

San Anselmo Town Council
Minutes of the Special Adjourned Meeting of January 11, 1996

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

5:30 p.m.

Closed Session:

6:00 p.m.

Mayor Breen announced that the Council met in closed session before the meeting and no action was taken. The purpose of the meeting tonight is to discuss the addition of Greg Lyman, 123 Saunders, at the request of neighbors Jake and Nicole Ours, 125 Saunders, with respect to the design review process and the Lyman addition.

Planning Director Chaney said the Ours came to the January 9, 1996, Town Council meeting regarding construction at the Lyman home. At question is whether the project is subject to the design review in the flatlands ordinance, designed to protect neighbors' light, air and privacy. The mid-section of the Lyman addition is the one at question by the Ours.

Robert Epstein, Attorney for the Ours, said his position is that the building permit issued to the Lyman's is void because the design review ordinance was passed by the Council on August 10. He said the Town is within its rights to stop construction as the permit is void. The Ours would be adversely affected by this addition with respect to light, air, and privacy. He wants the Town to issue a stop work notice. The Ours have agreed to indemnify the Town and will defend it against any future suit.

Planning Director Chaney said that the design review ordinance requires that for any second story addition of 400 square feet or more, neighbors within a 100 sq. ft radius must be noticed. If no one objects to the plans, the process can continue. If there is an objection, the affected parties get together to resolve neighbor's concerns. If the neighbors can't resolve the problem, Planning Director Chaney takes the issue to the Planning Commission.

Epstein said the Ours feel there is room to compromise. They would like to discuss the plans and perhaps have some changes made. He said he understands that the Town would like the Ours to be the ones to take legal action, but that doesn't seem fair. However, the Ours are prepared to do this and would plan to recoup all legal costs. He said it is unreasonable for Council to try to retroactively date the ordinance in order to make this situation right.

Yarish said that misunderstandings between Council and staff have led to this unfortunate situation. He suggested an abbreviated process for the design review of this project, eliminating the mailing, beginning an immediate dialog, providing for immediate approval upon consensus, or a prompt hearing if necessary, and waiving the ten day appeal.

Town Attorney Roth said Council cannot waive the notice procedures. Council doesn't have the authority to waive provisions of the ordinance.

Yarish asked what discretion Council does have. If both parties agree can the process be eliminated.

Town Attorney Roth said that if all parties agree, Council can waive the process. If they cannot agree, the whole process must be followed. Once a stop work notice is issued, it will start the process.

Greg Lyman, 123 Saunders, asked if he has a valid building permit.

Town Attorney Roth said that the law that exists at the time the permit is issued is the one that is in force. The Lyman's do not have a valid permit; they were issued one in good faith, but in error. When the permit was issued, design review was in effect. Either party could get an injunction and a court could go either way because of Lyman's good faith reliance and action based on the permit.

Lyman said it doesn't seem fair that just because he didn't pick the permit up earlier than August 10, this is an issue. He is willing to work with the Ours on the design, but feels he went through the process with good intent. He doesn't want to incur any more engineering or design costs.

Epstein suggested a temporary stop order be issued for the Ours peace of mind.

Mrs. Lyman said the next phase is the garage on the other side of the property.. They are two months away from any work on the second story.

Roth said the Council can delegate the issuance of a stop work notice to Planning Director Chaney. If the parties reach an impasse, she can issue a stop work notice.

Jake Ours said he would not be responsible for redesign costs.

Town Attorney Roth recommended the involved parties get together, with no action by Council except to delegate authority to Chaney to issue a stop work order if the talks break down.

Epstein said the Town will be named as a defendant if a lawsuit is necessary, and they will pursue cost reimbursement by the Town. They are concerned about any further construction; the more that is done, the harder it is to make changes. If Chaney has the stop work authority, a decision to file suit will have to be made.

Town Attorney Roth said two actions would trigger a stop work order, an impasse in talks and if work starts on the second story.

Epstein said their concern is that construction may occur that may not be appropriate if the design changes.

M/s, Chignell/Hodgens, to delegate authority to Planning Director Chaney to issue a stop work notice at 123 Saunders if Chaney determines an impasse in talks has occurred or if Chaney believes good faith is violated by commencement of work affecting the Ours. The Council requests the two parties work with Chaney to resolve their differences, with the issue to be brought back at the regular meeting on January 23. As a corollary matter, the design review in the flatlands ordinance should be on that agenda as well. Ayes: All.
Absent: Kroot.

The meeting was adjourned at 6:35 p.m.

Debbie Stutsman