

**TOWN OF SAN ANSELMO**  
**Minutes of the Town Council Meeting of May 11, 1999**

Present: Breen, Chignell, Hodgens, Kroot, Overberger

Absent: None

8:00 p.m.

- CALL TO ORDER.
- PLEDGE OF ALLEGIANCE.
- ANNOUNCE ACTION TAKEN IN CLOSED SESSION, IF ANY.
- ADMINISTER OATH OF OFFICE TO TOWN TREASURER, DONNA COHEN.
- INTRODUCE PLANNING DIRECTOR AMY FEAGANS.
- OPEN TIME FOR PUBLIC EXPRESSION.

Louise Mathews, Foothill Road, presented a petition from 35 Foothill Road residents requesting that the potholes on the street be fixed. It is in bad condition. She also submitted a letter from neighbor Larry Santucci who is a paving engineer regarding the condition of the street.

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

Kroot asked about the progress of the repair of the Town Hall front doors. Public Works Director Bush said the work would be starting next week.

Hodgens said she has received more complaints about the noise at the Log Cabin. There is some misunderstanding around what the Memorandum of Understanding (MOU) requires. She requested that the Town Administrator and the Police Chief review the MOU with the Log Cabin management. She would like dispatch personnel made aware that this is a recurring problem. Town Administrator Pollard said staff would look into it in the next two weeks.

Hodgens said the Open Space Committee's annual celebration is this Friday at St. John's Church in Ross.

Breen said the Legislative Committee of MCCMC asks that we agendize a discussion of Senator Burton's bill, SB 402, before May 26, 1999. The bill requires compulsory binding arbitrary for Police and Fire negotiations.

Breen said that on May 26 representatives of the League of California Cities will go to Sacramento to get up to date on current events

Chignell said he has a copy of a letter from the Fairfax planner again requesting funds for the flood study for the Marin Town and Country Club. He gave the letter to staff.

1. 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: April 27, 1999.
- (b) Acknowledge and file warrants Nos. 31334 - 31688 in the amount of \$850,619.99.
- (c) Approve Resolution No. 3468 and associated purchase agreement for the issuance of tax and revenue anticipation notes in an amount not to exceed \$1,900,000 for the 1999-00 fiscal year.
- (d) Approval and second reading of Ordinance No. 1003 amending the San Francisco Theological Seminary Master Plan.
- (e) Acknowledge and file downtown beautification project construction status report.
- (f) Approve proclamation honoring Dr. Frank Elliott for 27 years of service to the Ross Valley School District.

Items (c), (d) and (e) were removed for discussion.

M/s, Breen/Hodgens, to approve consent agenda items (a), (b) and (f).

Regarding item (c), Finance Manager Gill presented the staff report regarding the issuance of tax and revenue anticipation notes in an amount not to exceed \$1,900,000 for the 1999-00 fiscal year. As property taxes aren't paid until December, this allows us to have use of this money earlier in the fiscal year or use it to earn interest. We are one of four Marin cities that use this method.

Louise Mathews, Foothill Road, noted that the amount earned last year is less than anticipated. Will these decisions come forward to the Council as it is important that we maintain safety.

Finance Manager Gill said that this authority is delegated at this point, but it is up to the Council to decide that. It was agreed that any changes would be reported to Council.

Regarding (d), Chignell asked if anyone wanted to comment on this.

Regarding (e), Bill Hendrickson asked what this report is about and why it isn't made public.

Public Works Director Bush said these status reports are done every two months to keep the Council and the public informed. At the last report a grant was being applied for and the timeline modified to accommodate the grant timing. The Town was awarded \$200,000 for the entryway at Tunstead and for improvements to the bus shelters at the Hub. Andronico's Market has agreed to incorporate design elements of the downtown beautification plan in the hub parking lot that they are developing. The paving is scheduled for the summer of 2000 with the Pacific Bell work scheduled for this summer in July through October. Bush will send Bill Hendrickson a copy of the notice sent to property owners.

Louise Mathews, Foothill Road, said she was concerned about the loss of visibility with the planned improvements to the hub depot for the businesses that are located right there. Have the affected property owners received notice of this?

Bush said the grant opportunity was a scramble, and at the last moment they added the depot because it fulfilled the regional quality the group was looking for.

Bill Hendrickson, San Anselmo Avenue, said there are encroachments of property rights on the proposals that have been put forward.

M/s, Kroot/Hodgens, to approve consent agenda items (c), (d) and (e). Ayes; All.

2. CONSIDERATION OF REQUESTS FOR CONTRIBUTIONS TO PRIVATE PAVING PROJECTS ON SOUTH OAK AVENUE AND SMITH LANE.

Public Works Director Bush presented the staff report. The first request is on Smith Lane, from Ted's Restaurant to the end of the alley at Dr. Kluse's veterinary office. The work has been done by Dr. Kluse and he is requesting the Town participate after the fact. Four neighbors have contributed and they are asking the Town to contribute \$3,288. The South Oak Avenue paving project begins at 60 and ends at 1000 South Oak Avenue. The road is in poor condition and resurfacing is an appropriate solution. Six property owners are contributing and they are asking for \$1,552. Both applications meet the established criteria for Town contributions to private paving projects on non-maintained roads.

Hodgens asked how this relates to the required paving in the Bott/Nelson planning improvement. Bush said they are involved and don't want to wait until there are actually development plans for their property.

Mary Tamley said the Bott/Nelson's are contributing and their property is for sale at this time.

Chignell said the 25% Town contribution has been increased on occasion; what were the criteria? Town Administrator Pollard that it was when the Town owns adjacent property. Bush said the Ramona Way project was very small, but it was a collector street

for Fairfax traffic.

Chignell asked if there are any unusual conditions on this project.

Mary Tamley said this would improve fire access and improve access for the residents on the road.

Theresa Tamley said they actually are having some of the work done right away.

M/s, Kroot/Overberger to approve the request from the residents of Smith Lane for financial and nonfinancial contributions to the private paving improvements at a cost of \$3,288, subject to the conditions and criteria noted in Resolution 3268. Ayes: All.

M/s, Kroot/Hodgens, to approve the request from the residents of South Oak for financial and nonfinancial contributions to the private paving improvements at a cost of \$1,552, subject to the conditions and criteria noted in Resolution 3268. Ayes: All.

3. APPOINTMENTS TO THE OVERNIGHT PARKING TASK FORCE.

Town Administrator Pollard presented the staff report. The Council solicited letters of interest from Town residents for two members of the Overnight Parking Task Force. Attached to the staff report are the letters received, sorted by those with perspectives in favor or the ordinance, with perspectives against the ordinance, and those whose perspectives are unclear or unstated. The Task Force would also include Councilmembers Hodgens and Kroot, representatives from Fire, Police and the garbage company and the Town Administrator.

Hodgens noted that she had suggested that one person be appointed from each of the three groups. Town Administrator Pollard said that is an option for tonight.

Louise Mathews, Foothill Road, noted that the length of the task force was supposed to be three months, which will be over the summer months. She asked that the Council consider having at least two members from each group in order to allow them to converse with themselves and gather knowledge from a broader base.

Breen said he has no problem with adding one person from the undecided group. It was the consensus of the Council to do that.

M/s, Breen/Overberger, to nominate Helie Robertson, Mark Berger, and Victor Turkan to the Overnight Parking Task Force. Ayes: Chignell, Overberger, Breen. Abstain: Kroot, Hodgens.

4. APPEAL OF A PLANNING COMMISSION APPROVAL OF A DESIGN REVIEW REQUEST FOR THE PROPERTY KNOWN AS 379 OAK AVENUE IN SAN ANSELMO (APN 7-241-61). APPROVED PROJECT INCLUDES A STEEL FRAME PATIO COVER/DECK STRUCTURE. APPELLANTS ARE COUNCILMEMBERS JEFF KROOT AND PAUL CHIGNELL.

Mayor Chignell announced that Lance Russell, Attorney for Mr. Posthuma, has submitted some materials that will be incorporated into the official record.

Acting Planning Director Bush presented the staff report. He passed out pictures of the partially completed project which were made a part of the official record and gave a history of the project since 1992, outlined in Exhibit A of the staff report. He outlined the other attachments in the staff report. Since then Mr. Posthuma filed suit against the Town, and the summary of the action was that the Town did not make the appropriate findings for the project. The appellate court was not able to conclude that the Council had adequately reviewed the project, even though it was substantially similar to previous applications. Acting Planning Director Bush stated this application should be considered without regard to prior submittals. The required findings are listed on attachments A-4 and A-5. A letter from the Cohen's, neighbors, was submitted in favor of Mr. Posthuma's project.

Breen asked if the pictures are a fair and accurate representation of the project as it exists today. Bush answered affirmatively.

Hodgens said there were discussions on a compromise to the size of the deck. Does anybody remember what the compromise was?

Bush said it was discussed to compromise at 6' 6" by 18' 6".

Mr. Russell, attorney for Posthuma, said he appreciated the Town accepting documents he submitted in order to make a more complete record. We are here today because in 1995 Mr. Posthuma was guided to submit an amended design application to be considered as a new application. The court found that the Planning Commission rendered the decision on the merits of the project but that the Council did not. This is the same place we were in 1996. Nothing structurally has changed. The Council gets to make a new decision, but four separate judges found something improper in what you did before. A judge noted that the Council's actions have put Mr. Posthuma in a catch 22 situation. Russell noted that Chignell said Posthuma's attorney made an "excellent case" for the project. The court found that the Council's deficient findings undermine the analytic route they took to get there. It said the Council shouldn't rely on neighborhood protests that were speculation. A number of letters were submitted at that time in favor of the project. He submitted an additional petition which has been signed by community members, 19 additional signatures in support, plus a letter from Harold Knocktrab. In all, letters and petitions were submitted from 42 separate people in the community in support of this project. Mr. Posthuma's plans haven't wavered at all. He is just asking for what the Planning Commission previously approved. He read a letter from former Planning Commissioner Oliver Harle in support of the project.

Kroot asked about the catch-22 comment. Town Attorney Roth said this refers to the statement that we suggested a path he could take – back to the Planning Commission, then reversed it, but no direction was given to the applicant. The appellate court made no reference to this. This was an option, not a direction to the applicant.

Hodgens asked if the courts are saying it wasn't appropriate to look at the history of the project. Town Attorney Roth said that the appellate court didn't feel the decision was made based on the merits of the project, but rather made the decision based on what went on before. Council should now look at this project now based on the merits.

Gay Kagy, 280 Redwood Road, said the steel framework is obviously not in scale with what it is going to be. It has an overbuilt look. The overall design is not integrated with the existing house or neighborhood.

Ted Posthuma, 379 Oak Avenue, said he hoped that tonight some resolution could be made to this. He made some mistakes and he'd like to move on. He went back to the Planning Commission and got approval. This has been a difficult process and very long. He would like to get on with his life. He appealed to the Council to bring this to a conclusion tonight. He is willing to go along with the conditions the Planning Commission put on the project three years ago. The trees and bushes have grown so much over the last three years that you can hardly see the steel frame. The steel frame was to be a prototype for workforce housing. He hopes the Council will approve his project so we can all get on with other matters.

Hodgens asked the date of the petition circulation and who was the author.

Posthuma said he and the attorney are the authors and the circulation took place several weeks before the item was on the calendar two weeks ago. It was circulated in late April.

Hodgens noted that a compromise committee wanted a 12-foot deck. Posthuma said what they wanted was 6 feet. The Planning Commission said he could have 16-foot deck.

The public hearing was closed.

Kroot said he still has the same problems with the project as he had before. It is a very awkward structure on the side of the house, probably because the applicant wanted to put a room there originally, if he were to look at the history of the project. But as we aren't going to look at the history, it just doesn't fit. The posts and beams of steel are very heavy. It is roughly the size of a two-car garage. Aesthetically it isn't integrated into the house. He was on a subcommittee trying to work on a compromise with Mr. Posthuma with smaller dimensions. He would still be supportive of the smaller dimensions, but the current shape is awkward and that's why he voted against it before and why he appealed the Planning Commission decision.

Breen said he understands the Council is being asked to see if it can make the required findings. Finding one is whether the structure is functionally and aesthetically compatible with the area. He cannot make that finding. Finding two is protection against noise and he could make that finding. Finding three, will not tend to cause the surrounding area to depreciate materially in appearance or value. He cannot make that finding. Four, will not create unnecessary traffic hazard; he can make that finding. Five, will not adversely affect health and safety; he can make that finding. Regarding adequacy of the screening, he is concerned because landscape is subject to the quirks of nature and disease. Finally, the selection of architectural features and colors enables the structure to blend with its environment; he cannot make that finding. He doesn't believe that this particular structure blends with its environment and results in a low visual profile; he cannot make that finding.

Overberger said she has a unique advantage in that this is the first time she has heard this project. She doesn't have any strong feelings about anything that has gone on before. When she looks at this house and addition, she is looking at it with a newcomer's eyes. She has to ask what somebody really wanted to build there, because the structure is obviously way more than is needed for a deck to protect the front door. It seems like an overkill project for decking and coverage for the house. She has no problem saying she can't make the findings for 1, 3 or 7.

Hodgens said she cannot make findings on 1, 3, 7 or 8.

Chignell said a lot of effort has been put into this and he doesn't want to keep spending taxpayer's money on this. He cannot make the findings either. There have been repeated attempts to try to work with the applicant and those efforts have been rebuffed. It was unusual for Town Councilmembers to appeal, but they didn't take this lightly. This structure is awkward, incongruent and not compatible; he cannot violate the principles in this instance as it would not be consistent with his civic responsibilities as a member of this Council. He supports his colleagues. He would like Mr. Posthuma to come with an application that could meet our findings and is not incongruent. Council is not arbitrary or capricious and is willing to work with applicants.

M/s, Hodgens, to approve the appeal of the Planning Commission's conditional approval of the amended design request of Mr. Ted Posthuma of 379 Oak Avenue to construct a steel frame patio cover/deck and to direct staff to prepare a resolution for Council's approval at the next meeting. Ayes by roll call: Breen, Hodgens, Kroot, Overberger, Chignell.

5. APPROVE CONDITIONAL SALE OF AN APPROXIMATELY 3,900 SQUARE FOOT PARCEL KNOWN AS LOT 17A OF HAWTHORNE CANYON, ADJACENT TO 91 VALLEY ROAD, TO THE OWNER OF 91 VALLEY ROAD.

This item was continued to June 8, 1999.

6. MEASURE G CAPITAL IMPROVEMENT PROGRAM:
  - (a) Acknowledge and file the 1998-99 Measure G Capital Improvement Program Expenditures.
  - (b) Acknowledge and file the Measure G 3 Year Project Summary.
  - (c) Approve the Measure G Capital Improvement Program Budget for 1999-

- 2000.
- (d) Acknowledge and file the status report on the available funds and bond issuance schedule.

Public Works Director Bush presented the staff report and the four recommended actions. He outlined the four attachments included with the staff report. Exhibit A lists the 1998 programs, with expenditures and budget figures. Exhibit B is a summary of all Measure G projects, a report that was requested by the Measure G Monitoring Committee for an overall view. Exhibit C is the original 3 year Capital Improvement program adopted in 1996. Several projects were added, several deferred and they are listed in the staff report. Exhibit D is the proposed budget for 99-00, a planned catch-up year, starting again with a new CIP in 2000 for three years. The Monitoring Committee concurs and provided their report as Exhibit E. Two maps were presented on the wall as a colorful representation of how the program has gone since inception.

Town Administrator Pollard noted that originally we were scheduled to issue bonds again this summer, but it appears we can defer one more year.

Hodgens asked about the proposal for this year and adding the paving of Austin Avenue. She asked if the utility districts were going to contribute to that project.

Public Works Director Bush said PG&E was requested to pave the road, and they have a legal opinion that the Town doesn't have the right to require paving. It is between attorneys at this point.

Breen said it's wise to play catch-up for a year. Sir Francis Drake Blvd. is already starting to crumble from the hub to the Red Hill Shopping Center after four years. He strongly supports staff's stance with the utilities because their work really damages a paved road. Is the water district willing to share paving?

Town Administrator Pollard expects they will be coming back to challenge our policy and other cities' policies.

Chignell said cooperative efforts are more prevalent than the recent challenges. Occasionally the Councilmembers can help with other elected officials when it appears to be appropriate. Regarding slurry seals for this year, when would that work be done? Public Works Director Bush said it would probably begin in August or September, as the projects are being evaluated right now. Paving condition analysis for the next three year plan would begin at that time.

Chignell noted that adjustments have to be made where conditions of streets have deteriorated. Bush said he is trying to balance the money and the necessary priorities, against the anticipation made in 1994-95.

Chignell noted that the Monitoring Committee discussed putting away money for the future. Bush said their intention was to continue on with accumulating interest money not used for cooperative non-maintained road projects, and save it for projects after the G money is spent.

Louise Mathews, Foothill Road, asked if there are any county, state or federal grants applied for or gotten during these Measure G years. Her neighbors will be distressed to hear that the Measure G Monitoring Committee wants to accrue interest monies to use after G funds. It makes more sense to use the money now to repair streets. We can still fall back on the Gas Tax revenues.

Bush said grant opportunities have only come up in the last year. We have successfully gotten a grant for Sir Francis Drake Blvd. of \$470,000. The Red Hill Avenue-Sir Francis Drake Blvd. drainage project is another pending grant for \$15,000. They would only be putting away the difference between the interest earned and the money spent on non-Town maintained cooperative projects. Also, we really had too many projects going on last year all around.

It was the consensus of the Council to accept the staff recommendation.

7. INTRODUCTION AND FIRST READING OF ORDINANCE AMENDING THE UNIFORM FIRE CODE.

Steve Fisher, Fire Marshall, presented the staff report.

Kroot asked about page 7 where the ordinance has more requirements for automatic sprinkler systems. Sprinklers add a lot of expense and do include a risk factor for residents if they go off by accident, weighed against the risk of fire.

Fisher said this is an attempt to have a uniform requirement across the County to make it easier for all involved. Most building is in the hills and most new buildings are sprinklered. In terms of expense, it adds \$2,000 - \$3,000 per residence. The Fire Department averages ten to fifteen structure fires a year. Sprinklers hold the fire to a small stage, thus making fighting it easier.

Kroot said there are some pluses in County consistency, and he has no problem with hill houses being required to have sprinklers, but in the flatlands a block from the firehouse it seems like a needless expense because of its broadness.

Breen said he noted that Los Angeles has some automatic gas shutoff requirements and he wondered if San Anselmo should have something like that.

Fisher said it could be added but you have to draw the line somewhere, factoring in cost considerations, etc.

M/s, Breen/Kroot, to approve the findings of fact and introduce and waive reading of the ordinance amending Title 3 of the San Anselmo Municipal Code adopting the 1998 California Fire Code based on the 1997 Uniform Fire Code. Ayes: All.

Kroot said he is essentially in agreement but he will pursue the sprinkler issue further with Fisher.

8. DISCUSS REPORT ON REQUEST FROM THE TOWN OF FAIRFAX FOR A PROPOSAL TO PROVIDE POLICE DISPATCH SERVICES.

Town Administrator Pollard presented the staff report. Fairfax asked for a proposal for this service in conjunction with the new radio system that will require new equipment.

Police Chief Del Santo said the staff report was based on statistics from a usual 24-hour period. He determined that two dispatchers would be the absolute bare minimum we would need to perform this service. An annual cost of \$174,000 to Fairfax is what they feel is equitable.

Chignell asked if Fairfax would then close the police station. Police Chief Del Santo said he didn't know what they would do.

Kroot asked if the Town would make money on this proposal. Town Administrator Pollard said there may be some economic savings to San Anselmo.

Kroot asked if there would be an increase to the Town's liability? Del Santo said it is planned to include a contract to indemnify the Town.

Town Administrator Pollard said the proposal does increase San Anselmo's Worker's Compensation liability and before any contract was negotiated she would recommend the Town Attorney review the liability issue and contract.

Breen said dispatchers are difficult to recruit. Are we making more problems for ourselves taking on two more? Del Santo said they would just continue their recruitment procedures.

Breen asked if the money is already budgeted in our MERA money. Town Administrator Pollard answered affirmatively.

Chignell noted this is just a study and hasn't been presented to Fairfax. Fairfax dispatchers would be available for employment.

Hodgens asked what the benefit would be in taking this on? Is it because we would save significant amounts of money in capital acquisition?

Town Administrator Pollard said there is the direct cost of the dispatchers, plus a 20% factor included amounting to \$24,000 that would be the Town's cost of oversight. For purposes of presenting this to Fairfax, however, some of that work has to be done anyway just to operate the service, but part of the new equipment cost could be passed on to Fairfax.

Overberger noted that no more administrative staff is proposed; it appears that current staff can take up the slack.

Chignell said he heard the Fairfax Council voted several months ago to not pursue the dispatch proposal.

Town Administrator Pollard recommended Council authorize staff to pursue negotiations with Fairfax and come back with report. Sharing of the overhead load would generate funds for the Town and would create shared capital costs. It is primarily a revenue issue, and it won't impact negatively on San Anselmo residents. It is a revenue possibility, but not a significant revenue generator.

Breen asked if this would accelerate our ability to get mutual aid. Chief Del Santo said it probably would not.

Louise Mathews, Foothill Road, said San Anselmo now provides services to Ross and College of Marin. We seem to be assuming a number of administrative details for Fairfax; why isn't that a requirement for Ross and College of Marin. She'd like to see the consolidation of as many local agency services as possible.

Del Santo said the College averages five calls a day, Ross about seven, whereas from what they can gather from Fairfax, they have ten times the amount of calls.

It was the consensus of Council to authorize staff to negotiate with the Town of Fairfax to provide police dispatch services upon implementation of the Marin Emergency Radio System in 2000-2001.

9. ADJOURN.

The meeting was adjourned at 10:20 p.m. in memory of Marga McLeod.

Debra Stutsman

**Town Council Meeting of May 11, 1999**  
**Transcription of Item 4 – 379 Oak Avenue, Ted Posthuma**

Paul Chignell: ... (obscured at the beginning of the tape) affidavit from Mr. Lance Russell, Attorney for Mr. Posthuma, dated April 26, 1999, will be incorporated, Mr. Russell, in the official record, and thank you for providing us with those relevant documents. We will start with the staff report. Is Ms Wight going to do that? No, OK. Then, after the staff report we'll hear from Mr. Russell, and then proceed from there. Mr. Bush.

Public Works Director Bush: Your Honor and members of the Council (unintelligible) I have taken this project by attrition. This started in 1992 with the proposed addition . . .

Paul Chignell: Could you go to the mike?

Public Works Director Bush: I think what I'll do is I'll describe the project first, then I'll describe the process.

Paul Chignell: Can I just interrupt you for a second? Christine, we've continued Valley Road, were you here for that, because Ms. Currie was ill it's been continued, so I'm sorry.

Public Works Director Bush: I'll start by describing the project and then go through the process and then summarize where we are right now. I have some pictures to provide the Council. You have an opportunity to see the proposed project in a near completion state as it has been built already, or a good portion of it has been built already, so you have an opportunity to make these findings based on what you can see out there along with what the proposed project shows for completion. So these pictures were taken as part of the nuisance abatement action in 1995 and they show partially completed project and I'll show you on the plans what's left. This is Oak Avenue, there is a sharp turn right here and then Mr. Posthuma's driveway is in here, the proposed covered deck is right in here and it's partly visible from the street. In section, the east elevation is more or less the area the way you can see it is from the street with the steel girders being supports here for the deck and the decking itself and there's a door that's been constructed to get access to the deck. When it's completed there will be a railing going around this deck for safety reasons and then looking at it from the north and south elevations, the two sides, you see the deck up above, and these girders over here and again

over here. This is the deck, this is the existing house. I won't go into two many details on the history of the project except to point out that on page A2 of your staff report which is Exhibit A, page two, there is a good history of what happened from September, 1992, until 1995, when the nuisance abatement hearing was held and that describes Mr. Posthuma's approval for an expansion to his existing house, a denial for a use permit for a second unit and an addition, appeal to that and a stop work notice was issued then the nuisance abatement hearing. Also in your staff report are minutes or staff reports for each of the actions that were taken so far from 1995, the project went back to the Planning Commission after the nuisance abatement and was discussed, continued, and presented again, and conditions were proposed, the project was essentially approved and then appealed by as you know two Town Councilmembers because, on the grounds that the Commission approval was contrary to the abatement resolution and therefore should be reviewed by the Town Council at large. Then continuing on through the exhibits, there's a staff report for that Town Council meeting to hear that, minutes of the meeting where the Town Attorney was directed to revise the nuisance abatement resolution and then Exhibit H is the nuisance abatement resolution itself, created after Mr. Posthuma's project was appealed. And that summarizes the Town's actions and directs Mr. Posthuma to remove the illegal structure. Since that time, Mr. Posthuma and his attorney filed suit against the town and through legal action and the appeal, the summary of the action was that the town did not make the appropriate findings for reviewing the particular project. Page 80 of the judgment states "since the Town Council either did not appreciate or deliberately discounted differences between the final proposal and past proposed projects, we simply cannot conclude that it adequately evaluated the merits of the amended application." In other words, the judge was saying that the Town needs to review this project, however similar it might be to prior projects, and I believe that was a particular bone of contention that it was virtually similar to prior applications. So, at this point, the Town needs to review this project on its own merits, as it stands before you, and without regard to prior submittals. The findings that you would have to make are summarized in the analysis of the staff report. There's essentially eight of those findings and on page A-4 and 5, you could use as a guide, should you decide to approve the project, you could use those recommended findings to the Planning Commission as your guide for an action to reject, I should say uphold the appeal. And then, finally, there are Planning Commission recommendations or conditions the Council is also free to impose additional conditions onto the project should it choose to approve it. My feeling is that should Council want to make

findings for upholding the appeal and denying the project, it would need to make them based on the requisite findings. The most likely areas of those findings are going to be in items 1, 3 and I think it's 7 and 8. Item 1 is functionally and aesthetically compatible with the existing improvements and the natural elements in the surrounding area. Item 3 is will not tend to cause the surrounding area to depreciate materially in appearance or value or otherwise discourage occupancy, investment or orderly development of such area. The last two are adequacy of screening and selection of architectural features that blend in with the environment. So, at this time, if the Council wishes to uphold the appeal they must find the project does not comply with one or more of the required findings and if the Council, whether the Council upholds or denies the appeal, staff will return with the appropriate resolution that documents those findings. I also have a letter here that I'll pass out to you that was submitted to us by a neighbor at 406 Oak Avenue, Michael and Lee Cohen, supporting Mr. Posthuma's project.

Chignell: Is that it? Any Council questions for the Public Works Director?

Breen: Are these pictures, didn't you say they were taken at the time of the original . . . is it substantially or identical right now. Have you viewed this recently?

Bush: Yes

Breen: And these are a fair and accurate representation of what it is as of today?

Bush: Yes, I believe so.

Breen: The bushes may have grown a bit.

Chignell: Any other questions of Mr. Bush?

Hodgens: Yes, at one point I think we were discussing in all of this material some level of difference in agreement, or, that we had a Council subcommittee, we had several, I think, and there was a discussion of the project being modified by a certain number of feet. Does anybody remember what that number was? I'm looking for the abridged answer. There was at one point an agreement between a subcommittee and I wondered what happened to that and where did it go?

Chignell: There were discussions. I don't recall the specifics in feet, do you, Peter?

Breen: No, it was, I don't want to say.

Kroot: Well, I think it was to cut it back to 8 or 10 feet wide, something in that neighborhood was what we were talking about.

Hodgens: From?

Bush: Page A-6, number 1 of page A-6. The patio and deck cover shall not be larger than 18 feet 6 inches long by 6 feet 6 inches wide. I believe that was an amendment.

Hodgens: OK

Kroot: I guess the compromise was maybe a little bit wider than we were discussing.

Hodgens: Thank you.

Chignell: Any more questions of Mr. Bush? Mr. Roth, did you want to add anything to that presentation.

Town Attorney Hadden Roth: No.

Chignell: Mr. Russell, welcome.

Mr. Russell: Thank you. Ladies and Gentlemen, I'm a new face in this saga. Hopefully that will bode well for trying to work something out here, equitable for everybody. I appreciate your accepting the documents that I submitted to you. I believe that creates, at least from Mr. Posthuma's point of view, a more complete record. I did want to address a couple of things to follow up on Mr. Bush, basically falling into two categories, which is why are we here today and basically what Mr. Posthuma would like to see happen in terms of you exercising your discretion. A different way of approaching the history that Mr. Bush recited, is essentially this is what both the Superior Court and the Court of Appeal found, is that the reason we are here today is because in 1995 Mr. Posthuma was basically guided by the

Town to follow a certain procedure, to submit an amended design application and that application would be, as Mr. Bush stated, considered as a new application and not be ruled upon on the basis of history, because if he was going to be denied on the basis of history that everybody knew, there's no point in sending him down a path that would take him to exactly that same place. So, that's half the reason why we're here today. The other half is simply that, although both the Superior Court and the Court of Appeal found that the Planning Commission rendered a decision on the merits, it found that you, as a group, did not do that, and by failing to render a decision on the merits, Mr. Posthuma was basically denied his rights. So, really, we are, with the exception of a couple of matters, exactly in the same place we are today, today as we were in 1996. So the only real question that comes to my mind is, what's happened between now and 1996. Nothing structurally has happened, OK, except of course, growing of bushes and things like that, nature's way, but certainly Mr. Posthuma has done nothing to change the structure. So, we start with the fact that basically I consider two things to have happened. One, is we have the decisions by the various courts and although I'm fully aware that you sit here as a body not obligated to render a decision based specifically on what those courts say. You get to basically create a new decision tonight. What we have here is four judges, one judge, three justices of the court of appeal, all of whom are impartial, all of whom are fully familiar with this whole case, researched it completely, all of whom came to a unanimous decision. And that decision was that there was something improper about what you did before. So what I would suggest is that I want to point out a couple of things that are contained in these decisions, which again I ask you to consider for guidance purposes. Not that you are bound by them, but simply because you have four learned people giving you advice on how this thing is looked at from an impartial view. First thing I want to point out is a couple of statements in the decision of Judge McGivern. First page says is turning to the remaining issues on the underlining administrative decisions themselves, the court notes that the Town Council did make efforts to dot their i's and cross their t's, so to speak, so the findings would technically support the decision to order abatement. So, the court is well aware that as you sit here today one thing it is not looking for is an attempt to simply clean up what you did before. But the dotting of the i's and crossing of the t's is something the court has already said, looked upon with disfavor. The other thing that I want to point out is language in here which gets back to the issue of what I've said before in terms of how did we get here, what path did you take Mr. Posthuma down? And it basically says that the actions of the Town Council have

“essentially put petitioner in a catch 22 situation, that’s Judge McGivern speaking. And that I submit to you, is exactly what we have here. You know, he was taken down this road and it is at this point, three plus years later, you pull the plug out from under that after he has at least complied administratively with the procedures he was supposed to comply with, that it’s going to present a continuation of this catch 22 situation. And, again, the court does not look upon that type of situation with favor. Next we come to the opinion of the Court of Appeal which Mr. Bush referred to and again he cited, the statement that he quoted was actually from the Court of Appeal decision, it wasn’t from the judgement itself. A couple of statements here that I’d like you to focus on when you think about rendering a decision. One of them is that the justices, and again this is an unanimous three justice panel, said “interestingly, Councilmember Chignell acknowledged that disregarding the history of the proposals, Posthuma’s attorney had made an “excellent case” in favor of approval, but they opposed the application based upon its history. I certainly can’t improve upon excellent, and so I’m certainly going to defer it to the record upon which, at least Mr. Chignell, made the statement that Mr. Posthuma’s attorney, Mr. Moss, had made an excellent case. The statement that Mr. Bush read to you is certainly a part of the record, but what he didn’t read to you and what’s not included in the report are the two statements that follow, and these statements are very important. The first statement is the one that Mr. Bush read to you and it’s in your report. The second statement following that says “Indeed the deficient findings in this case undermine the analytic route the administrative agency traveled from evidence to action which is the focus of our attention as a reviewing court.” In other words, it is saying that we have to look at how everything got here, you know, with the authority to render a new decision that history of how we got here, this analytic route that the court refers to, is going to be a part of any decision made and needs to be considered as such. After that comes the next sentence, “Evidence that the Town Council relied upon speculation as to neighborhood opposition, when substantial evidence was submitted to the contrary further calls into question the underpinnings of its decision. And why this is important is because this court is saying, and what the Superior Court says, is public opinion is important. And that is something that you, in exercising your duties have to rise above your personal feelings about the history of this and give due weight to public opinion. Now, in the documents that I gave to you in that package, there were previously three petitions which contained 15 signatures and there were six letters attached to those. All of those were in favor of Mr. Posthumas’s application. What I’d like to submit to you now is an

additional petition which we have obtained, this additional petition which has been signed by members of the community, containing 19 additional signatures in support of Mr. Posthuma's proposal. It also contains the letter of Michael and Lee Cohen, which was referred to earlier and also contains an additional letter from Harold Knocktrab all in support of Mr. Posthuma. When you combine all of this together, we now have petitions and letters from 42 separate people in the community supporting this proposal. And, I'm not aware of any opposition, perhaps there are people sitting out in the audience here who may be coming up to oppose this, but certainly I'm not aware up to this point, and the courts were not aware, of any opposition that had been submitted. So I submit to you on behalf of Mr. Posthuma that when 42 people come forward and say they want to support this proposal, it is extremely important that the Town Council give that the weight that it's deserved as representatives of the people themselves. So, basically Mr. Posthuma's position since the time that the Planning Commission recommendation was made, hasn't wavered one iota. It's always been he's willing to go along and adopt the Planning Commission recommendation with all of the conditions that they attached to it. That position was the same in 1996, it's the same as he sits here today. That's what he's asking for. I would ask you to simply take into consideration the guidance that these courts have given to us, take into consideration the statement of a large number of people which at this point I believe is undisputed who are in support of this position, and finally, I just wanted to read something as part of the record because I think that this case has been going on for so long, it has consumed so many pages, I've been through the record of this case, by the way I was Mr. Posthuma's appellate attorney, that's how I got into the case, so I am completely familiar with the entire record. And every once in a while as an attorney you find one document that synthesizes hundreds and hundreds of pages, and I want to read this to you because it happens to be from Commissioner Harle and I ask you to take these words with great weight. "I know that Mr. Posthuma is before you again on an appeal of the clearance given his Oak Avenue project by the Planning Commission. Speaking only for myself as one commissioner, my take on the case in its present state was this. Concerns of actual viability and impact to the neighboring properties the applicant's plan is acceptable. The modest cutback of the deck which was required of him would in fact harm the project, both in utility and appearance. While I deplore the defiant stance taken by the applicant, I feel that denying the project at this point would be merely punitive and inappropriate in this case." I can't say it any better.

Chignell: You'll get another opportunity to respond at the end of the public hearing. Mr. Roth, did you want to make any comments on legal issues or -- ?

Roth: I'd be happy to answer any questions.

Chignell: OK. Do you have questions of Mr. Roth, Judith?

Hodgens: Well, not at this point.

Kroot: There was a comment about a catch 22. Something about that with the appeals court. I don't quite understand. It almost sounded as if one makes an application with the Town that there's an implicit guarantee of an approval, is that it or did I misunderstand it?

Roth: No, what that refers to is the statement that we guided him or suggested a certain path to take, you know, just an option that he could take, there was no direction given to the applicant. So that's the reason we have this. And apparently the judge at the trial level thought that, but the appellate courts made no reference to that. And their decision is a final decision. So it's just that, supposedly, we said we'll go do this and then reverses the action of the planning commission, but actually we never directed them, we just, that was an option we could take, and it's one that we took.--back to the Planning Commission.

Kroot: This is when he had built the structure, and it was actually redtagged, whatever you say, and the Planner said that, well, if you wanted to try to apply to get it approved he could.

Roth: No, what happened was they had filed a lawsuit and then the attorney suggested maybe they could go back to the Planning Commission. We said well you could if you want to, that's certainly an option, you have the right to do that and so he did that. But I didn't direct or suggest that he do that, and nobody else did either.

Chignell: Any other questions for Mr. Roth?

Hodgens: I do, I'm not sure if you can clarify this for me, but I believe I was being instructed, or at least advised by Mr. Posthuma's attorney, that the courts were saying that it was not appropriate for us to have looked at the

history of the project in making our findings. And then I believe I heard later on that some judge was advising us that we should look at the history before we make our findings. How seriously do I need to take this?

Roth: The only thing that happened in both the trial level and the appellate level was the court didn't feel you made the decision based on the merits of this particular project. You simply said well this is the same as you brought before and we're going to deny it because it's the same as you brought before, when actually there were some differences. So the court felt there were some differences between what was before you and what went before and you didn't really specifically discuss the project. That is the entire essence of the whole case.

Hodgens: So, in terms of the reference to being cautioned to keep the history in mind. Is that something I have to keep in my mind?

Roth: No, I don't agree with his advocacy on that point at all. The only thing you need to do is look at this as you did the first time, look at this particular project in relationship to what you must find, either approving or disapproving the project. That's all that needs to be done.

Hodgens: OK, thank you.

Chignell: OK the public hearing is now open. Is there anyone here from the public who wishes to address the Council on this matter?

Gay Kagy: My name is Gay Kagy. I live at 280 Redwood Road. The steel framework is obviously not in scale with what is proposed to be constructed upon it. The heavy framing looks like it was designed to structurally support a building. This overbuilt look would remain even if the decking and covered sides were reduced, because the overall design is not integrated. It is my opinion the merits of this plan are insufficient for the approval of design review. It is not functionally compatible with the existing improvements in the surrounding area.

Chignell: Anyone else? Ok, we're going to close the public hearing shortly. Mr. Russell, if you'd like to make any final comments, or Mr. Posthuma, here is your opportunity.

Ted Posthuma: Town Council members, it's been three years that I've been dealing with this and I was hoping that tonight we could find some conclusion to it. So I appeal to you as a body, that I made mistakes and I'd like to have a chance to fix them. That I felt, to come back to what was said about a catch 22, that I was instructed to go through the proper process; and that was to go through the Planning Commission process and I feel that I did that. And I thought that I was actually finished with this project three years ago because I got an approval. When I found out that that approval was once again appeal by two members of the Council, I was not only flabbergasted I was heartbroken because I knew that we would start again a lengthy process. The last three years have been very difficult. I'm trying to get this project finished so I can get on with my life, so I can finish my house and go on with other things that are equally important. So I appeal to you as a community representative body to bring this to a conclusion tonight and that I am willing to deal and accept those Planning Commission agreements and conditions that I have received three years ago. My house will not be any bigger than 3,073 square feet and I would like to bloody finish it. The last three years I've felt pretty good and neighborly, I've allowed construction crews who worked on water line to use my property to stage their equipment. On two occasions when Oak Avenue got worked on and the sewer was done I allowed my property to again be used as a staging point. I would like to finish my driveway and my parking area. I would like to finish my deck and be done with this. And I felt very disheartened last weekend, or two weekends ago, to go out and appeal to all my neighbors one more time to please sign this petition to convince this body that we would like to see this come to conclusion tonight. And, on a personal note, today is my son's fifth birthday and he wasn't even two when this process started three years ago. And I'd like to tell him tomorrow that we are finished. We can finish this deck and we can move on with our lives. And I'm sorry that someone in the audience had to feel that there is still some opposition to the steel frame of my structure. In the three years that we've been here, the trees and bushes have grown so far that you can barely see the structure from anywhere, and I mean anywhere. You can't see it. And it may be the opinion of somebody that the steel frame is out of context with the neighborhood, but when I built the structure, I did it for one reason, it was the prototype for what we refer to now as workforce housing and it is still the prototype I wanted to use to create workforce housing in this County. And I would rather see another project get completed and use that in my portfolio than my own house, my own residence. So I hope tonight that you as a body can say "Let's put this behind us," because it's been a very

strenuous three years for me and I would like to just get on with my life and this town can get on with yours. And that's what I'm asking for tonight. I know I've made some mistakes and I'd like the opportunity to fix them. Thank you.

Chignell: Thank you. Ms Hodgens, you had a question for Mr. Russell.

Hodgens: Yes, I did. It was about the petition. I wanted to know the date of the circulation of the petition, because I didn't see any dates on this, and I wondered who was the author of the petition.

Mr. Posthuma: The author of the petition was myself and my attorney and the circulation took place the several days and weeks prior to the last meeting.

Mr. Russell: This was on calendar two weeks ago.

Hodgens: During the month of April, 1999.

Mr. Posthuma: It was scheduled for two weeks ago and there were only three Councilmembers and we felt we needed to have the full Council.

Mr. Russell: And so the signatures have been gathered in the period pretty much right before.

Hodgens: OK, because they're not dated and it wasn't a neighborhood petition, it was your petition that other people signed. OK. The other question I had relates to that discussion of the subcommittee compromise of several years ago, it's amazing what can come back to my rapidly aging brain over these years, it was a 12 foot deck that I think the compromise committee had asked you to accept.

Mr. Posthuma: No. It was a six foot deck.

Hodgens: So they're asking you to cut back from 18 to 6 feet.

Mr. Posthuma: They're asking me to cut from 20 to 6 and the Planning Commission had given us approval to cut from 20 to 16. And I feel that if you put rails on there, and landscaping and bushes and everything else that it will not look . . .

Mr. Russell: And Mr. Harle refers to that in the letter that I read, because he says the modest cutback of the deck that was required of him would harm the project both in utility and appearance. That's to the 6 feet.

Hodgens: And so your final request is for 18.

Mr. Russell: No, 16, the same 16 that the Planning Commission approved.

Hodgens: Well, I'm looking at something, A-6, which says 18 x 6. Shall not be longer than 18 feet by 6 inches. Paragraph 1, recommendation A-6 which you referred me to.

Mr. Russell: This is 18, this is 20, we're reducing it back to 16.

Hodgens: OK, well they did say, got it, they did say longer than so I was looking at that from that way.

Mr. Russell: (Unintelligible)

Hodgens: I've heard that one before. I'm just trying to figure out. . got it.

Chignell: Thank you, Mr. Russell. We're going to close the public hearing shortly. Is there anyone else who wishes to speak. Ok the public hearing is closed. The matter's before the Council. Looking for a volunteer.

Kroot: Is it appropriate to have one of the appellants volunteers:

Chignell: I guess.

Hodgens: It's not against the law.

Jeff Kroot: You know, I still have the same problem with this that I had before. I think it's a very awkward structure on the side of the house and if I were to look at history I would say it was because the applicant originally wanted to put a room there. But, since we're not going to look at history, I think it just doesn't fit. It has these very heavy posts and beams made out of steel. The posts are out, I believe, are 20 feet. It is roughly the size of a 2 car garage. And aesthetically it's just not integrated into the house. I was on a subcommittee much earlier with this and we did try to work with Mr. Posthuma and I remember we worked at some smaller dimensions away

from the house so that it was more of a configuration of a porch with a deck over it. I would still be supportive of that. We said 8 or 10 or something in that neighborhood, by the full 18 foot 6 inch width, but in the shape that it is now it is quite awkward. That's why I voted against it before and appealed it.

Peter Breen: I think I've taken instruction from the Town Attorney and the Acting Director. As I understand it, we're being asked to look at the finding to see if we can make the required finding on the design review basis. There were several that were pointed out to us that we need to look at. Number one functionally and aesthetically compatible with the existing improvements and the natural elements in the surrounding area. I cannot make that finding. Two, protection against noise; I can make that finding. Three, will not tend to cause the surrounding area to depreciate materially in appearance or value. I personally can't make that finding. Four, I can make that, will not create unnecessary traffic hazard due to congestion. Five, will not adversely affect the health and safety. I can find that. Adequacy of screening: the reason I asked that question about the landscape, the landscape is there, but as we all know, landscape comes and goes and is subject to the quirks of nature and disease, etc. And, the last one, the selection of architectural features and colors which enable the structure to blend with its environment. I cannot make that finding because I don't believe that this particular structure that we're looking at can truly say that it blends in with its environment and results in a low visual profile, so I can't make those findings.

Carla Overberger: I might have one unique advantage to all of you. And that is that I wasn't here before. So I didn't hear the original appeal. I don't have any particular strong feelings one way or the other about the original Planning Commission decision, the reversal, the appeals, or for that matter, what the Court Appeals judges say. So when I take a look at this house and addition, I'm looking at it completely from a newcomer's eyes. And, what I can't help but ask the question, is what was somebody trying to build there in the first place. Because it is pretty obvious to me that this thing on the side of the house is a way more significant structure than needs to be for an overhang protection for a front door. So, I'm somewhat troubled by the way it looks on the side of the house in its openness and it's lack of any kind of integration into the environment. And it seems to me like it's an overkill project where the original, what is now purported to be the original objectives, which is decking and coverage for the house, and I think that's

supported by concrete pillars, I mean the concrete decking inside it, or the benches, or whatever it is we want to call those things. So, I don't have any problems saying I can't make the findings for number one, seven and three.

Judith Hodgens: This has been an amazing struggle and again I am trying to get clarity myself on the number of feet that we've been struggling about for these number of years, but I also believe that I would be able to agree with my colleagues that I could, I could not make the findings on number one, number three, number seven or number eight. That's all I have to say.

Paul Chignell: This has been a long struggle and a lot of effort has been put into this. The last thing I want to do is keep spending taxpayers money on this matter. But the principles are very clear. And I can't make the findings either. There have been repeated attempts to discuss this matter with the applicant in terms of making a project mesh with our findings, but those have been rebuffed by the applicant. And that's unfortunate. We recognize that it is unusual for Councilmembers to appeal a project and this town did lose in Superior Court, handily, and we lost in the Court of Appeal, and I don't take continuing this lightly. But again the principles are very clear. The findings can't be made. The structure is incongruent, it's awkward, it's not compatible and for me to violate those principles in this instance would not be consistent with my civic responsibilities as a member of this Council. So, unfortunately, I will support what my colleagues have said. Again, the olive branch is always there to Mr. Posthuma to come back with an application that passes muster that would not be incongruent and would meet our findings and I'm sure we're willing to do that. This Council has repeatedly done that in other instances, over the years, we're not arbitrary or capricious and we're always willing to reach a meeting of the minds in terms of the findings that can be made in planning matters. But we have tried repeatedly with Mr. Posthuma and he is not done so with us, so, unfortunately I'll support what my colleagues have said. So, is there a motion?

Judith Hodgens: Yes, I'll move that the Town Council approve the appeal of the Planning Commission's conditional approval of the amended design request of Mr. Ted Posthuma of 379 Oak Avenue to construct a steel frame patio cover/deck.

Hadden Roth: And that we will prepare a resolution and bring it back for Council approval at the next meeting.

Judith Hodgens: And that we'll prepare a resolution and bring it back for the Council's approval at the next meeting.

Paul Chignell: OK, that motion has been made. Is there a second to the motion.

Jeff Kroot: Second.

Paul Chignell: Is there a discussion on the motion? Will you call the roll please?

(The roll was called by the Town Clerk and the responses were as follows: Kroot, Aye, Overberger, Aye, Hodgens, Aye, Breen, Aye, Chignell, Aye.)