISTRICTS OF MARIN.

This item was continued to the next regular meeting of January 23, 1996.

14. ADJOURN.

The meeting was adjourned at 12 a.m. in memory of Rhoda Hayes, wife of former Planning Commissioner Stan Hayes, to a special meeting on January 11, at 5:30 p.m.,

Debbie Stutsman