

**TOWN OF SAN ANSELMO**  
**Minutes of the Town Council Meeting of August 28, 2001**

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

8:00 p.m.

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

Mayor Kroot announced that no decisions were made in closed session.

- INTRODUCE NEWLY HIRED POLICE OFFICERS MIKE MEJIA AND JOHN PINEDA AND CLERK DISPATCHER JANET WRIGHT.

Police Chief Maynard introduced new Police Department employees. Mayor Kroot also introduced new Public Works Director Rabi Elias and new Town Administrator Gene Miles. Two former mayors, Pieter Toal and Bill Franchini, were introduced.

- OPEN TIME FOR PUBLIC EXPRESSION.

Pieter Toal, Hawthorne Avenue, congratulated the newly-elected Councilmembers on their re-election. He feels the consent agenda is too long. As a former Councilmember he receives the agendas by mail, but never knows the outcome of the meeting. Could they receive the minutes too?

Bill Franchini, Agatha Court, congratulated the Councilmembers who were re-elected. Who are the people that represent the Town on the Drake High committee dealing with the facilities question? What are you doing to help the neighborhood? Kroot said Breen and Hodgens are on the committee, and representatives from Planning and Police attended.

Guy Meyer, San Anselmo, said he feels that there is less of a sense of community involvement in Town, evidenced by no one running against the incumbents in the election. We shouldn't be trying to sell San Anselmo.

Louise Mathews, Foothill Road, cited section of the Brown Act regarding rules about citizens speaking up to correct the minutes. If the Town disagrees, Town Attorney Hadden Roth should be requested to prepare a staff report.

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

Breen said he received a constituent complaint about people not picking up dog waste. Staff should look into this and see what can be done.

Breen noted that Oakland Avenue is an unaccepted street bordering the Town's Faude Park. The Town had agreed to maintain the drainage ditch, but residents say it hasn't been maintained. The hillside has a lot of runoff that goes under the roadway because there is no drainage system. He asked that staff get the drainage ditch cleared out, and look at what component of the problem could be solved by Measure G. He would like staff to come back with some recommendations.

Breen said last week a set of story poles went up on Oak Knoll at the ridgeline. The proposed development may be in the County, but Planning staff should look into it and see what the County's policy is on ridgetop development.

Breen said the Congestion Management Agency has advised that there is \$1.8 million available in transportation funding and San Anselmo is qualified for some of it.

Chignell noted that there are no plans to widen Sir Francis Drake Blvd., as was incorrectly reported recently.

Chignell said he and Mayor Kroot have met with the Scenic and Summit neighbors to discuss guard rails, paving, and other concerns about their road. He suggests that a subcommittee of Town staff be set up to walk with the neighbors to see what can be done to improve the situation. The main areas are from 200 Scenic and upward.

Kroot said he and several staff members attended a meeting with the Drake High School committee regarding the recently installed portable buildings. They advised the school that the Town and neighbors are displeased with the placement of the portables.

Kroot said he was contacted by several Bicycle Task Force members who would like to start a new committee to implement items recommended in the recent bicycle task force report.

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: August 14 and 23, 2001.
- (b) Approve Resolution No. 3568 in support of the Safe Routes to Schools Program and approve letter to the Project Coordinator in support of the Safe Routes to Schools Program in San Anselmo.
- (c) Approve resolution authorizing the Town to access summary criminal history information for employment (including volunteers), licensing or certification purposes.
- (d) Announce expiration of terms on the Ross Valley Paramedic Authority, Volunteer Advisory Board, Open Space Commission, Art Commission, Board of Review and the Marin County Hazardous and Solid Waste JPA.
- (e) Approve recommendation of the joint Management/Marin Association of Public Employees (MAPE) Team regarding the annual equity study for MAPE employees completed in July 2001.
- (f) Approve plans and specifications and authorize advertising for Measure G improvements for resurfacing and drainage work on Scenic Avenue, Foothill Road and Willow Way.

Items (a), (b), and (c) were removed for discussion.

M/s, Chignell/Kilkus, to approve consent agenda items (d), (e) and (f). Ayes: All. Absent: Hodgens.

Regarding item (a), Louise Mathews, Foothill Road, said that during Open Time on August 14 she did not say the structure on Yolanda Avenue is illegal. She actually said the structure encroaches onto the property at 77 Alder.

M/s, Kilkus/Breen, to approve consent agenda item (a). Ayes: All. Absent: Hodgens.

Regarding item (b), Breen noted that there is a Safe Routes to Schools training session at the Isabel Cook Community Center on Thursday, 6:30 to 9:30 p.m., to try to remediate some morning traffic concerns and ensure that children get to school safely.

M/s, Breen/Kilkus, to approve consent agenda item (b). Ayes: All. Absent: Hodgens.

Regarding consent agenda item (c), Louise Mathews, Foothill Road, said she is concerned that this includes volunteers. This resolution allows that a person volunteering to be on a committee can have their criminal history looked into. She asked that this resolution be looked at more carefully. It doesn't address fees, there is no notification of people being investigated. She is supportive of the concept of using fingerprinting, but she is not supportive of the language about volunteers.

M/s, Breen/Chignell, to continue consent agenda item (c) to the next meeting. Ayes: All. Absent: Hodgens

Item (f) was withdrawn.

2. PUBLIC HEARING REGARDING PUBLIC NUISANCE: PLACEMENT OF VEHICLES IN SPACE RESERVED FOR FIRE TURNOUT PREVENTING ACCESS BY FIRE TRUCKS IN THE EVENT OF A FIRE OR OTHER EMERGENCY IN VIOLATION OF REGULATIONS ADOPTED PURSUANT TO THE SAN ANSELMO MUNICIPAL CODE; 405 SEQUOIA AVENUE, A/P NO.6-117-08.

Town Attorney Roth said this hearing would be similar to a court hearing, with witnesses testifying and evidence introduced. The notice of the public hearing describes the public nuisance as the placement of vehicles in space reserved for a fire truck turnout. This notice was sent as required by law to Mr. Sherman and neighbors within 300 feet. He presented the two declarations of mailings that were sent to the neighbors and Mr. Sherman. He introduced Resolution No. 3465 approving the variances and design of the building at 405 Sequoia. In the second Whereas, the Planning Commission conditionally approved the project based on the plans date stamped received by the Town on September 24, 1998. In the fifth Whereas, the project was approved after appeal to the Town Council and approved subject to conditions. In the resolution Required Finding 2 provides that a fire truck turnout will be constructed and adequate parking provided. Required Finding 4 provides that the fire truck turnout has been approved by the Ross Valley Fire Department. Roth referred to the map on the wall showing the house and the 28 x 10 fire truck turnout. He pointed out the public right-of-way line. The street has been offered for dedication but not accepted. Forty two square feet of the turnout is on the Sherman property. Steve Fisher, Ross Valley Fire Marshall, Tony De Sousa, Building Inspector, Lisa Wight, Interim Planning Director, and neighbors Don Conrad, Carol Holderness, David Straussman, Ingrid Robinson, and Judy Devito were all sworn in by Town Attorney Hadden Roth.

Steve Fisher, Fire Marshall, Ross Valley Fire Department, said his official duty was to plan check the construction at 405 Sequoia. Because Sequoia is a very narrow road, he required that the engine have an area where it could pull off the road if it responded to a call in that area. The intent was to provide access for the engine and to allow cars to evacuate around the engine. The 28' x 10' space is a cleared area where the engine can pull off the road to enable cars to evacuate. It must be kept open at all times. He prepared a memo to that effect and presented the recommendation to the Planning Commission. The turnouts are important because there is a problem in that area with a narrow road. The engine can turn around at the end of the road. Rather than perpetuate the problem, when new houses are constructed we apply the current codes and try to improve the situation.

Mr. Bassing, who appeared on behalf of Mr. Sherman, asked if during this process Mr. Fisher heard that Mr. Sherman knew about this requirement before he purchased the house. How does the code define the term regulation? Fisher said he doesn't know about Sherman and San Anselmo has adopted uniform fire codes.

Mr. Bassing said 405 Sequoia appears to be the newest house on Sequoia, built on a steep shoulder. Prior to the construction of this house, you could not pull a vehicle off the road. Mr. Fisher agreed. This is a common problem on narrow streets in San Anselmo and when new houses are built they try to fix the problems they can.

Mr. Bassing said there may be dozens of such situations in Town. There is nothing unique about this situation. Fisher said he tries to build in fire safe measures when he reviews plans.

Chignell asked if there was any doubt that a turnout was required. Fisher said there was no doubt. The turnout was for fire safety for Mr. Sherman and for his neighbors.

Lisa Wight, Interim Planning Director, verified documents from the Planning file on 405 Sequoia regarding the fire turnout. She fully discussed orally and in writing with Mr. Sherman the requirement for a fire turnout.

Mr. Bassing said he didn't see the deed restriction in the Planning file. Wight said the deed restriction is in the Building file. Bassing confirmed that the deed restriction doesn't say anything about the fire turnout. She verified that she was employed in the

Planning Department when this house construction came before the Planning Commission and the Town Council. She verified that Michael Sherman was not involved in that process. The deed restrictions included exterior lighting, color, and a road covenant. Some of the conditions of approval were included in the deed restriction, but the fire turnout was not. It was required on the plans. There are eight conditions of approval; but it is part of the conditions on the approved plans.

Mr. Bassing asked how a subsequent purchaser of the property would know about this. Ms. Wight said she believes a buyer would request a copy of the plans. Mr. Bassing asked why record anything if you expect the buyers to come look at the plans? The deed restrictions are for exterior color, lighting, etc.

Mr. Bassing showed Ms. Wight a January 24, 2001 letter, second paragraph, where a comment was included about how she would handle such a situation next time. Conditions of approval and deed restrictions always get longer because of surprises. It was known from the beginning that this would be a fire truck turnout.

Mr. Bassing asked if she is generally familiar with the San Anselmo Municipal Code, Land Use Regulation matrix. Wight answered affirmatively. Bassing asked if it shows the regulations of San Anselmo regarding land use. Wight answered affirmatively. Is there anything regarding a fire turnout at 405 Sequoia? Wight answered negatively. He confirmed with Wight that neither Parking nor Building Regulations refer to a turnout.

Mr. Bassing asked that an additional drawing be placed on the bulletin board. He asked Ms. Wight if she received any training on San Anselmo law. She answered affirmatively. Wight said when plans are approved, that is how a house is to be built. Bassing asked if the room identified as Living Room could be used as a Dining Room. Wight said that from a planning standpoint the Town wouldn't care. We don't regulate how people use the rooms in their home. Wight said the site plan gives specific information. Bassing noted that the plans were approved as a set.

Mr. Bassing noted that when Wight was first contacted about the parking at the house, it was about truck parking not the fire turnout. Ed Heavey was the applicant. Bassing referred to an e-mail from Chignell to a staff member about the complaints he'd received about parking at the Sherman residence. Bassing asked Wight if she went to see if he had a business in the house? Wight answered affirmatively. Bassing asked if she'd called the police to the house? He gave her a 1/3/01 letter to Hadden Roth regarding going to the site with Police Lieutenant Randy Kirton. The complaint came in in August and was responded to in January. Was there anything going on during that time other than trying to figure out what to do about Mr. Sherman's trucks? Wight said she knew clearly all along that this was a fire truck turnout because she was the Planner on the project. Bassing asked how he could purchase the zoning code and for how much. Wight said \$25. She responded to his question saying there would be no reference to 405 Sequoia.

Keith Angerman, Building Official, said the Town enact codes that put in by the State of California. We haven't yet adopted the 2000 building code, and we are using 1997 until adopted.

Roth handed Angerman some documents. Angerman said he was asked to go by 405 Sequoia to observe if any vehicles were parked in the turnout area. He went up at 7:30 p.m. one evening and took pictures of the vehicles parked in the turnout area, as well as of some of the excavation done on the property that was unauthorized. He discussed on the phone and in person with Mr. Sherman these issues. Roth said this evidence relates to Mr. Sherman's attitude toward law enforcement, but the excavation isn't part of the hearing tonight. Bassing stipulates that the Sherman's have been parking in the area in question. He spoke with Mr. Sherman in person for several hours one night and Mr. Sherman had a copy of the plans for his house. He showed Mr. Sherman where his property line is, and how the work was outside the property line, digging into the hill, an old slide area, to make a walkway. The Building Inspector on two occasions had told him not to do that. Angerman showed Mr. Sherman the location of the property line.

Mr. Bassing said the driveway and the turnout are visually indistinguishable. Angerman said the turnout is an expanded area, which the driveway necks down from. It is not

striped or signed in any way saying that there is no parking. Angerman said disclosure documents provided by the realtor would have disclosed the fire turnout.

Mr. Bassing asked Angerman if he has training in real estate or law? Angerman said he has been involved in the resale of property. The resale report shows particular restrictions on the property.

Tony De Sousa, Building Inspector, said he did most of the inspections on the house as it was built. He has subsequently dealt with the owner, Mr. Sherman. He received a complaint that work was going on in a slide area. He wrote him a letter and said such work would have to have an encroachment permit and be under the supervision of a soils engineer. The work continued. He went to the property again. Mr. Sherman was there, and De Sousa reminded him that he shouldn't be working in that area. Later another complaint was received, so he sent a second letter, referencing the first letter and their discussion. Nothing was ever done.

Mr. Bassing said Mr. De Sousa keeps referring to the right of way. De Sousa said it is the public right of way. He has seen maps of that area that define the public area and the lots. Mr. Bassing asked if there was any offer of dedication or acceptance of dedication by the Town of San Anselmo.

Don Connerd, 500 Sequoia, said he lives across the street. There are two trucks and some cars at 405 and there is a lot of activity at the residence. It seems like it is a warehouse in the garage.

Bassing objected because the hearing was noticed for a specific alleged violation. He stipulates that the Shermans have been parking on this area. These other matters are not at issue.

Don Connerd, said the garage is used for what appears to be merchandise in shelving. No cars are in there. Activity at the premises is loading and unloading, checking things off, with people coming and going. Loading and unloading of the trucks takes place in the parking area.

Breen asked if there is a business license at this residence. Mr. Sherman answered in the negative. Bassing said Mr. Sherman is a tutor and he maintains voluminous files in his garage.

Carol Holderness, 5 Alto, said Mr. Sherman is definitely a tutor. She has twice seen a car parked down by the drain with a man sleeping in his car. The man said he was waiting for his son who was being tutored. She has seen people coming and going all the time. He has young helpers who have to park down below her house also. Friends also have to park elsewhere. She said between the tutorees and the young people helping, there's activity three days out of seven. He turns around at 3 a.m. in the morning occasionally.

Mr. Bassing asked if she has any reason to believe it is anything other than paperwork in the plastic bags. Ms Holderness said they are trinkets. She has left one note on his truck and she asked that it be moved from below her house. It is a junk truck. Visitors could park in the car deck.

David Strassman, 555 Sequoia Drive, said he has no problem with Mr. Sherman. He doesn't see the property. He was involved in the planning process for this house and the problem was that Mr. Heavey originally wanted to build a flatland type house on a steep seemingly unbuildable lot.

Mr. Bassing asked Mr. Strassman if Mr. Sherman was at any of the meetings. He answered in the negative.

Ingrid Robinson, 550 Sequoia Drive, said she talked to Mr. Sherman saying that the neighborhood had a problem with him parking his truck there as it was reserved for a fire turnout. It was a big issue for the neighbors because they need the right of way. She's had numerous conversations with Mr. Sherman and he refuses to comply with the right-of-way. The trucks wouldn't fit in the garage anyway. The garage is packed with things;

you can't even walk in there. He said the purpose for buying the house was so he could warehouse his things. She asked that he please respect the feeling of the neighborhood to protect those on top of the hill in case of emergency.

Mr. Bassing confirmed that her first conversation was after Mr. Sherman purchased the house. She was not aware if Mr. Sherman was involved in the planning process or if he was aware of the restriction before he bought his house. On numerous occasions PG&E access, mail delivery, etc. is a problem, and there have been near accidents at the curve. There's no way to get beyond his property.

Judy De Vito, 1 Freda Lane, said she first noticed that the big trucks were there, but she thought they were moving trucks. Later, she realized they were permanent. They were four feet into the road itself and she was concerned because her husband was quite ill and emergency vehicles might have to be called. Later he began to edge in at a different angle and it wasn't as big of a problem.

Mark Barnett, Civil Investigator, said he is assisting the Town with this matter. He spoke with Joe Baccus, the realtor that represented Mr. Heavey. Mr. Baccus indicated that the issues regarding parking were discussed between Mr. Heavey and Mr. Sherman.

Peter Bassing, Attorney for Mr. And Mrs. Sherman, passed out a notice of this evening's hearing, Ordinance 1017, amending Town's code, and a proposal from Mr. Sherman relative to the proceeding. He characterized this hearing as a form of distraction. What is before you is something very specific. It isn't just about the parking or the turnout, or what is in his garage, any slope work, or workers, it's more specific. What you have to decide is whether there is a regulation in San Anselmo that has been violated. You've heard some evidence that it isn't really about fire. It's about the ponytails, old trucks, and shelving in the garage. There are dozens of driveways in the Ross Valley area on which the Fire Department would like to restrict parking. Has the Town effectively prevented Mr. Sherman from parking there? All the anger that Mr. Heavey generated in the neighborhood has been visited on Mr. Sherman. Mr. Sherman never had any notice of the restrictions that Mr. Heavey apparently agreed to. A public nuisance arises out of a violation of the code, but there is nothing in the code about this regulation. There are notice and due process issues. There is a specific requirement for a deed restriction to put subsequent owners on notice. He proposes that, at Mr. Sherman's expense, the parties obtain an independent view of this situation. Mr. Sherman received no notice about this restriction officially from anyone.

Michael Sherman, 405 Sequoia, was sworn in by Town Attorney Roth. Mr. Sherman first saw the house in the spring of 2000, when some final work needed to be done but it was on the market. Did anyone tell you of the legal restriction about parking? Sherman answered negatively. He got a preliminary title report. He has contacted his neighbors and many of them want him in the neighborhood. He presented copies of the letters. Sherman said he tutors for a living. With the trucks he carries around things he uses in his tutoring, which he has done for 24 years. In his garage are personal items and things he uses for tutoring. It is not merchandise. He doesn't have a mail order business in the house. The slab that is the fire turnout is the same as what is his driveway; it is not painted in any particular way.

Roth asked if the sale disclosures are with him tonight? Sherman wasn't able to find them. Upon questioning, Sherman said it is plausible that the law requires disclosures. Sherman said he has had workmen in to help set up DSL lines, etc., but not in connection with his tutoring. Bassing objected to the line of questioning, as it doesn't relate to the parking. Roth asked what he tutors? Sherman said science, arts and social sciences. Do you want to tutor in your residence? Sherman said only if it's legal. He has tutored people in his house before. He knows it has to be one visit or less per day. Bassing instructed his client not to answer because it has nothing to do with the reason he was summoned here. Mr. Roth had no further questions.

Chignell asked Mr. Sherman about getting notice of the Town's regulations. Chignell confirmed that since purchasing the house, he has been given notice. Mr. Sherman said he doesn't know where it is a regulation, but he does know about a fire turnout. He doesn't have any notice of a regulation preventing him from parking there. He does have

notice from staff that there is a regulation.

Chignell asked Sherman why he isn't complying with the Town's regulation on a fire turnout. Why are you substituting your opinion for the public safety officials of the town? You have been given notice and the professionals say they need that turnout for the safety of townspeople. Why do you refuse to comply? Mr. Sherman said he must go beyond the public safety issue. He wants to make those fire turnarounds in a more appropriate spot.

Kilkus asked Mr. Sherman if he'd known about the turnout, would he have bought the house. Sherman answered in the negative. He may sell it.

Kroot asked when he found out that it was a fire turnout. Sherman said he received a letter from Lisa Wight six months after he moved in. First it was called a parking restriction. His first response was he never heard about it.

Kroot asked about homeowner's insurance. Have you discussed this matter with your insurance broker. Sherman said his title insurance person says the Town is out of line.

Breen said it isn't legal to park at least one of the vehicles in the area. Why don't you be reasonable and move the truck? Sherman said the legal advice he's received has been on both sides of the issue. He doesn't park somewhere else because it is an incredible burden. Breen asked why he couldn't come to a reasonable conclusion. Basing said no other residents offered him parking. He doesn't believe he's legally required to not park in the turnout.

Kroot said the Fire Department calls this a fire turnout. If people get blocked in and harmed, Sherman could be liable. Is that a worry? Sherman answered affirmatively. He proposes that we use two spaces elsewhere for a turnout. He showed the spaces on a map. Fire safety is of vital importance.

Chignell asked Town Attorney Roth about the regulation question. Town Attorney Roth said the code says, "Any regulation adopted pursuant to the code." Any approval adopted he considers to be a regulation. Regulation isn't confined to broad terms that apply to everybody.

Chignell asked about the notice issue as Sherman bought the property after the hearing. Roth said the nuisance on the property happens whether you received notice beforehand or not.

Chignell confirmed that Sherman still has a legal obligation to abate. Roth confirmed it.

Chignell said asked about some of the objections of the other attorney. Roth said we want to get the context of the situation. The Town clearly couldn't do anything about the home occupation or digging the walkway. Chignell said the Fire Chief and Fire Marshall have professional opinions. Everyone appreciates that Sherman remedied the problem of blocking the street. But he doesn't recognize his legal responsibility to follow Town direction regarding the fire turnout, as one of the conditions in the resolution. Why wouldn't a learned individual bring common sense to a situation like this? The common sense solution is for Mr. Sherman to remove the vehicle from the pad, so that a fire truck could pull out as intended. He believes Council should state that this is a public nuisance and we should proceed.

Kilkus said he visited the site, and there are other places where this turnout could be made. But the issue is that it was done at this property. It is the Council's responsibility to go forward with the abatement.

Breen said this hearing is about a safety issue and he supports the abatement of this nuisance.

Kroot said this is clearly a safety issue and the Fire Marshall says so. It will be a liability issue during a fire. He feels he has to support the fire turnout. It is only one vehicle and maybe he could find a better place to park it. As an architect, he knows that over time the

industry has learned what needs to be done to create a fire safe community.

Town Attorney Roth recommended that the Council make a determination, and put over a formal decision for two weeks. The Council would have several options – give Mr. Sherman an opportunity to remedy the situation in a certain amount of time, impose administrative penalties, up to \$1,000/day, or direct the Town Attorney to file a civil complaint. A decision on remedy could be made in two weeks.

M/s, Chignell/Breen, that the placement of vehicles in the space reserved for a fire turnout at 405 Sequoia is in violation of Town regulations; the Council held a duly noticed hearing, heard witnesses and deliberated, and determined that it is a public nuisance. A formal resolution will be brought back on the agenda of September 11, 2001, for Council deliberation. Exhibits at the hearing included: (1) Two Notices of Hearing, (2) a resolution, (3) building plans, (4) sections of plans, (5) a Steve Fisher memo, (6) the file regarding the turnout and (7) photos of the turnout and a letter from Keith Angerman (Town); and (1) a property description and notice of hearing (Bassing/Sherman). The hearing will be continued to the meeting of September 11, 2001. Ayes: All. Absent: Hodgens.

Gil Iwanaga, 409 Sequoia Drive, said he has had amicable dealings with Mr. Sherman, although he doesn't particularly like the trucks. He has no problem with a legal business. On this project, his primary objection has always been the granting of the variance for the 20 foot setback. The primary item brought out by the town is that the variance had to be granted to get the turnout. He spent considerable money on this issue.

3. PUBLIC HEARING ON PROPOSED 2001-02 BUDGET.

This item was continued to the meeting of September 11, 2001.

4. ADJOURN IN MEMORY OF WALTER L. HODGENS, FATHER OF EVAN HODGENS, FATHER-IN-LAW OF VICE-MAYOR JUDITH HODGENS.

The meeting was adjourned in memory of Walter Hodgens at 11:05 p.m.

Debra Stutsman

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Present: Breen, Chignell, Kilkus, Kroot

Absent: Hodgens

**Item 2: PUBLIC HEARING REGARDING PUBLIC NUISANCE: PLACEMENT OF VEHICLE IN SPACE RESERVED FOR FIRE TURNOUT PREVENTING ACCESS BY FIRE TRUCKS IN THE EVENT OF A FIRE OR OTHER EMERGENCY IN VIOLATION OF REGULATIONS ADOPTED PURSUANT TO THE SAN ANSELMO MUNICIPAL CODE; 405 SEQUOIA AVENUE, A/P NO. 6-117-08.**

HADDEN ROTH: This is in the nature of an adjudicatory hearing; it's like a court hearing; it's not the same but similar. There's going to be witnesses testifying, and documents introduced, and the . . .

JEFF KROOT: Hadden, could I just, I'm sorry, you know I know there's a lot of people here for the budget, and we are not sure at this point how long this is going to take, so I was thinking that we'll see if it's over in half an hour or so, we might decide just how much of the budget we'll be able to look into this evening.

HADDEN ROTH: I don't think we're going to be that short. I would say probably an hour.

PAUL CHIGNELL: Let me suggest, Mr. Mayor, with regard to the budget that we, as you just said, that maybe we should notice the department heads, staff and other interested parties that when we look at the budget possibly we'll just do an overview tonight, but we're not going to get into a substantive review. If that's the case, I would suggest, rather than having people wait 60 to 90 minutes, thinking that we're going to have a substantive review.

PETER BREEN: I think we want to do justice to both issues and they're both very, very important issues. So I totally concur.

JEFF KROOT: So . . . do you have a problem with it? What we're worried about is that this may take so long that we may not be able to do much to the budget, so what we will do is at least an overview of the budget, and those who came down wanting to say something specific about the budget (unintelligible) but, in fact, most of the action on the budget will take place at our next meeting. So if you don't want to stay through this and wait, you will have your opportunity at the next meeting. At this time we will do the overview and we'll take testimony of those people who can't be here in two weeks. Anyhow, so suit yourself. Ok, now Hadden, I just wanted to let people know.

HADDEN ROTH: The notice of the public hearing described the public nuisance, the placement of vehicle in space reserved for fire truck turnout preventing access by fire trucks in the event of a fire or other emergency in violation of regulations adopted pursuant to the San Anselmo Municipal Code. And, this notice was sent as required by

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law both to the owner of the premises, Mr. Sherman, as well as neighbors within 300 feet. What I'm going (unintelligible) a number of document to have a record. The first items are these two declarations along with these notices, one for the owner and the other the neighbors. Now, the next thing we're going to . . .

(There was an exchange here between Town Attorney Roth and Peter Bassing, Attorney for Michael Sherman that is unintelligible as they are not at the mikes.)

HADDEN ROTH: The first document I'm going to introduce is Resolution 3465. This is a resolution for approval of the design of the property 405 Sequoia that was built by Mr. Heavey and purchased by Mr. Sherman. I want to direct the Council's attention to several portions of this resolution. In the second WHEREAS, on January 6, 1999, the Planning Commission received comments from staff, applicants other to conditionally approve the variances and designs based on the plans dated stamped received by the Town on September 24, 1998. (Lisa, would you put the plans up?) I'm asking Lisa Wight to put these plans I just referred to up on the board. Next, the 5<sup>th</sup> WHEREAS on April 13, 1999, the Town Council received comments from staff, the applicant and the appellant and others who gave (intelligible) to approve the project subject to the following conditions. (Put it on so that the portion of the turnout shows. That's what I want to see, the portion of the turnout.) All right, the next reference I want to make to the resolution is on the third page under required finding number 2: This single family dwelling should not result in adverse environmental impacts as the landscaping will provide screening, there will be drainage improvements, the fire truck turnout will be constructed and adequate parking will be provided. Then the last reference is on the last page, under finding number 4, this project will not create unnecessary traffic hazards as this is a single family home in a single family neighborhood and the mirror direction shall be closely monitored by the applicant and the fire truck turnout has been approved by the Ross Valley Fire Department. Now, I previously distributed to the Council a portion of that map and if the Council would look at that small portion of the map, which is at the upper left-hand corner of the map on the wall. You will notice where it shows parking for one car, dash line, and the parking for two cars, which is the garage, then there is an area described as the 28 x 10 fire truck turnout which is the area in the center called cement pad and there is also reference to a railing. You will see the right of way line which is the end of the property line of the Sherman residence and the beginning of the public right of way. This is the street that has been offered for dedication but not accepted. The portion of the fire turnout that is on the Sherman property is a total of 42 square feet, which you'll see down at the bottom on the left it makes a reference to on inch on the left as you look at the map and on the right 2 inches for a length of 28 feet or a total of 42 square feet is on the Sherman property. Now I'd like Mr. Fisher, oh, by the way, let me do this, I know Mr. Fisher here and Lisa Wight, Keith Angerman, Tony De Sousa and Mark Barnett, is Don Conrad here, Carol Holderness, David Strassman, Ingrid Robinson, Judy Devito? (All said yes). If all of you would just stand and raise your right hand and rather than having each sworn separately, we'll do it all at one time. Do each of you swear to tell the truth, the whole truth, under penalty of perjury if called as a witness

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in this matter? (All said yes). OK, thank you. All right, Steve, if you would step to the podium there.

STEVE FISHER: Steve Fisher, Fire Marshall, Ross Valley Fire Department.

HADDEN ROTH: What can you tell me about this residence as far as your official duties are concerned?

STEVE FISHER: My official duty was to plan check the construction and, at that time, with Sequoia being a narrow road, with one way in and one way out, and going by the fire codes, the National Fire Code and the Uniform Fire Code, the requirement that I made was that the engine would have an area where they could pull off. If there was a fire in that area, that, or the engine were to respond to that particular residence it could get off the road. Again, the intent was to provide not only access for the fire engine but also if they had to do an evacuation then cars could evacuate down the hill. So that was the intent and the dimensions that I came up with were specifically for our engine.

HADDEN ROTH: All right, what's that got to do with the 28 by 10 area.

STEVE FISHER: The 28 by 10 area is a flared area where the engine can come up, pull in, obviously they can't parallel park, but they come into a flared area and pull off the road. Again, to enable cars to evacuate down the hill.

HADDEN ROTH: So, in summary, what was your recommendation concerning this residence when it was being constructed?

STEVE FISHER: My recommendation was to provide an access or turnout for the engine to turn off the road to enable cars to come down and evacuate if there should be a disaster in that area.

HADDEN ROTH: Did you give that input to the Planning Commission and Council at the time of the construction of this residence?

STEVE FISHER: I gave it to the Planning Commission, yes.

HADDEN ROTH: Also, I want to show you another document and ask if you can identify this, or identify what's contained in it. . Now I'll tell you what I'm getting at. My (unintelligible)

STEVE FISHER: I can't tell you for sure that there are other turnouts in that area. Sequoia Road in itself is very narrow. There's a turnaround that I'm looking at on what you just handed me at the end. That's for an engine or somebody to turn around if there was, if they had to go to the end, so they wouldn't have to back down. And, again, to point out, that there is a common problem in that area amongst many other residents in San Anselmo. Rather than (illegible) the problem, as new houses are constructed, not

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only turnouts, but just some construction, maintenance, landscaping to apply the current codes.

HADDEN ROTH: All right, does any member of the Council wish to ask any questions on this topic at this time? Mr. Bassing . . .

PETER BASSING: Yes, Fire Marshall, in the process that you made these recommendations to the planning staff, did you come to learn of any knowledge that Mr. Sherman had about any of this, what was going on, prior to his purchasing the house?

STEVE FISHER: No.

PETER BASSING: Do you have any reason to believe that Mr. Sherman ever heard any of this before he purchased the house?

STEVE FISHER: No.

PETER BASSING: Do you have any knowledge about what qualifies as a regulation under the San Anselmo Municipal Code? Do you know anything about how the code defines regulation?

STEVE FISHER: No, other than the Fire Codes and how they are applied to building construction.

PETER BASSING: San Anselmo has adopted fire codes?

STEVE FISHER: Yes.

PETER BASSING: Is there anything in any Fire Code that specifically refers to 405 Sequoia, do you know?

STEVE FISHER: Other than they can't block the roadway.

PETER BASSING: That's in the fire code?

STEVE FISHER: Yes, it is.

PETER BASSING: That they can't block the roadway.

STEVE FISHER: Yes.

PETER BASSING: But nothing that relates to this turnout.

STEVE FISHER: Yes, this turnout was required by the fire code and . . .

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PETER BASSING: Do you know the section of this Uniform Fire Code?

STEVE FISHER: Yes.

PETER BASSING: The section of it that refers to 405 Sequoia?

STEVE FISHER: No, in general.

PETER BASSING: OK, now just looking around up there, it appears to me that the Sherman house is about the newest house on Sequoia, basically compared to any of them further up the hill.

STEVE FISHER: Yes.

PETER BASSING: And looking at the topography up there, and you say you were up there, you have a better idea than I do, that before that house was built the slope downward, that is the front of the house, is at the top of the slope. It's actually between two sections of Sequoia but the slope downward is quite steep and there is virtually no shoulder.

STEVE FISHER: Correct.

PETER BASSING: So, it is my inference from what I see there now, that prior to the construction of this house, you couldn't pull a bicycle off the road, let alone a fire truck of any type. Now, did you ever make any recommendations to the Town of San Anselmo that they by one means or another acquire that parcel to build a turnout?

STEVE FISHER: No.

PETER BASSING: What was protecting all those house up there until two years ago when this house was built?

STEVE FISHER: As I said, I admit that there was existing right and before Mr. Sherman bought the house and before the house was built, that there existed a problem through much of San Anselmo. And as brand new houses are being built, rather than perpetuate the problem, we try to create some firesafe means within our community.

PETER BASSING: So if I understand correctly you could drive around within the Ross Valley Fire District (unintelligible) dozens if not hundred of places where you would say "I wish we could keep anybody from parking there because someday we might need to have that open. Is that true?

STEVE FISHER: Yes.

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PETER BASSING: So the real issue isn't anything unique about this. The question is whether or not the Town has effectively made Mr. Sherman do that as opposed to all these other driveways to which you might longingly gaze.

STEVE FISHER: To me, that again, to go back to the original (intelligible) when I did a plan check, I try to build in fire safe measures. That turnout is very specific for that residence.

PETER BASSING: OK, I have nothing else. Thank you very much.

HADDEN ROTH: Any questions?

PAUL CHIGNELL: One, Mr. Mayor, is there any doubt, Chief Fisher, that this was required at the time of the plan approvals, this particular turnout at this particular location, (unintelligible) and the rationale for this turnout (END OF TAPE) . . .

JEFF KROOT: Would you like them to make sure they are speaking into the microphone? I noticed it was turned a little to the side. I presume this is all being taped so if the witness could straighten the mike out.

HADDEN ROTH: You are . . .

LISA WIGHT: Acting Planning Director.

HADDEN ROTH: All right, I want to show you a document and have you identify the document.

LISA WIGHT: Yes.

HADDEN ROTH: And what are they?

LISA WIGHT: These are documents from the file of 405 Sequoia, the Planning file, that I gathered that had to do with the fire truck turnout.

HADDEN ROTH: So you selected from the file anything that had to do with 405 Sequoia, excuse me, the fire truck turnout.

LISA WIGHT: Correct.

HADDEN ROTH: All right, did you have any correspondence or conversations with Mr. Sherman throughout the . . .

LISA WIGHT: Prior to this, I believe I did.

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HADDEN ROTH: What I'm asking is whether or not you discussed . . . in correspondence or orally about (unintelligible).

LISA WIGHT: Both orally and written.

HADDEN ROTH: I have no further questions of Ms. Wight.

PETER BASSING: OK, I think I have several. Unless I'm missing it, I don't see here the deed restriction that was recorded with regard to 405 Sequoia. Am I missing it?

LISA WIGHT: The deed restriction is actually in the Building file. This was out of the Planning file.

PETER BASSING: OK. Are you familiar with the deed restriction?

LISA WIGHT: I am.

PETER BASSING: Did it say anything about the fire turnout?

LISA WIGHT: No.

PETER BASSING: Were you instrumental in preparing the deed restriction?

LISA WIGHT: Yes.

PETER BASSING: May I give you (unintelligible)? Now, Ms Wight, you were with the Planning Department when the Heavey application was made, right?

LISA WIGHT: Yes.

PETER BASSING: As I understand it, as I infer from the paperwork, it was quite a celebrated cause in the neighborhood, that application for a house, was it not?

LISA WIGHT: Yes.

PETER BASSING: And there was approval by the Planning Commission, an appeal by a neighbor, and to the Town Council here, resulting in the resolution that Mr. Roth introduced a couple of minutes ago.

LISA WIGHT: Correct.

PETER BASSING: Throughout any of that process did you see Michael Sherman?

LISA WIGHT: No.

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PETER BASSING: Do you have any reason to believe that Michael Sherman had any idea what was going on during that process?

LISA WIGHT: No.

PETER BASSING: Now directing your attention to your deed restriction, what is the third page, I think the report has a cover page. It's the page that there's Mr. Heavey's signature. It says the terms of this covenant shall be binding and enforceable against all heirs, successors, transferees, purchasers or assigns of the undersigned owners of the property. What did you understand your purpose was in preparing the deed restriction?

LISA WIGHT: We do deed restrictions and they included things that aren't necessarily on the building plans. They include exterior lighting so it won't shine on people's property. It includes exterior colors because the color samples are not on the plans. It sometimes we'll include additional landscaping that may or may not be on the plans. And, for example, it had the road covenant there which was not on the plans. The driveway was on the plans and that was included on the resolution. That's why that was not included . . .

PETER BASSING: All of the items you've mentioned were in the Town resolution that Mr. Roth introduced.

LISA WIGHT: Correct. And we pulled some of the items out of the resolution and put them in a deed restriction.

PETER BASSING: Right.

LISA WIGHT: And that does not include approved plans.

PETER BASSING: The conditions of approval were, at least some of them, put in the deed restriction.

LISA WIGHT: Correct.

PETER BASSING: The fire turnout was not a condition of approval was it?

LISA WIGHT: It was on the approved plans.

PETER BASSING: My question . . .

HADDEN ROTH: That calls for a legal opinion. Just ask for the facts.

PETER BASSING: In the resolution that you have before you. . . do you have a copy?

LISA WIGHT: No.

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PETER BASSING: I'll provide you with a copy. Did you prepare this?

LISA WIGHT: Yes.

PETER BASSING: Did you prepare this? Does it represent a fairly standard format for resolutions for approving applications for variances and design review?

LISA WIGHT: Yes.

PETER BASSING: And is there a section clearly labeled "Conditions of Approval?"

LISA WIGHT: Yes.

PETER BASSING: And are there eight numbered conditions of approval?

LISA WIGHT: Correct.

PETER BASSING: Is the fire turnout numbered on any of them?

LISA WIGHT: Not on the conditions of approval. It's also in the resolution when the plans were approved.

PETER BASSING: OK. Is it your understanding that it was not a condition of approval that the fire turnout be (unintelligible).

LISA WIGHT: It was not a separate condition of approval on the resolution. It is part of the approved plans.

PETER BASSING: Was it part of the combined condition of approval?

LISA WIGHT: Are you asking me if it's in this list of conditions of approval? No it is not. It is in the resolution, however.

PETER BASSING: How did you imagine that any subsequent purchaser of the property would know about it? . . . . Did you imagine at all?

LISA WIGHT: It's on the approved set of plans. I would imagine that if somebody purchased the property that they would obtain a copy of the approved plans. It was a new dwelling.

PETER BASSING: Each of the items that was in the deed restriction was also in the file, right? It was a condition of approval, was it not?

LISA WIGHT: Excuse me?

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PETER BASSING: Each of the items that was in the deed restriction that you prepared and had Mr. Heavey sign and one or the other of you recorded, each of those items was a condition of approval.

LISA WIGHT: Yes. It did not include all the conditions of approval.

PETER BASSING: Now, if you assumed that any subsequent purchaser would look in the file, which is the place they would have to look to find the plans, right?

LISA WIGHT: Right.

PETER BASSING: What was the point of recording anything. They would see the resolution.

LISA WIGHT: Well, the point of the deed restrictions in the past have been for exterior colors, so people won't change them without getting approval, for landscaping for exterior lighting, for tree removal, things of that sort.

PETER BASSING: You have characterized your action in not including the fire turnout among the items in the deed restriction as a mistake on your part, have you not?

LISA WIGHT: No, I have not.

PETER BASSING: OK. Showing you a copy of a letter from you to Mr. Roth dated January 24<sup>th</sup> of this year, ask you to look at the second paragraph. "I just put my typical deed restriction language in, which is always exterior colors, materials, landscaping, lighting. I know now to put it in there the next time."

LISA WIGHT: Would you like a comment about that?

HADDEN ROTH: Yes. Let her comment on that. Go ahead.

LISA WIGHT: I can. I wouldn't think that I would need to put that in the deed restriction because it is on the approved plans. But in this case, it appears that someone . You always find in the future. How do I explain this? Deed restrictions and conditions of approval always seem to get longer with every application that we get. Because we get surprises. And it was understood clearly that it would be a fire truck turnout, pretty much from the beginning of the hearing between the applicant, the architect, myself and Fire Department. I wouldn't call it a mistake. It was just assumed that somebody would understand that that was to remain a fire truck turnout. So my comment "I know now to put it there next time" is a comment I would make about a number of things.

PETER BASSING: OK. Given that the entire resolution and the full set of the plans, what is it a microfiche of the plans?

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LISA WIGHT: I'm not certain if they've been microfiched yet or not. These have not, the Planning Department ones have not. I don't know about Building.

PETER BASSING: OK. But those are the final. Then, what is your understanding of the point of recording anything?

HADDEN ROTH: What's the purpose of this question? I don't see the relevance to this witness.

LISA WIGHT: I've already answered it anyway.

PETER BASSING: Well, I perhaps didn't hear it.

HADDEN ROTH: The purpose of recording it; the covenant?

PETER BASSING: Yes, her understanding of the purpose of recording it.

HADDEN ROTH: Calls for a legal opinion.

PETER BASSING: Are you making rulings on . . .

HADDEN ROTH: Yes, I'm addressing your question.

PETER BASSING: Could I possibly ask for a point of information on who's running the hearing?

JEFF KROOT: Well, I am.

PETER BASSING: That was my impression.

JEFF KROOT: I actually did hear her answer that question, though, that you just gave her earlier.

PETER BASSING: Now, Ms Wight, are you generally familiar with the organization the makeup of the San Anselmo Municipal Code?

LISA WIGHT: The zoning ordinance.

PETER BASSING: OK. Are you aware of the land use regulation table or matrix?

LISA WIGHT: Yes.

PETER BASSING: As far as you know, subject to being kept current periodically, does that show the regulations of the Town of San Anselmo regarding land use?

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LISA WIGHT: Yes.

PETER BASSING: To your knowledge, is there anything in that table that refers to a fire turnout at 405 Sequoia?

LISA WIGHT: No.

PETER BASSING: Are you familiar with the portions of the San Anselmo Municipal Code that are called parking regulations?

LISA WIGHT: Yes.

PETER BASSING: To your knowledge is there anything in that section of the San Anselmo Municipal Code that refers to the turnout at 405 Sequoia?

LISA WIGHT: No.

PETER BASSING: I believe there's also a portion of the San Anselmo Municipal Code entitled Building Regulations? Are you at all familiar with that?

LISA WIGHT: No, I am not.

PETER BASSING: Has anybody pointed out to you that any portion of the building regulations of the Town of San Anselmo Municipal Code refers to a turnout at 405 Sequoia?

LISA WIGHT: No.

PETER BASSING: Now, I wonder if I could ask you to put up the right of that drawing that Mr. Roth only had you put up one page of. . . .

JEFF KROOT: You know, while these plans are being put up, I'd like to say to the people in the audience that I had no idea that this was going to be as involved or take as long as it appears it's going to. I think that it would be best at this point, if my colleagues don't have a problem, that we just basically call the budget hearing for this evening and tell anyone here for the budget that we'll do it at the next hearing, starting from scratch, and we'll get it on early, first. My apologies, I did not realize this would be so involved. Thank you. Yeah, that would be you guys too . . . OK and how long is the garbage rate review . . . Well, we may not be first, we'll be no later than second, and we may actually need a special meeting in September for this.

PETER BASSING: Ms. Wight, did you, at the time you were hired as a planner, or received any promotion in the department as a planner, receive any training or explanation as to San Anselmo law?

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LISA WIGHT: Yes.

PETER BASSING: OK, did anybody tell you that anything that was on an approved set of plans was a regulation of the Town of San Anselmo?

LISA WIGHT: Regulation, what do you mean by regulation?

PETER BASSING: Did anybody tell you that anything that was on a set of plans approved by the Town of San Anselmo constituted a regulation? It's a term I'm using, regulation of the Town.

LISA WIGHT: Well, I'm not going to give a yes or no answer because I don't know what you mean. But I will tell you that I was told that when plans are approved that is how the house is to be built?

PETER BASSING: OK. Did anybody use the word regulation?

LISA WIGHT: I don't recall.

PETER BASSING: OK. Now, was it your understanding, for example, on this plan it says "Master Bed" it has an elevation, for Master Bedroom, finish floor. Now is it your understanding that Mr. And Mrs. Sherman, for whatever family needs they have, decide to take that master bedroom and rather than sleep in it, to sleep in another room and use it as an office, that they're violating a regulation of the Town of San Anselmo? This is on the plans.

LISA WIGHT: What I would say to them is that you would have to check with the building department specifically, the Building Official, to determine if you can use that room for an office, or a bedroom. Because I'm not familiar with the building codes as to size and height.

PETER BASSING: That's the advice if they don't want to sleep in what is on that plan, they'd have to talk to the Building Official.

LISA WIGHT: Yes, I would get the Building Official, who would be there and could explain the building codes.

PETER BASSING: OK

LISA WIGHT: From a planning standpoint, we wouldn't care as long as it was being used as a home office. From a planning standpoint we wouldn't have a problem with it.

PETER BASSING: OK, and I see also depicted on here, living room and dining room. Is it your understanding that they would be committing a nuisance and violating the

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regulations of the Town of San Anselmo if they put their dining table on what's depicted as the living room? And they used for living room functions what is depicted as a dining room?

LISA WIGHT: No.

PETER BASSING: It's on the plans.

LISA WIGHT: Correct.

PETER BASSING: So it is not your understanding that everything on the plans is an enforceable regulation of the Town of San Anselmo?

LISA WIGHT: We do not regulate how people use the rooms in their house so long as they're not providing a living unit or running a business; there's a number of uses that would not be permitted.

PETER BASSING: And it's also your understanding that not everything on the plans constitutes a regulation? Even though this was the approved set, right?

LISA WIGHT: You're talking about the site plan versus the floor plans and elevations.

PETER BASSING: Oh, so some of the sheets of the approved plans constitute regulations and some don't?

LISA WIGHT: The site plan specifically says how far away the structures are from property. It specifically says where the driveway is, the garage is, where the turnout is. The site plan's on the far left.

PETER BASSING: I understand. But all of this was approved as a set, right?

LISA WIGHT: That's correct.

PETER BASSING: And each of these probably contain something that found it's way into the conditions of approval, plants, size, exterior had to do with colors, right?

LISA WIGHT: Correct.

PETER BASSING: Something on all of these, but not everything on all of these, right? It is your understanding.

LISA WIGHT: Floor plans could be altered. They might need permits if they were going . . .

PETER BASSING: I'm not even talking about . . .

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HADDEN ROTH: Mr. Bassing, she's still speaking.

PETER BASSING: I thought you were finished. I'm sorry.

LISA WIGHT: You would need permits if you were to do structural work.

PETER BASSING: Perhaps I didn't make myself clear. I'm not talking about structural work, I'm talking about Mr. And Mrs. Sherman, for example, without touching a wall, without polishing a light switch, moving their dining room table into what is depicted here as the living room, and their living room furniture into what is depicted as a dining room, and using them for those functions. Even though they are labeled otherwise on the drawings.

LISA WIGHT: Correct.

PETER BASSING: Now when you were first contacted by a member of this Council concerning parking at 405 Sequoia, for a number of months, nobody said anything about fire turnout, isn't that right?

LISA WIGHT: I'm trying to recall how we first heard about it.

PETER BASSING: Wasn't it generally a set of messages that "What are we going to do about Sherman parking the trucks?" and you were up there. ..

LISA WIGHT: Can you show me something? I'm just not remembering.

PETER BASSING: OK. (unintelligible) again to look at the letter of January 24, which I (unintelligible) before you. And this time I draw your attention to the first paragraph. "I just didn't think to put in the deed restriction or conditions of approval because it was on the plans and the applicant knew that was why he had to provide three other parking spaces because this was supposed to be kept free for the fire truck turnout. Just so everybody is clear, because there have been (unintelligible) Mr. Sherman was not the applicant, was he?"

LISA WIGHT: Ed Heavey was the applicant.

PETER BASSING: Right. Showing you a printout of an e-mail that Councilmember Chignell to I believe, one of his constituents, no excuse me, it was somebody in your department. Is there an Amy in your department?

LISA WIGHT: Amy was in our department.

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PETER BASSING: About the complaints he has received about parking at the Sherman residence. And this was, I'll represent for the file, I believe in fact, it's in the packet that Mr. Roth produced. Do you remember seeing this?

LISA WIGHT: It has my . . . I've written Robert M. Sherman on there so I must have seen it.

PETER BASSING: Do you remember going to Mr. Sherman's house trying to determine whether or not he was carrying on a business in the house?

LISA WIGHT: I do.

PETER BASSING: Do you remember calling the Police Department to the house?

LISA WIGHT: No, I don't.

PETER BASSING: I ask you to take a look at what I understand to be your letter to Mr. Roth, dated January 3 of this year.

LISA WIGHT: I would appreciate it if you could give me these things. It's just hard to remember.

PETER BASSING: Oh, I'm sorry, I thought I had.

LISA WIGHT: I have it, but before you asked the question if I had had this it would help. You asked me if I remembered calling the police department. I do remember this.

PETER BASSING; Don't you remember it independent of the letter?

LISA WIGHT: No.

PETER BASSING: This was January of this year, right?

LISA WIGHT: Right.

PETER BASSING: Do you now remember having called the Police Department?

LISA WIGHT: I don't remember the call, but I must have, because I went to the site with Randy Kirton.

PETER BASSING: Randy Kirton being a Police Officer.

LISA WIGHT: He's a commander in the Police Department.

PETER BASSING: You didn't call the Fire Department at that point, right?

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LISA WIGHT: No, Fire and I had talked about this before the project was approved.

PETER BASSING: You mean, when Mr. Heavey was involved.

LISA WIGHT: Right.

PETER BASSING: I'm talking about in response to the complaints of neighbors that led to Mr. Chignell's e-mail, what are you going to do about Michael Sherman.

LISA WIGHT: I don't believe I contacted Fire.

PETER BASSING: OK, his email was already in August, as I understand it. And you (unintelligible) the Police Department to see if there was anything in the Vehicle Code. They can only ticket if they don't maintain the full road width requirement. He doesn't care what they do in the driveway. There's nothing in the Vehicle Code to help out here.

LISA WIGHT: I'm not sure what happened between August and January.

HADDEN ROTH: Was that a question or just a statement?

PETER BASSING: She apparently took it as a question.

HADDEN ROTH: Was it a question, I didn't get the question.

PETER BASSING: The question was, was there anything other than that between August and January, other than trying to figure out some way to deal with Mr. Sherman's trucks sitting in the driveway.

HADDEN ROTH: You can answer that question, if you can answer it.

LISA WIGHT: I don't remember what happened between Amy getting this fax, or this email. I don't know if I received it right away. I don't know if she was working on it, if I was assigned to it. I don't remember between August and January. OK, I just don't have any recollection. I knew all along, clearly, that this was a fire truck turnout.

PETER BASSING: You now remember that.

LISA WIGHT: I now remember that?

PETER BASSING: You are telling me, standing there today, you remember that all along you knew it was a fire truck turnout.

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LISA WIGHT: I have always known there was a fire truck turnout because I was the planner that processed the application. On this complaint, it is talking about the use of the property for a business, and vehicles . . . I guess that's my statement.

PETER BASSING: Ok, I'm very nearly done. Ms. Wight, if I came to the counter in your department and said I got a check here. I want to buy a copy of the Town codes and regulations, would there be anything that you would sell me? Is it printed up?

LISA WIGHT: It is, I would ask you in what you were interested? Did you want . . . then I would suggest you get the entire zoning code.

PETER BASSING: OK, how much would that cost me?

LISA WIGHT: I think it's \$25. I'm not certain.

PETER BASSING: So, if I was willing to spring for the \$25 and I brought it home, and I started reading at page 1 all the way to page whatever, would I find a reference to 405 Sequoia.

LISA WIGHT: No.

PETER BASSING: Would I find a reference to the fire turnout requirement at 405 Sequoia?

LISA WIGHT: No.

PETER BASSING: I don't have anything further.

HADDEN ROTH: Does Council have any questions of the witness? . . .

PETER KILKUS: Hadden, I did have one question, if I can still ask it.

HADDEN ROTH: Yes.

PETER KILKUS: Lisa, in terms of any building plans that we do or approvals of remodels, we always require the building to be brought to the latest code. Is that the case? The building codes. Do we do that? But a new house has to be built to the latest codes. (Responses from Ms. Wight unintelligible) OK.

KEITH ANGERMAN: Keith Angerman, Building Official, Town of San Anselmo.

HADDEN ROTH: Why don't you elaborate on (unintelligible).

KEITH ANGERMAN: We enact enforcement of codes that are revised every four years. And we enact the codes that are enforced in the State of California. The new codes come

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out and they are slowly adopted by the Town. For example, what you are referring to, the latest code, the 2000 building code, which we haven't adopted yet, . . . 97

PETER KILKUS: But if a house were being, had been built in 1980, and now it were being remodeled, we would apply the code from 1997. So we'd apply newer codes.

KEITH ANGERMAN: Right, we'd apply newer codes. The codes that are enforced in the State of California . . .

PETER KILKUS: Yes, that's all I'm asking. We do apply newer codes . . .

KEITH ANGERMAN: Correct.

PETER KILKUS: And those newer codes will never have the address of the house that we're applying them to.

KEITH ANGERMAN: They apply to all properties in the State of California.

HADDEN ROTH: OK, I'm going to hand you a set of blueprints and would you just (unintelligible). What's on the first page, letters from you?

KEITH ANGERMAN: At your request I was asked to go by 405 Sequoia to observe if there were any vehicles parked in the front of the building in the turnout area. I drove up there, I happened to be working late that night, so I drove up there, I documented the time because it was late in the evening, so 7:30 p.m. and I happened to have the digital camera and I took pictures of the vehicles parked in the driveway, the turnout area, as well as some excavation that had been done on his property without Town authorization, as well as off the property by him into the public right of way.

HADDEN ROTH: Do you have any discussion with Mr. Sherman about that?

KEITH ANGERMAN: Yes, a couple of times. On the phone and as well as about two weeks ago I went out there and had a conversation with him on Thursday night. It was about an hour and a half to two hours, about that, about these issues.

PETER BASSING: I'm going to object here since Mr. Roth believes there is some relevance standard. The citation for this hearing was very specific as to a claim that there was violation of a regulation of the Town of San Anselmo with parking in the fire turnout. Are we expanding the hearing beyond that?

HADDEN ROTH: Well, we're expanding the hearing beyond that not for purposes . . .

PETER BASSING: We offered . . .

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HADDEN ROTH: Just a minute, I'm speaking, if you don't mind. (Unintelligible). This evidence that I want to introduce relates to Mr. Sherman's attitude about law enforcement. And, also, if there's going to be evidence on other nuisance violations and it's going to be produced tonight, we would bring another hearing for that purpose. We wouldn't seek to make a determination of nuisance tonight. So you may proceed Mr. Angerman.

JEFF KROOT: So whatever abatement we're looking at would only be parking on the fire turnout and not any other . . .

PETER BASSING: We will stipulate the Sherman's have been parking in the area that has been termed the fire turnout. If that's what Mr. Angerman is here to testify about.

HADDEN ROTH: I don't accept your stipulation. Please proceed, Mr. Angerman.

KEITH ANGERMAN: We spoke for almost a couple of hours that night. I He had a copy of the building plans for his house. I took the site plan from the building plans. I showed him specifically where his property line was. I even went out and stood on the corner of the property line and showed him where it was as it went across the parking area approximately the distance off his house, so he could define where the property line was and what the work that he was doing was outside his property line as well as within the limits of his property.

HADDEN ROTH: What work was he doing?

KEITH ANGERMAN: Digging, excavating into the hill, it happened to be a slide area that occurred years ago and he was cutting out a walkway in the hill, increasing erosion and potential for slide.

HADDEN ROTH: Now, did anybody from the Town, as far as you know, tell him to stop doing that.

KEITH ANGERMAN: Yes, the Town Inspector on two occasions had sent him letter, as well as spoke with him on the phone, as well as going by to talk to him.

HADDEN ROTH: Did you also show him where his property line was in terms of the parking area for the truck turnout?

KEITH ANGERMAN: Definitely. As a matter fact, we went over and stood there and on the drive I showed him how it was several inches right there at the back of the wall just as you described earlier, that little piece. I showed him exactly where it was on the wall.

HADDEN ROTH: And, would the exhibits here show the photographs?

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KEITH ANGERMAN: Yes.

HADDEN ROTH: I have no further questions.

PETER BASSING: Mr. Angerman, you referred to the driveway and the turnout. The fact is that visually, standing there, the driveway and turnout are completely indistinguishable, are they not?

KEITH ANGERMAN: No they're not. I mean, excuse me, they are entirely different.

PETER BASSING: How are they different?

KEITH ANGERMAN: A driveway approach is the part, if you look at that, it's an expanded area at the front, adjacent to the street. And it necks down as it approaches into the garage. That's the driveway.

PETER BASSING: They're both concrete slabs, right?

KEITH ANGERMAN: Correct.

PETER BASSING: Does the turnout, what you call the turnout, striped?

KEITH ANGERMAN: No, it's not.

PETER BASSING: Is it signed in any way that says no parking?

KEITH ANGERMAN: No, it's not.

PETER BASSING: Is there any other physical indication on it that no parking is to be allowed there/

KEITH ANGERMAN: No.

PETER BASSING: If one purchasing the house were to look very carefully at it, would that person have any indication that it was a no parking area.

KEITH ANGERMAN: Yes, they would.

PETER BASSING: What indication would they have?

KEITH ANGERMAN: They would have the disclosure documents that were provided by the broker when they bought the house. This was a major, major issue at the time of the Planning approval as well as the development of the building plans, as well as it clearly had to be shown on the drawings, therefore it would be obvious that it would be a disclosure statement.

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PETER BASSING: First of all, are you familiar with the specific disclosure statements that were given to Mr. Sherman.

KEITH ANGERMAN: Not at all.

PETER BASSING: OK. So when you say it would have been obvious to him from those disclosure statements, you don't know that. Right?

KEITH ANGERMAN: No, disclosure statements you have to sign that all these are the issues relative to this building. So, therefore, yes, it would be . . .

PETER BASSING: Mr. Angerman, you don't know what was show there, correct?

KEITH ANGERMAN: No, I do not.

PETER BASSING: OK. Do you have any training in real estate brokerage?

KEITH ANGERMAN: No.

PETER BASSING: Any training in real estate law?

KEITH ANGERMAN: No.

PETER BASSING: On what are you saying, on what basis are you saying what would have had to be shown there?

KEITH ANGERMAN: On purchasing a number of properties myself, as well as being involved with mostly every resale that occurs in the city, town of San Anselmo.

PETER BASSING: When you purchased the property yourself, do you recall receiving, typically shortly after escrow opened, (unintelligible)?

KEITH ANGERMAN: Yes.

PETER BASSING: And what does that indicate?

KEITH ANGERMAN: Uh, are there any particular restrictions on the property, are there any easements on the property, information about the property.

PETER BASSING: Do you look at that pretty carefully?

KEITH ANGERMAN: I do.

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PETER BASSING: Because you know that if anything is indicated, you're going to be stuck with it.

KEITH ANGERMAN: Yes.

PETER BASSING: OK. I have nothing further. Thank you.

HADDEN ROTH: Any questions from the Council? Mr. DeSousa? Can you give us your official title?

TONY DESOUSA: Tony DeSousa, Building Inspector for the Town of San Anselmo.

HADDEN ROTH: And what's been your involvement with the Town of San Anselmo?

TONY DESOUSA: I did all the, most of the inspections, when the house was built.

HADDEN ROTH: All right, have you had any subsequent dealings with the owner of the property?

TONY DESOUSA: Yes, I received a complaint that there was work going on that was adjacent to a previous slide area. I went up there and looked at it. Mr. Sherman was not home at that day. I sent him a letter telling him that he was working in the right of way, that it was a previous slide area and that any work to be done there would have to be supervised by a soils engineer and he would need an encroachment permit.

HADDEN ROTH: What did he say to you?

PETER BASSING: Excuse me, gentlemen, I have the same objection. This hearing was noticed on a very specific issue.

JEFF KROOT: And we understand that, having to do with the fire turnout.

PETER BASSING: Correct. Only that.

JEFF KROOT: But, why don't you continue on with the questions.

HADDEN ROTH: Go ahead.

TONY DESOUSA: After I sent him a letter, I don't remember how long it was after that, I received another complaint that he was still working. At that point, I went up there, it was a Friday, I forget the date but it was a Friday, just before, about 11:30 maybe a little before. Mr. Sherman was home and I referred to the letter that I had sent him and that he was not supposed to be working in the right of way without soils engineer supervision and an encroachment permit. And we talked for probably over half an hour and I tried to impress upon him what the requirements were. It was getting late and I left him with the

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information that I had given him. Subsequently, we received another complaint that nothing had been done about the work that he had done there, so I sent him a second letter referencing the letter I had sent him before and our discussion about the work in the right of way, and nothing ever came of it.

HADDEN ROTH: All right, no further questions.

PETER BASSING: Mr. DeSousa, you keep referring to the right of way and encroachment. On whose property did you believe Mr. Sherman was encroaching?

TONY DESOUSA: Well, the right of way is public right of way.

PETER BASSING: Do you believe it is owned by the Town of San Anselmo?

TONY DESOUSA: It is part of the public right of way, yes.

PETER BASSING: My question is, do you believe it is owned by the Town of San Anselmo?

HADDEN ROTH: Calls for a legal opinion.

PETER BASSING: Well, he has been expressing a legal opinion, he has been expressing an opinion about encroachment, he has been telling us that he advised Mr. Sherman when he was and when he was not encroaching, and he was doing it in response to a question.

HADDEN ROTH: The issue is whether or not the Town owns it or it's an easement. That's the issue.

PETER BASSING: Do you believe there is an easement in favor of the Town of San Anselmo?

TONY DESOUSA: It is part of the public right of way.

PETER BASSING: All right. Have you ever reviewed the subdivision map for that part of San Anselmo?

TONY DESOUSA: No. Well, let me clarify that. I have seen subdivision maps that define the public area and the lots.

PETER BASSING: Have you ever seen an offer of dedication of any of the streets in that area, including Sequoia, to the Town of San Anselmo?

TONY DESOUSA: No.

PETER BASSING: Have you ever seen any acceptance of an offer of dedication?

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TONY DESOUSA: No, it's not a city maintained street.

PETER BASSING: And you don't know if those streets were ever offered to the town, do you?

TONY DESOUSA: That I don't know.

PETER BASSING: Nothing further, thank you.

HADDEN ROTH: Anything from the Council? OK thanks Mr. DeSousa. I'd like to have Mr. Don Conrad come forward, please. If you could give us your name and address please, Mr. Conrad.

DON CONNERD: Don Connerd, at 500 Sequoia Drive, San Anselmo.

HADDEN ROTH: Connerd, I'm sorry. And where is that in relationship to Mr. Sherman's house.

DON CONNERD: Right across the street.

HADDEN ROTH: And what have you observed with regard to the turnout?

DON CONNERD: Well, the two trucks, a car, other trucks coming and going and during the day, activity.

HADDEN ROTH: What kind of activity?

DON CONNERD: It appears like it's a warehouse, moving stuff, merchandise around.

HADDEN ROTH: What's a warehouse? The garage?

DON CONNERD: The garage is very, very full.

HADDEN ROTH: All right. Have you actually seen the inside of the garage?

DON CONNERD: Yes.

PETER BASSING: Gentlemen, I am going to again object. The hearing was noticed for a very specific alleged violation. As far as I can tell, we have offered, and I will again offer to stipulate that the Sherman's have been parking on the area that has been characterized as a fire turnout. This Council has expressed some concern and has moved it calendar around, at the length of time this is taking. Nobody is contesting that the parking is there. These other matters are not at issue to that.

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JEFF KROOT: My response would be the same that I gave before.

HADDEN ROTH: You may proceed. Tell us what you have observed inside the garage.

DON CONNERD: Lots of shelving. Looks like every square inch is used for merchandise.

HADDEN ROTH: Can you tell whether or not it is temporary or permanent shelving?

DON CONNERD: It looks like it is permanent shelving.

HADDEN ROTH: And can you tell what's on the shelves?

DON CONNERD: Lots and lots of stuff. I don't know what it is or what it is used for, but it's moved around.

HADDEN ROTH: All right. Are there any cars in there?

DON CONNERD: No.

HADDEN ROTH: And what activity do you see on the premises?

DON CONNERD: Loading, unloading, checking things off, other people coming up.

HADDEN ROTH: How often does that occur?

DON CONNERD: Every other day or so, it varies.

HADDEN ROTH: Have you seen any loading or unloading regarding the trucks in the parking area?

DON CONNERD: Yes.

HADDEN ROTH: No further questions.

PETER BASSING: No questions.

HADDEN ROTH: Thank you, Mr. Connerd.

JEFF KROOT: You know we do have one question.

PETER BREEN: One question, Mr. Connerd. I'm not sure if you would know. Is there a business license at this residence? Do we know, does the Town have a business license at this residence, or does anyone have a business license? So there's no business going on at this . . .

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HADDEN ROTH: Well, there may be.

PETER BREEN: That's what I'm just trying to . . .

PETER BASSING: . . . (unintelligible) as to what's in the garage and what Mr. Sherman does for a living and . . .

PETER BREEN: My question was, really, did it appear to be a home business?

PETER BASSING: They are files. Mr. Sherman is a tutor. He tutors people, occasionally at home, mostly at their own homes. He maintains voluminous files. Mr. Sherman is eccentric and extremely successful. He has, as far as I can tell, every piece of paper he ever looked at in his entire life. His garage, like many, and including, I admit, mine, can't get a car in it. I think if we were perhaps to poll the homes in San Anselmo we would probably find a significant percentage, if not a majority, couldn't get a car in.

PETER BREEN: Thank you.

HADDEN ROTH: All right. Carol Holderness? Do I have the pronunciation right? If you would identify yourself and where you live.

CAROL HOLDERNESS: Carol Holderness, I'm at 5 Alto, and in relation to Mr. Sherman's house I am above and near Don Connerd. But in order for Mr. Sherman to even park his cars in his driveway, he cannot park his cars in his driveway, without going all the way to the end of the cul-de-sac, turning around below our house, to get his two truck, two cars, four garbage cans, three bicycles, a water hose on his fire deck and driveway. So that's my relation to where . . .

HADDEN ROTH: OK, and what have you observed going on at 405?

CAROL HOLDERNESS: He's definitely a tutor, I have, if I'm sweeping out or cleaning out a major drain that we had revised with the big paving project we had several years ago, twice a car has been down by the drain. And at one time there was a big suburban and a man was asleep. And I felt real uncomfortable about this person sleeping at the cul-de-sac. So I went up to him and said, excuse me, can I help you? (End of tape 1, side two)

HADDEN ROTH: . . . many times that you've observed him in the process of tutoring in the sense of seeing parked cars there or people coming and going.

CAROL HOLDERNESS: Well, there's people coming and going all the time because they can't park on his car deck. So when he hires these younger gentlemen to restock his garage by taking everything out of the two vans that are just jam packed with shelving and all these plastic bags. The plastic bags are all being revised and put into the garage and reshelved. Those helpers he has cannot park on his car deck. They have to park

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down below our house also. If he has a friend, and they are bringing gifts or a casserole, they have to park. No one can park. His parking deck is full.

HADDEN ROTH: Well, what I'm trying to get a sense of, if you know, is how, whether this is occasional, regular, or sporadic, he's doing this sort of thing.

CAROL HOLDERNESS: It's often and you know, maybe, do you want how many times a week?

HADDEN ROTH: Yes.

CAROL HOLDERNESS: Because between the tutors, and the guys with ponytails who help him shuffle all the plastic bags, there's something going on every other day, or three days out of the seven.

HADDEN ROTH: And you talk about helpers. Are they people who are actually working for him, as far as you can see?

CAROL HOLDERNESS: Now, that I don't know. But I do see them opening the vans, taking things out of the vans, putting them into the two by four shelving in the garage. There must be . . . well, Lisa Wight's been there, there must be six shelves, floor to ceiling, of, I guess he's calling it his paperwork, that he keeps in little plastic bags.

HADDEN ROTH: I have no further questions.

CAROL HOLDERNESS: I would like to add that he does turn around, around 2:30 or 3 a.m. in the morning. He has to come, you know, and turn the truck around, and our windows are open. So I don't know what his business is doing at 2:30 or 3:00. That is not often, but it is in the evenings and enough to wake me up and look down and go, oh, there's that truck again. So there's some activity going on besides just his paperwork. Unless he keeps all the paperwork in little plastic bags.

HADDEN ROTH: No further questions. Mr. Bassing may . . .

PETER BASSING: Ms Holderness, you said in your last couple of answers something to the effect of what he calls his paperwork in plastic bags. Do you have any reason to believe there is anything other than paperwork in the plastic bags?

CAROL HOLDERNESS: Well, there's not paperwork in plastic bags. There's items, trinkets.

PETER BASSING: Now you were among those that took the oath to tell the truth today, were you not? You have left notes on Mr. Sherman's trucks even when they were not parked on his driveway.

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CAROL HOLDERNESS: I've left him one note when he decided to move his junk truck from his yard to the bottom of our house. And my parents were coming that week from Texas and I just, you know, didn't want that junk truck below our house.

PETER BASSING: Now, junk truck, is he in the junk hauling business?

CAROL HOLDERNESS: Well, it has seven or eight pieces of metal on it, and it's dented, about five different colors, it's kind of beat up.

PETER BASSING: He's got kind of an ugly truck.

CAROL HOLDERNESS: Yeah.

PETER BASSING: So, that's the problem.

CAROL HOLDERNESS: No. If he had a BMW and a Ferrari on that car deck, I would still be upset.

PETER BASSING: On that deck.

CAROL HOLDERNESS: Because we went to twelve, how many Council meetings have we been to, twelve or thirteen, it was to be a two car garage, there was to be no car on the car deck through our thirteen meetings. Ed Heavey said he wanted an extra and the Town finally agreed to that, so that if he had visitors the one car could park on the car deck. There was to be no cars, ever at all, plus the fire turnaround.

PETER BASSING: It sounds like you were very involved in the whole planning process that led to the construction of the Heavey house, right?

CAROL HOLDERNESS: I probably came to five of thirteen. Some people came to thirteen.

PETER BASSING: OK, and you have a pretty good recollection of it?

CAROL HOLDERNESS: Well, I would probably want to look at the minutes just to, you know, refresh my memory because it was quite some time ago.

PETER BASSING: Do you remember seeing Michael Sherman at any of them?

CAROL HOLDERNESS: You know, whether, Mr. Sherman, or whoever purchased the house, that's immaterial. There are laws and rules that we all have to follow. And there's now a law that's on the agenda tonight that Mr. Heavey, along with several other items that are not on the agenda, that Mr. Heavey does not seem to want to, uh, Mr. Sherman, is it? Mr. Sherman doesn't seem to want to listen to these rules.

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PETER BASSING: OK, thank you.

HADDEN ROTH: OK, Dave Strassman, please.

DAVID STRASSMAN: My name is David Strassman. I live at 555 Sequoia.

HADDEN ROTH: And where is that in relationship to 405?

DAVID STRASSMAN: It's at the very end of the street at the top of the hill.

HADDEN ROTH: OK, what can you tell us about the subject matter tonight.

DAVID STRASSMAN: Well, I really have no problem with Mr. Sherman, since the only time I see this is when I leave or return to my place, because I have to go past his place. My problem is that I was, as Carol Holderness was, involved with the planning for the house right from the beginning, before there was a house there. The problem was that the original builder, Mr. Heavey, who has since left the County, in fact, left the state, wanted initially to build a flatland house on a platform, on that seemingly unbuildable lot. So the reason it went through so many hearings before the Council and before the Planning Commission was to get the house that was logical for that area and would also allow for passing vehicles at the fire truck turnout at that point. That was the main effort between before all of us at all of those meetings.

HADDEN ROTH: Anything else you want to add? Mr. Bassing?

PETER BASSING: Yes, do you recall seeing Mr. Sherman at any of those meetings?

DAVID STRASSMAN: No.

PETER BASSING: Do you have any reason to believe that Mr. Sherman knew anything about any of these restrictions when he bought the property?

DAVID STRASSMAN: I have no way of telling.

PETER BASSING: Thank you very much.

HADDEN ROTH: OK, Ingrid Robinson, please.

INGRID ROBINSON: Ingrid Robinson, 550 Sequoia Drive. I'm on the very top of the hill.

HADDEN ROTH: All right, what can you tell us?

INGRID ROBINSON: Well, I spoke to Michael Sherman about a month after he moved into the house, telling him that the community had a problem with the trucks being

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parked where they were because of the right of way, or the emergency trucks. I spoke to him about 5:30 6:00 in the afternoon, he said he didn't know anything about that. That he was very concerned, he didn't want to have any problems with the community. And a car drove up, another person, and he runs out in the middle of the street, waves them down, and says "I hear you have a problem with my trucks." These people didn't know who he was, he was crazy. One person said, yes we have a problem. We need you to move the trucks because we can't go by the road. He said, he was going to go up and down the street and speak to everybody on that hill to find out if they had a problem with their trucks. None of us have heard from him. And I also told him specifically, at that time, that that was the big issue that we had, besides the fact that he had his hoses that were out on the deck forever, that he had cars there, that he had bicycles there, that he had garbage there, and I said that we really needed the right of way. And it wasn't only one time. In fact, I went to everyone in the community to say to them that I took it upon myself to speak to Michael. Every single person up on that hill said thank you so much because we really had a problem.

HADDEN ROTH: Anything else you'd like to add?

INGRID ROBINSON: Yeah, that I have had numerous conversations with Michael, asking, begging, pleading. He absolutely refuses to comply to our right of way. He says that he can park there. His trucks are so high that they couldn't fit into the garages even if the garage was empty. And he does have them packed with shelves, and contrary to what his attorney said, there's no way that you can even walk in the aisles of that garage, it is so packed with things. I mean, he specifically built shelves for warehousing, and he did say that the purpose for buying that house was that it had so much space that he could warehouse all of his things. And he didn't care about the trucks. And I also sent him a letter which I signed explaining to him and asking him to please respect the feelings of the neighborhood. That we had asked him repeatedly that it was illegal for him to park his cars there so that we were not protected at the top of the hill to have emergency vehicles. Totally ignored it. Nothing else.

PETER BASSING: Just the one thing. The first conversation that you had with him when you told him about your concerns, that was after he moved into the house, right?

INGRID ROBINSON: Right.

PETER BASSING: At least as far as you know, it was after he had purchased the house.

INGRID ROBINSON: Yes.

PETER BASSING: OK. And you were involved in the proceedings first at the Planning Commission level and then before this body with the Heavey approval?

INGRID ROBINSON: I didn't come to any of the meetings, but I was part of what was going on. I was told . . .

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PETER BASSING: Do you have any knowledge that Mr. Sherman was in any way involved?

INGRID ROBINSON: Not in the planning, no.

PETER BASSING: Do you have any reason to believe that Mr. Sherman was made aware of any restriction on parking there prior to purchasing the house?

INGRID ROBINSON: No, I didn't know him until he bought the house. And I was very clear to come up to him very quickly, because it was a concern. We realized that his trucks were permanent and they were not moving and he had at that time his now wife was his fiancée, the car was there and other cars were there. We were very clear to go up to him and just say, look we need some kind of protection. As a matter of fact, we even suggested that he park on lower Sequoia which is about three houses away from him. And he refused to do it. He asked everybody, he even asked Lisa, where could he park his car for free so that he wouldn't have to be bothered. He asked Carol Holderness one day when we were standing right there, he asked me, he asked the other neighbors. Everybody even gave him a list of where he could park his trucks so that we could be safe. And, he did nothing. And he has parked his truck once on lower Sequoia. It was great. It was absolutely wonderful. It was the first time that we could go by without any problems. And on numerous occasions, I must tell you, PG&E, Pacific Bell, I have gotten caught in that corner where I could not move. We have a UPS truck that comes up it is a blind spot. You cannot go by his house if there's somebody coming up on that curve. And there have been many times that we've had near accidents.

PETER BASSING: So, if I understand what you're saying correctly, even if the turnout at his house was always clear, you would be frequently blocked up about twenty yards below that.

INGRID ROBINSON: No, we wouldn't be blocked up. We'd be able to see. We'd be able to move. We'd be able to turn so that we could at least back up or have another car come around the curve. There's no way to move. There's no way for any other vehicle to get beyond his house and his property if all his cars are there and his trucks are there. Can't do it.

PETER BASSING: Thank you very much.

HADDEN ROTH: OK, Judy DeVito.

JUDITH DEVITO: My name is Judith DeVito and I live at 1 Freda Lane, just off Sequoia Drive.

HADDEN ROTH: And, Ms. DeVito, what can you tell us about this situation?

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JUDITH DEVITO: Well, I have not been as involved as some of the neighbors, although I've certainly talked with them and heard their complaints. And I certainly felt very empathetic and sympathetic with them. I guess the first thing I noticed about the neighbor, the new neighbor, was the fact that there were those big trucks there. I thought they were moving in trucks. About a month later when they were still there I realized that they were permanent. Or they were owned by the owner of the house. At first, the trucks were actually four feet or so, especially the biggest truck, into the road itself. And I was concerned because my husband, who has now passed away, was very ill, toward the end of his illness, and I had to call an emergency vehicle. And when I saw the edge of that truck sticking out there, all I could think was, my gosh, if anybody up here needs help they're not going to get it very easily because that truck is parked in a very peculiar, precarious way. However, after a few, I don't know, maybe somebody complained about it, he began to edge it in at a little different angle and it didn't stick out quite as much. It's been a problem in the sense of worrying about that turn there. And that's about all I have to say about.

HADDEN ROTH: All right. Mr. Bassing?

PETER BASSING: No questions, thank you very much.

HADDEN ROTH: I wonder if we could take a short break. I may have just one witness or witnesses and I need to talk to this witness first.

JEFF KROOT: Certainly, yes, we've been here for a couple of hours. Let's take about a five minute break?

BREAK

HADDEN ROTH: Let's call Mark Barnett.

MARK BARNETT: My name is Mark Barnett. I'm a civil investigator.

HADDEN ROTH: And have you been assisting the Town in this matter, Mr. Barnett?

MARK BARNETT: Yes I have.

HADDEN ROTH: And did you have discussions with any of the realtors in this case?

MARK BARNETT: Yes, I spoke to Joe Baccus during the course of this last week. Mr. Baccus is the realtor that represented Ed Heavey.

HADDEN ROTH: What did Mr. Baccus tell you?

MARK BARNETT: Mr. Baccus

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PETER BASSING: Objection, heresay.

HADDEN ROTH: It's admissible.

PETER BASSING: Another ruling from Mr. Roth?

JEFF KROOT: No

HADDEN ROTH: That's the law.

JEFF KROOT: Go ahead.

MARK BARNETT: Mr. Baccus indicated to me that he believed that the issues regarding parking were discussed between Mr. Heavey and Mr. Sherman upon the sale of the residence.

HADDEN ROTH: No further questions.

PETER BASSING: Let me be sure I get this straight, telling whom? Mr. Baccus didn't say that he discussed it with Mr. Sherman.

MARK BARNETT: No he didn't.

PETER BASSING: And he didn't say that he discussed it with Mr. Sherman's broker.

MARK BARNETT: No he didn't.

PETER BASSING: He said that he believed, he told you that he believed that Mr. Heavey and Mr. Sherman discussed it.

MARK BARNETT: That's what he said, sir.

PETER BASSING: But he only believed it, he wasn't present, right?

MARK BARNETT: I don't know that.

PETER BASSING: You didn't ask him?

MARK BARNETT: No I did not.

PETER BASSING: No further questions.

JEFF KROOT: Do any of the Councilmembers have a question of Mr. Barnett? OK, thank you.

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HADDEN ROTH: That's all the evidence I'm going to present.

JEFF KROOT: OK

PETER BASSING: Let me pass out a copy of Ordinance No. 1017 amending Section 1-2.01 of the Town code. For your consideration I have a proposal from Mr. Sherman relative to the proceeding. I'd like to make a few remarks in the manner than Mr. Roth did in the beginning. A friend of mine, who also is an attorney, and I have a way that we characterize hearings that have been characterized the way this one has been to this point. And what we do is we say, look, distracts everybody. The reason I gave you a copy of the notice, which presumably you have seen in one form or another, is that what is before you today is something very, very specific. It is not only just about the parking . . .

HADDEN ROTH: Just a minute, are you going to present any evidence? Is this your argument?

PETER BASSING: I'm going to present evidence, thank you.

HADDEN ROTH: Is this an opening statement?

PETER BASSING: This is an opening statement. It is not about the parking and what's been characterized as the turnout, in general, even. Let alone is it about what is in Mr. Sherman's garage, what work Mr. Sherman has done on the slope, what the young men in ponytails loading and unloading the junk truck have done. As I say, it is not only the parking turnout in general. It is much more specific than that. Because what you have to decide is whether there is a regulation, that's the term in the ordinance that was enacting only several months ago, whether there is a regulation of the Town of San Anselmo that has been violated. You've seen some evidence and you're going to hear more, that this isn't really about fire. That's not where this started. The complaints were about young men in ponytails and the junk trucks and the shelves of quote merchandise in the garage. So, just in terms of keeping a general perspective here, as the Fire Marshal testified, there are dozens, probably hundreds of driveways that he could look at in the Ross Valley jurisdiction of his district that he would love to say, I wish I could always count on there not being a car there. That's not the issue. The issue is whether or not the Town has effectively prevented, not Mr. Heavey, but Mr. Sherman from parking there. It's also not about any liability of the Town. Government Code Section 818.2 says "adoption or failure to adopt or enforce enactment, a public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law." You don't have to proceed with this. I think you've heard a little bit of the testimony so far tonight but I just want to say again, don't get the players confused. What has happened, what is clear to me that has happened both from reviewing the paperwork and from being here tonight, is that all the anger, possibility the very justifiable anger that Mr. Heavey, who apparently led people to believe that he was going to be living in this house, all the anger that he left in the neighborhood has been visited upon Mr. Sherman. Unfortunately for these people, the one thing that was not visited upon Mr. Sherman was any notice of the restrictions that Mr. Heavey apparently agreed to, or at any rate, were imposed upon him.

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The ordinance you have in front of you says that the nuisance arises out of a violation of the code, we haven't seen any provision of the code that anybody has claimed has been violated, or any regulations adopted pursuant to the code. The notice you have in front of you says that the violation is violations of regulations adopted pursuant to the code. I have searched the entire municipal code, thank God for computers, and have found every reference to the word regulation. There is nothing in it in which the term is used in any context that would lead one ever to believe that a notation on a map on a resolution that is not published or codified and that itself does not even make the issue a condition of approval, that that would ever rise to the level of regulation. As a matter of fact, there is quite a bit in the code that makes it clear that it can't. For example, there are sections of the code that specifically distinguish between resolutions and regulations. Now, unless we are going to assume that the people that drafted that just wanted the redundancy, then a resolution isn't a regulation. I haven't heard here, Mr. Roth hasn't show us anything, that indicates what the regulation, that's the term in the ordinance that this body adopted at the beginning of this year, that any regulation of the town has been violated. Aside from that we've got notice issues, due process issues. As has been testified, most people, everybody, when they buy a house look at the title report. That's not habit. That's because the law says that whether you know it or not, you're on constructive notice of matters that are of record. The resolution that the Council adopted when they approved the Heavey development, giving the variance and the design review, specifically required recordation of a deed restriction that served a very specific purpose. The deed restriction puts subsequent owners on notice. Without deed restriction, subsequent owners are unnoticed. We've heard testimony that there isn't anything physically at the site, nor was anything required by the plans to be physically at the site, that would give anybody any idea that one part of the parking slab you could park on, and another part of the parking slab they could not park on. There has been no notice whatsoever to Mr. Sherman of this restriction. It was not even made a condition of the Heavey approval. From Mr. Sherman's point of view, and from the point of view of the law, his driveway, his parking slab, is no different than any other parking slab that the fire marshall might like to see kept vacant. And this town does not have the authority at this point, without giving him any reasonable means of notice, to declare this a nuisance. In the letter that I have given you I have proposed that, at Mr. Sherman's expense, the parties obtain an independent opinion as to this legal issue. If I've been at all successful, I may at least have some of you thinking, "Well, maybe there's a problem here; what can we do? We can't really listen to Bassing because he's Sherman's lawyer. What else is he going to say?" But on the other hand, maybe there is something else we can do. Something else you can do is what is proposed there. This is going to be a very expensive undertaking and, in my view, and I think if you think about it, and get rid of the fuzz of the men in pony tails and the trucks and the slope, and the claim about whether or not at any given time a truck was sticking out or not, we're not contending that he has a right to stick out into the road. We're not contesting that he was parking in the space. We are down to a very narrow issue. The narrow issue properly framed by the notice, and the town is going to lose on it. This is a man who had no notice, no constructive notice, no inquiry notice. Nobody has placed him at any of the hearings on the Heavey development. The best we have is a broker who says he believes that two people in a conversation at which he weren't

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present, discussed it. You can take that for whatever you think it may be worth. I'm going to put Mr. Sherman on the stand, as it were. Michael, why don't you get up? Mr. Roth, do you want to do the swearing honors?

HADDEN ROTH: Mr. Sherman, would you raise your right hand? Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God, under penalty of perjury?

MICHAEL SHERMAN: Yeah.

PETER BASSING: OK, Mr. Sherman, when did you first see the house at 405 Sequoia?

MICHAEL SHERMAN: Just before I bought it, last spring, the spring of 2000.

PETER BASSING: OK. It was already constructed?

MICHAEL SHERMAN: They still had to do some of the last touchups, but it was on the market.

PETER BASSING: It was already after the date of the resolution approving the variance.

MICHAEL SHERMAN: Long, long after. It was almost just about done.

PETER BASSING: Prior to your purchasing the house, did anyone tell you there was any restriction, legal restriction, concerning your right to park on the parking slab between the house and the street?

MICHAEL SHERMAN: No, nobody told me. . (unintelligible)

PETER BASSING: Did you obtain, did you buy the house through conventional escrow?

MICHAEL SHERMAN: Yeah.

PETER BASSING: Did you obtain a preliminary report?

MICHAEL SHERMAN: Preliminary report, meaning . . .

PETER BASSING: A title report.

MICHAEL SHERMAN: Oh, yeah, yeah, yeah.

PETER BASSING: Have you made any effort to contact your neighbors concerning the parking situation?

MICHAEL SHERMAN: Yeah.

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PETER BASSING: Have your neighbors, as one might think sitting here, been uniformly adverse to your existence?

MICHAEL SHERMAN: Far from it. In fact, a large number of them signed stuff saying it's great to have you in the neighborhood and please, you know, City Council, allow them to continue to park and stay here. I brought copies.

PETER BASSING: You have copies of the . . . (unintelligible)

MICHAEL SHERMAN: Now, I can get a lot more too, but I, it just got tiring walking around and kind of it felt so self-serving going around saying (unintelligible). I like being more like a give and take (unintelligible). But there are 24 names there, and they're all like seriously right in the area where I live, cause I didn't want to go walking any distances and besides it isn't relative to where I live. There's a lot more where's those came from. If you think it'd be relevant, I'll go nab two-three more.

**UNINTELLIGIBLE COMMENTS FROM THE AUDIENCE**

JEFF KROOT: You know, I'd rather not have any comments from the audience please.

PETER BASSING: They are identified on. . .

MICHAEL SHERMAN: Oh, well, each page has a name, address, phone number. You want me to, like (unintelligible).

PETER BASSING: No, thank you. Michael, what do you do for a living?

MICHAEL SHERMAN: I tutor. I have a great time of it. Actually I love it better than teaching. I just love it. Help them grown.

PETER BASSING: What do you do with your trucks?

MICHAEL SHERMAN: I use them to carry around stuff relative to the tutoring. I brought one of those nefarious plastic bags. I'm going to open one. Here it goes. In it is something of a distraction. It is sometimes used, if you put them on see what happens. Go ahead, put them on and see what happens You can see behind you. It is a rear view mirror sort of stuck in the corner of those glasses and what I do is just kind of keep it lively, you know, it's a way of just (unintelligible) we want a good time, you know (unintelligible) that's what's in those plastic bags.

PETER BASSING: You make a living as a tutor?

MICHAEL SHERMAN: Yep.

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PETER BASSING: How long have you made your living as a tutor?

MICHAEL SHERMAN: Since 1977. What is that, 24 years?

PETER BASSING: What's in your garage?

MICHAEL SHERMAN: Stuff I use personally, files as you say. There's an overlap between my personal and (unintelligible) stuff I sometimes will go out with. But it's stuff, all kinds of stuff. Generic garage stuff.

PETER BASSING: One gentleman testified tonight, characterized it as merchandise, is that what it is in your garage?

MICHAEL SHERMAN: Oh, no, and I don't sell any of these; Don has one of those, I gave him one of those glasses and he kind of enjoyed them. You know, when I talked with him, he said, well, let's try to be friendly about this, even though I don't like your trucks and I'll do what I can to not let them park in your driveway.

PETER BASSING: He must have used the term merchandise loosely.

MICHAEL SHERMAN: Yeah, yeah. (unintelligible)

PETER BASSING: You don't have a mail order business out of the house?

MICHAEL SHERMAN: Sometimes I order something by mail, but I don't (unintelligible) no.

PETER BASSING: OK, physically are the portions of the slab in between your house and the street that are being referred to tonight as the fire turnout, is that any different from the part that is being referred to as the driveway?

MICHAEL SHERMAN: No, it's a slab of concrete. There's an asphalt road and a slab of concrete. That's the driveway.

PETER BASSING: Physically the slab of concrete that's being referred to as the fire turnout is, as far as you can tell, the same concrete as the rest?

MICHAEL SHERMAN: Made of the same stuff, yeah. It isn't colored.

PETER BASSING: Is it painted in any particular way?

MICHAEL SHERMAN: No, it's concrete, whitish, grayish, beige. (unintelligible)

PETER BASSING: I have no other questions.

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HADDEN ROTH: Mr. Sherman, do you have the disclosures that were given to you on the sale (unintelligible)?

MICHAEL SHERMAN: Disclosures on the sale . . . I have a bunch of stuff. I don't know where they were; but they're not here right now. I have a bunch of them. I don't know if they're the ones you're referring to. Which disclosures did you have in mind? Here are . . . (unintelligible) Is it one of these? If the answer's yes, do you want to look at them?

HADDEN ROTH: Well, I doubt if they're that thick.

MICHAEL SHERMAN: Well, I mean it would be in here. You want me to start hunting it down.

HADDEN ROTH: I want the real estate disclosure forms . . .

MICHAEL SHERMAN: Do you want to find it in this? I . . .

HADDEN ROTH: No, I don't want to find it. You find it.

MICHAEL SHERMAN: I wouldn't know what it looks like. You mean one by one.

HADDEN ROTH: You can't find it.

MICHAEL SHERMAN: Maybe. Yeah, I could if I knew what it looked like. You tell me what it looks like (unintelligible)

HADDEN ROTH: . . .your attorney. He'll know what it is.

PETER BASSING: Well, if it's in there, I will find it. (End of tape 2, side 1)

HADDEN ROTH: Do you recall receiving one?

MICHAEL SHERMAN: I recall receiving hordes and hordes of paper. And the name disclosure per se? Sounds familiar to me.

HADDEN ROTH: Do you know whether or not the law requires you to receive disclosures when you purchase property?

PETER BASSING: Are you asking for a legal opinion?

HADDEN ROTH: I'm asking whether he knows or not.

PETER BASSING: I'm going to object on that basis.

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MICHAEL SHERMAN: Hey, didn't you just ask, like, that he not ask a legal opinion of one of your witnesses?

HADDEN ROTH: No, no, I'm not asking for a legal opinion. I'm asking whether or not you know whether or not there are required disclosures.

MICHAEL SHERMAN: No, I'm not sure if I know. I think, I mean you're asking my opinion on a legal matter?

HADDEN ROTH: Yes.

MICHAEL SHERMAN: This is my opinion? Well, I hesitate to make a legal opinion without being a lawyer, right, especially to you. You want me to make one anyway, even though I'm not a lawyer, right? Tell me the truth?

HADDEN ROTH: Did you receive when you bought the property any documents that had the word disclosure at the top?

MICHAEL SHERMAN: It sounds plausible to me.

HADDEN ROTH: You don't know? Or you think you did, or you didn't?

MICHAEL SHERMAN: It's the kind of word that could appear on a real estate document.

HADDEN ROTH: Well, that's true. But did you receive one?

MICHAEL SHERMAN: I would, rather than speculate on something that is so conspicuously easy to find, just find the fact.

HADDEN ROTH: Well, then find it.

MICHAEL SHERMAN: Can you, I live 5 minute away. Give me 5 and I'm back here. OK?

HADDEN ROTH: You don't have it with you?

MICHAEL SHERMAN: I may or may not, but there are only two other boxes. He didn't find it in here. It's one of two boxes that I know.

HADDEN ROTH: Why don't you just check and see if you have it here?

MICHAEL SHERMAN: You want me to roll through. . ? How about you because I don't know.

HADDEN ROTH: No, I'm not going to look through it.

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MICHAEL SHERMAN: All right, all right

PETER BASSING: Take you time now.

MICHAEL SHERMAN: All right. There are only two other boxes. If you can give me probably 5 minutes there and 5 minutes back.

HADDEN ROTH: I'm not concerned about what's at your home. I want to know what you have here.

PETER BASSING: (unintelligible) any reason he would have brought it?

HADDEN ROTH: I'm not asking (unintelligible)

PETER BASSING: (unintelligible) request he bring it here?

MICHAEL SHERMAN: Yeah, he didn't ask me to bring anything.

HADDEN ROTH: No, I'm asking whether you have it. That's all I'm asking.

PETER BASSING: He's telling you he might and he'll find out. He's got about two and a half feet of paper here.

MICHAEL SHERMAN: (unintelligible) and I could get her to bring the other . . .

HADDEN ROTH: No, no, no.

MICHAEL SHERMAN: In the time it takes me

HADDEN ROTH: I'm not asking you, I'm asking you if you have it with you.

PETER BASSING: He doesn't know.

MICHAEL SHERMAN: I don't know, but by the time I finish looking for these she could be here.

PETER BASSING: Stop talking and start looking. Hand me some of it I'll look through.

JEFF KROOT: Hadden, I was wondering if while he looks for this are there other questions we can go on to?

HADDEN ROTH: Well, the thing is, maybe the attorney could look for it.

PETER BASSING: I would like to be paying attention to this hearing. I'm willing to stay for as long as it takes to look through these documents that Mr. Roth has requested.

HADDEN ROTH: The only question I'm asking is whether or not you have the document with the word disclosure at the top.

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PETER BASSING: He's answered. He doesn't know.

HADDEN ROTH: If you don't know . . .

MICHAEL SHERMAN: But I can find out within five minutes, you know.

HADDEN ROTH: I don't want you to go outside the room.

MICHAEL SHERMAN: But I can call Rochelle.

HADDEN ROTH: I don't want you to do that. Just look and see what you have. . .

(Conversation regarding Bassing and Sherman regarding looking for the documents)

MICHAEL SHERMAN: That would be in one of the ones at home.

HADDEN ROTH: You don't have it here.

MICHAEL SHERMAN: I don't think so, but I can get it if you need it.

HADDEN ROTH: No, I'm not asking you to get it. I'm asking if you have it with you.

MICHAEL SHERMAN: I don't think so. I think it's at home.

HADDEN ROTH: All right, now, who are these helpers that were referred to? Do you know anything about these helpers?

MICHAEL SHERMAN: Do I know anything about them, like, their life stories? What do you mean know something about them?

HADDEN ROTH: Do you know, did you have helpers up there?

MICHAEL SHERMAN: When I moved in, you mean?

HADDEN ROTH: No, after you moved in.

MICHAEL SHERMAN: Sometimes I have someone come by to help me with setting up, like, there's this one guy that set up the DSL on my computer.

HADDEN ROTH: I'm talking about anything in connection with your tutoring?

MICHAEL SHERMAN: In connection with my tutoring. I do it on my own, I always have.

HADDEN ROTH: You didn't have any help with your tutoring?

MICHAEL SHERMAN: I'm the only guy going out and doing tutoring.

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PETER BASSING: I'm going to raise an objection to the line of questioning.

MICHAEL SHERMAN: This is about the driveway?

PETER BASSING: I would ask for some offer of proof of what it has to do with the acknowledged parking on what has been characterized as a parking turnout. We are not contesting the factual question of whether or not he has been parking on that area. The notice, of which I handed you a copy, raises no issue other than the parking on that area.

JEFF KROOT: I'm going to let Mr. Roth continue.

HADDEN ROTH: Did you have anybody helping you with your tutoring at your residence?

MICHAEL SHERMAN: Do I have, no one helps me tutor at my residence, no.

HADDEN ROTH: Nobody has helped you.

MICHAEL SHERMAN: No. I tutor alone because what I do I like a very unique thing for me.

HADDEN ROTH: What do you tutor?

MICHAEL SHERMAN: Well, I break it into three main areas. I would say it would be like sciences, like bio-chem, physics, math, computers, arts, like religion, music, art, writing and social sciences, which I break into three categories, economics, chronology, and vocation, economics, micro and macro.

HADDEN ROTH: I got the picture.

PETER BASSING: You think he hadn't finishing answering the question?

MICHAEL SHERMAN: You know, you did that too. So I might as well finish saying the rest of what I should. Because you did that too. So often. If you break those down into . . . I'm sorry, you're tired of that. It was just kind of annoying to hear you say that.

HADDEN ROTH: Well, I just want an answer to the question, not comments.

MICHAEL SHERMAN: No, OK, so the rest of the answer, within the chronology department I break it into three parts: politics, history and institutions, within the bio I break it into three parts, which would be microbiology, species, you know the five kingdoms, like protists, planta, fungi. Within the physics and chem. I break it into the middle part, math and models. I could go on.

HADDEN ROTH: No, I wish you'd stop.

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MICHAEL SHERMAN: OK. You know, that what I tutor, I'm mildly into it. I don't know anyone else who does this.

HADDEN ROTH: Do you tutor anybody at your residence?

MICHAEL SHERMAN: I used to but it's been awhile.

HADDEN ROTH: Do you plan to do it in the future?

MICHAEL SHERMAN: If it's illegal I wouldn't. Is it illegal?

HADDEN ROTH: No, I'm asking you whether you plan to . . .

MICHAEL SHERMAN: I'm asking you whether it's illegal.

HADDEN ROTH: You don't ask the questions; you answer them.

MICHAEL SHERMAN: Only if it's legal is the answer.

HADDEN ROTH: So if it's not legal you won't do it.

MICHAEL SHERMAN: Absolutely.

HADDEN ROTH: And you have done it in the past.

MICHAEL SHERMAN: Am I, like, required to answer that. Yes? I have tutored someone in my house in the past. In fact, you know what, I got a letter from Lisa Wight saying that I was allowed to and that's what made me think I could. She said that I had to restrict it to a certain amount of visits per day, but since I've never exceeded one per day I'm well under the requirement. So that's what made me think it was legal.

HADDEN ROTH: How many people do you think you've tutored at your residence?

MICHAEL SHERMAN: Not more than one a day. Ever in the history of my life.

HADDEN ROTH: At 405 Sequoia.

PETER BASSING: At this point I'm going to instruct him not to answer.

HADDEN ROTH: You can't do that in here.

MICHAEL SHERMAN: So now, you're the judge right.

PETER BASSING: This has nothing to do about parking.

JEFF KROOT: I've been allowing people to ask whatever questions they want. So, I was going to allow Mr. Roth to continue his line of questions

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PETER BASSING: I understand and my client is not going to answer them. I'm telling you that I'm instructing him to not answer them because they have nothing to do with the matter for which he has been summoned here. This is not a grand jury. The notice said order to show cause if any he has, why he should not be cited for violating a "regulation" of the Town of San Anselmo concerning parking on the fire turnout. This is not a general review as to his life.

HADDEN ROTH: No further questions; you can step down.

PETER BASSING: I have no more questions.

JEFF KROOT: We may have some questions here. Councilmember Chignell.

PAUL CHIGNELL: Mr. Sherman, you indicated that you did not receive notice of this alleged regulation. But since that has occurred, (unintelligible), let's say that's a given, you have now been given notice, is that correct?

MICHAEL SHERMAN: Well, I don't know if it's correct. This is why. Because you said it's a regulation and so far can you show me where it's a regulation.

PAUL CHIGNELL: No, I'm asking you a question. You don't ask me a question.

MICHAEL SHERMAN: I'm sorry.

PAUL CHIGNELL: If you don't want to answer . . .

MICHAEL SHERMAN: No, no, I want to answer, but I want to make sure. . .

PAUL CHIGNELL: My specific question is you stated you did not have notice. However, at this point in time you have notice, isn't that correct?

MICHAEL SHERMAN: The first question is do I have notice of a regulation. And the answer, from what I understand, is I do not have notice of a regulation, which would be a legally binding document saying I can't park, right?

PAUL CHIGNELL: Do you have notice, Mr. Sherman, at the present time that the Town requires that area to be a turnout for the Fire Department? Do you have notice of that?

PETER BASSING: Do you mean the law of the Town or the personnel of the Town?

PAUL CHIGNELL: Whatever law (unintelligible)

MICHAEL SHERMAN: The answer is yes or not depending on which way you make the distinctions. I'll answer both of them and make sure you understand which one it is. As far as I understand, the no part of that is that I don't have any knowledge of any notice of any regulation preventing me. I do have notice from somebody who has said in the

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town that there is a regulation, but nobody has told me a single one, and if you can come up with one, I'm interested in knowing which one prevents it.

PAUL CHIGNELL: Mr. Sherman, I believe the Town has given you notice that there is to be a fire turnout, and that's a public safety issue. (unintelligible) Having that in mind, why are you not complying?

MICHAEL SHERMAN: Well, I just talked with the Fire Marshall as he was walking away because of the reason that I kind of like decided that it wasn't a regulation. That is, the places nearby are much more valuable for a fire truck than my silly little driveway. My driveway is what's called a fire turnout and I talked with, you know, the fire department, fireman Conroy who explained the difference between a fire turnout and a fire turnaround. Well, to answer your question. A turnout's a place where a fire truck can kind of pull over and a car can drive by. But a turnaround is where a truck can actually get going and turnaround. And the reason that I don't pull out and park in those other spots is that they are much more valuable to a fire truck in an emergency or otherwise.

PAUL CHIGNELL: And why do you substitute your opinion for the Fire Chief and the Fire Marshall, the (unintelligible). Why aren't you complying with what the professionals have said, that this is a fire turnout, it must be that way, it was shown on the map, you've been given sufficient notice (unintelligible).

PETER BASSING: So that the professional

PAUL CHIGNELL: Let me finish the question, please.

PETER BASSING: I'm making an objection to the question.

HADDEN ROTH: Let him finish the question.

PAUL CHIGNELL: The (unintelligible) you have been given the professionals have said, in their professional opinion, they need that for the safety of the community. But now you've been put on notice. Forget the legal niceties Mr. Sherman, why not at this juncture (intelligible), why are you still (unintelligible).

PETER BASSING: Forgetting the legal niceties is that where the. . .

PAUL CHIGNELL: Yes, forgetting the legal niceties, this is an administrative variance (intelligible) Why not put the legal niceties aside, Mr. Sherman, why not comply? This is a public safety issue for the community.

MICHAEL SHERMAN: That's an excellent question I want to make sure I understand correctly, so let me just ask if I understand your question correctly. You said I should put away the legal niceties, did you?

PAUL CHIGNELL: I said, why not put away the legal niceties?

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MICHAEL SHERMAN: Yeah, meaning don't worry about it's being illegal.

PAUL CHIGNELL: Why don't you comply with the public safety issue, rather than putting all of us, including yourself, at risk.

MICHAEL SHERMAN: I want to go beyond the public safety and get even more safe than the situation that has been described to wit. I'm interested in making those fire turnarounds the places that those fire trucks can be. It's a much better thing.

PAUL CHIGNELL: Thank you.

MICHAEL SHERMAN: And, the (unintelligible)

PAUL CHIGNELL: Appreciate your response. Thank you.

PETER KILKUS: Just one simple question. If you had known, if this had been in the deed restriction, would you have bought the house?

MICHAEL SHERMAN: No way, if I'd a known even a tenth of this thing was here I would have passed.

PETER KILKUS: If we do prevail, as this is a safety issue, and that the place must be a turnout, you will sell the house?

MICHAEL SHERMAN: It is a serious consideration.

JEFF KROOT: Mr. Sherman, I have a question. When did you find out that this was considered by the town or the fire department a fire turnout?

MICHAEL SHERMAN: When I got a letter from Lisa Wight about six months after I moved in.

JEFF KROOT: And your response to that was?

MICHAEL SHERMAN: My response when I got the letter?

JEFF KROOT: As I know you are concerned about other fire turnouts.

MICHAEL SHERMAN: When I first got the letter saying, well actually it was not even, it started by saying not so much a fire turnout as a parking restriction, then later it evolved into a fire turnout. So when it started, which was with the parking restriction, my first response was 'I never heard about this; where did ever I hear about this?'

JEFF KROOT: Just one more; I had one more. But you did say earlier, this was her letter of about six months ago was when it was brought to your attention . . .

MICHAEL SHERMAN: It may not be the exact date.

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JEFF KROOT: Well, just approximate. It doesn't matter exactly.

MICHAEL SHERMAN: I'm guessing I moved in in April of last year and roughly maybe in November, October . . .

JEFF KROOT: OK, so at least maybe six months ago, OK. The other is, I had wondered if, I presume you have homeowners insurance.

MICHAEL SHERMAN: Title insurance?

JEFF KROOT: No, homeowners insurance.

MICHAEL SHERMAN: Yes, I have both I think. I'm pretty sure. I'd have to . . .

JEFF KROOT: Homeowners, liability and fire. I was wondering if you had discussed this matter with your insurance broker or agent and what their response was.

MICHAEL SHERMAN: I have discussed it with the title insurance company who said there's nothing saying anything about a fire turnout. If that's what you mean. They said the city's out of line and somebody needs to tell them.

JEFF KROOT: But have you discussed it with your own insurance company on your house and informed them that the Town thinks that the parking is in a fire turnout. Does this affect my insurance in any way? Have you raised that question to the fire insurance company?

MICHAEL SHERMAN: No, I didn't do those because I didn't think it was their jurisdiction. No, I didn't yet.

JEFF KROOT: OK. Thank you, and Peter.

PETER KILKUS: Just a follow up on the mayor's question. You said you learned about this issue six months after you bought the house. But we just heard testimony from one of your neighbor's that she had told you one month after you bought the house.

MICHAEL SHERMAN: She told me a lot of things that weren't true, so I just didn't . . . (interruption from audience). One of the things she wrote down in a letter I have here says that I'm required to park the cars in the garage, even though they don't fit, she says, in that garage.

PETER KILKUS: You have a three-car requirement, your vehicles should be parked in the garage. That much is true.

MICHAEL SHERMAN: That much is true, in spite of the fact that my car won't fit there.

PETER KILKUS: I'm trying to say that's not our problem.

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MICHAEL SHERMAN: So, you're saying the law requires I park in a place I physically can't (unintelligible).

PETER KILKUS: No, if you have vehicles that don't meet the requirements of the garage you find someplace else to park them or buy a vehicle that fits in your garage.

PETER BREEN: One question, a very direct quote from you, "If it's not legal, I will not do it." You said that this evening. You have been advised that it is not legal to park at least one of the vehicles in this turnout area. Why don't you just be reasonable and move the damn truck?

MICHAEL SHERMAN: Well, I've been advised on both sides that it's legal and then, by other people, that it's not legal. I take it this is a court . . .

PETER BREEN: No, we're a Council.

MICHAEL SHERMAN: A Council which is going to make a, well you say we're doing away with legalities here and just kind of going past that, right, the nice little legalities or niceties. So this isn't really legal, it's something else. The reason I don't park somewhere else is it's an incredible burden. If I'm legally bound to it of course I would.

PETER BREEN: You talk, you just mentioned a burden. I think the burden of the death of ten residents above you might be rather heavy on your shoulders also. My point is, why can't you just come to a reasonable conclusion on this, OK, and make a community kind of compromise decision. I'm just looking for consensus, that's all.

PETER BASSING: Mr. Breen, I don't hear any of the other residents volunteering their driveways, and he's not legally required, and his situation is no different from theirs. If he is legally required, this will be determined. But I think it's going to be determined that he's not, and so I don't hear any of the other reasonable people, with so many people above them volunteering their driveways to serve the same function.

PETER BREEN: Well, I asked him, thank you.

MICHAEL SHERMAN: Basically I think any one of the neighbors could offer their driveways but probably like all of them might feel reticent to do so when there are two much better spots. I'd be into reasonably declaring those the fire turnarounds, vital places that are the real salient features in an emergency. They're on either side, on either side of my driveway. One's right on my property, abutting the area, and one's on the other side and the Fire Department people say that's much more in keeping with real useful . . .

JEFF KROOT: One more comment, or question, if I could. In that the Fire Department has called this a turnout, and if there is a possibility that fire engines and cars can get blocked up at that place right in front of your house on the street, and possibly someone could get injured in a fire, and there could be some liability coming out of that, has it

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occurred to you that you could be considered liable for that. That there is a serious health and safety issue that you should put into your calculations while you're doing this?

MICHAEL SHERMAN: Yeah, reason for this forum right here. (Unintelligible) I propose that we use those two, one on either side, much bigger, much better, much more relevant spaces. I have (unintelligible). . . city map. You can see the relevant size. It's exactly what he's asking about. Oh, I'm sorry, you have the floor, right? This is one of the fire places, let me get some orientation for you all. The drive runs like that, and that. And that's 405 over here. And here's the fire turnout. This is an awful big space. I say we use that. It's much more relevant than dickering over this. Secondly, when I talked with the fire department, every time I see them we talk, and I talk to them not just about this, but I'm seriously, you can ask any one them that's talked with me or, I say things not just about this thing. The scotch broom, for instance. Well, on one hand it's helping to stop the fire erosion, on the other hand it goes up like firewood, (unintelligible). What about pulling that, on the one hand, I'm with exactly what you're talking about. I think fire safety is of vital importance. A lot of times, like with the scotch broom, it gets balanced with erosion. There's another way that's much more relevant to the issue. It's not about somebody pulling over here. If there's a fire it's not about putting on your blinker and pulling over. It's about, look at the size of this space. This is just a blowup, I use this kind of paper on purpose, of the city map which (unintelligible). Look at this one over here. Fire trucks can turn around here. . .

PETER BREEN: Excuse me Mr. Mayor. I don't believe we've hired Mr. Sherman as a consultant on fire safety in San Anselmo. I think we're trying to restrict to the issue.

MICHAEL SHERMAN: I'm glad to hear that, and for that reason . . .

PETER BREEN: And the issue is that you're parking in what's listed as a fire turnout. I'm suggesting you move one of the bloody vehicles. That's all.

JEFF KROOT: Yeah, why don't you wrap it up. We actually are familiar with your house and the streets there. All of us have driven up there and are aware of it. So . . .

MICHAEL SHERMAN: That was the answer to why . . .

JEFF KROOT: I tell you, I don't know what to say. I mean, I've been an architect for over thirty years and it just would not occur to me to question a fire marshall's judgement. But, you know, you obviously are, so what can I say.

PAUL CHIGNELL: Are we going to have an opportunity to ask Mr. Roth some questions?

JEFF KROOT: Oh certainly, yeah.

PETER BASSING: We're finished.

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PAUL CHIGNELL: Mr. Bassing raises that very interesting point about the regulation or rule, trouble about that with your case. Can you tell me what your response is to that?

HADDEN ROTH: The language of the code is any regulation adopted pursuant to the code. In my legal opinion, the approval of this project is a regulation. That's the regulation.

PAUL CHIGNELL: So, the approval on the map?

HADDEN ROTH: Well, that's part of it. In other words, the references I made and specifically the endorsement on the map and the approval of that constitutes a regulation of this property. And that's the way I interpret the word regulation. Regulation is not confined to broad term regulations applied everywhere, but specific to one project. This project was approved on the condition, even though it's not an express condition, that there be a fire turnout.

PAUL CHIGNELL: The second issue. . . there has been a constant refrain from Mr. Bassing and his client with regard to notice that he was never noticed, that he wasn't at the public hearings, he didn't build the property, he bought the property, he was never given any notice. Is that a legally . . .

HADDEN ROTH: It's not a legally defensible. A nuisance relates to the property, not to the individual. If there's a nuisance on the property, whether or not you have notice of it, you can't continue to maintain it. There's no legal right to maintain a nuisance. A nuisance exists, and you've been noticed to get rid of it, you've got to get rid of it.

PAUL CHIGNELL: So, even if he had not been given notice at this point of time, he still has a legal obligation to abate.

HADDEN ROTH: Yes.

PAUL CHIGNELL: OK

JEFF KROOT: Any other questions? OK, I'm just thinking we would like to bring this to a conclusion of some sort. I wonder if anyone has a . . . some sort of a motion.

PAUL CHIGNELL: Well, Mr. Mayor, I'll start. I'd just like to say for the record that this is an administrative proceeding so my understanding is the heresay and some of the issues that have tended to transcend the specific narrow point that Mr. Bassing made are relevant in an administrative proceeding, is that right?

HADDEN ROTH: The point here is simply to get the context. It is clear that we should not make a finding that he is in violation of the home occupation ordinance or if he did something wrong by digging in the dirt. That would have to be the subject of another hearing. This is in the context to show his attitude, the reason he doesn't want to move the truck.

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PAUL CHIGNELL: My decision, Mr. Mayor, is based upon the recommendation of the professionals, the Fire Chief and the Fire Marshall. I recognize the fact that Mr. Sherman has a right to live at that premise, I think his vehicles were jutting out into the street on occasion, he remedied that, the Town's appreciative of that, the people living up in the neighborhood are appreciative of that. He remedied that problem. Cars can go up and down the street. But, what he did not do, is recognize the fact that he is legally required to have a turnout at that location for the safety of he and his property and family, and for the people up the hill. And how can we, as a Council, not abate a situation like this when we have the Fire Chief and the Fire Marshall saying it is required for public safety reasons and it is specifically delineated on the map that was available when the property was built and was one of the conditions, albeit not a written condition, but it was one of the conditions in the resolution. So I think there is no other way to go. The sad part is I don't understand how a learned individual, as you are asking Councilmember Breen, cannot bring a common sense solution to this. Mr. Bassing's common sense solution is to send this to another learned attorney or two to arbitrate the two positions, which, you know, will just keep this legal business going on and on and on. I think the common sense thing is for Mr. Sherman, as a valued member of the community, from what many people have written on those petitions that you sent out, would adopt a reasonable standard here and remove the vehicle from the pad. So that if there is a conflagration up there, God, hopefully there's not going to be, that a fire truck and people can get through. And people can get through from down the hill. It's just a reasonable issue. So I would vote to state that he has committed a public nuisance and that we have to, unfortunately, abate and proceed with this.

PETER KILKUS: I visited the site and I can make all the same arguments, there's a bigger turnout farther down, there's a bigger turnout, etc. etc., there's hundreds of places that could be done better. The issue is that it was done correctly at the beginning. It was laid out under the fire codes. And, as sympathetic as I am to some of the arguments, I just don't see it as anything but our responsibility to move forward with the abatement. It's just one of those things that we may not want to do things we don't like to do, but when we finally find out what the right thing to do is, it's time to do it.

PETER BREEN: I don't think this is an administrative hearing about baggies, I don't think it's about ponytails, I don't think it's about ugly trucks. I think it's about a safety issue in this community. And I will support the abatement of this nuisance since you refuse to cooperate with us and try to reach a reasonable solution.

JEFF KROOT: And, I'm coming from the same place. We've had testimony from the Fire Marshall that it's a fire turnout, it says it on the drawings. It's clearly a safety issue. I would be derelict in my duty to the residents of San Anselmo and to the residents who live further up the hill if I didn't support this as a fire turnout. I also think the town conceivably could be liable for any injuries that were caused to someone in a fire. So in my position with the Town I have to support this as a fire turnout. We are only talking about one vehicle, in one place there. I would hope that Mr. Sherman would look at it and find another, better place that allows this to be used for what it was intended. One

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other comment as an architect, also, you may not be aware of it, for years houses were built with very minimal codes and then over time the Fire Department, through legal actions and lawsuits and so forth and injuries has learned what needs to be done to make it a fire safe community so every house is looked at for these same sort of fire issues, and the fire safety of residents who live beyond everything from sprinklers and fire ladders and safe ways to exit residents, things that weren't done just a few years ago. Although there may be many other places in the town, it would be nice if they were improved, and they will be improved when those houses become remodeled. But yours is a new house and does have this required fire turnout and I can't turn my back on it. So .

HADDEN ROTH: Just before you vote on it, my recommendation (unintelligible) major determination and we'll put this over for two weeks. The different options that would be available: 1) first to give Mr. Sherman an opportunity to remedy the situation in line with the Council's decision and a certain amount of time to do that and in that time if it's not time, either or both impose administrative penalties, which could go up to \$1,000 a day, or direct the Town Attorney to file a civil action to ask the court to enjoin the . . .

JEFF KROOT: Would those sort of decisions be made this evening?

HADDEN ROTH: Well, what I was thinking is that you make your decision, what it looks like you're going to make, put the matter over for a resolution and at that time, in two weeks make a determination what the remedy should be.

JEFF KROOT: OK. And if at all possible, hopefully Mr. Sherman can find another place for his truck in those two weeks and that will be that. Can anyone make that motion?

PAUL CHIGNELL: Yes, Mr. Mayor, I'll be pleased to make the motion that the placement of vehicles in the place reserved for a fire turnout, preventing access by fire trucks during a fire or other emergency is in violation of regulation adopted pursuant to the San Anselmo Municipal Code, that we held a duly-noticed hearing today, heard witnesses and testimony and deliberated, and determined that that was in fact a public nuisance at that location, 405 Sequoia Drive; that Mr. Sherman, the property owner, is responsible for that public nuisance and that a formal resolution be brought back to this Council at the second Tuesday in September for Council deliberation.

HADDEN ROTH: One thing I need for housekeeping . . . the exhibits I introduced I want to mark as follows: Notice of hearing and declaration of mailing, two documents, Exhibit No. 1; Resolution No. 2465, Exhibit No. 2; the plans that are on the wall, Exhibit No. 3; the section, the cross section of the plans, Exhibit No. 4; the memo of Steve Fisher, Exhibit No. 5; the file pertaining to the turnout, prepared by Lisa Wight, Exhibit No. 6; photos of the turnout and the letter with that (unintelligible), Exhibit No. 7.

PETER BASSING: May I have marked as A the property restriction, B the notice of this hearing.

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PAUL CHIGNELL: My motion will incorporate both the exhibits of the Town Attorney and Mr. Bassing.

PETER BREEN: I'll second.

JEFF KROOT: Seconded by Breen, is there any further discussion? All those in favor of the motion signify by saying "Aye."

KROOT, CHIGNELL, BREEN, KILKUS SAID AYE.

JEFF KROOT: And that was unanimous.

HADDEN ROTH: The hearing is still continued to

JEFF KROOT: It would be continued, yes, two weeks, that was part of the motion.

PETER BASSING: What is that date?

JEFF KROOT: The second Tuesday of September.

PAUL CHIGNELL: That's the 11<sup>th</sup>.

Unintelligible comments from the audience:

JEFF KROOT: All right, about this item? I wish you'd made, oh, you were waiting for open hearing? I tell you what, why don't you go ahead and make a . . . we've actually closed the . . . Mr. Iwanaga, a neighbor.

GIL IWANAGA: My name's Gil Iwanaga, 409 Sequoia Drive, directly adjacent to the property of Mr. Sherman. I want to say, to begin with, that all my dealings with Mr. And Mrs. Sherman have been amicable and straightforward. As to the issue of his trucks, I'm not a fan of the trucks, but there's still no laws about what kind of truck or what they look like. It's his business, as long as it's legal and not dangerous, I have no objection to his business. All along on this 405 Sequoia Drive project, my primary objections have always been the granting of the variance encroaching in to the 20 foot variance. The primary items that were brought by him indicate that because of that turnaround, the property needed to be pushed into that variance area and the variance was granted. I want to make sure that if the town does not prevail, that I expended significant time and expense in bringing those items to bear. I just want to make that statement.

JEFF KROOT: OK, thank you. Let's see, at this time we are complete with item 2.

Transcript prepared by:

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Debra Stutsman, Town Clerk