

The special meeting of the San Anselmo Planning Commission Meeting was called to order on May 12, 1988, at 8:00 p.m. by Commissioner Sias. Staff present: John Roberto, Planning Consultant.

A. ROLL CALL

Commissioners present: Manning, Julin, Yarish, Sias
Commissioners absent: Harle, Hayes

B. ITEMS FOR APPROVAL

AR-6 - Quarry Mountain, Incorporated, Tomohawk Drive, Units 4, 5, 9 and 10, A/P nos. 177-220-50, 177-250-40, and 177-250-41, review of roof color.

John Roberto stated that the roofs are ready to be constructed and the exterior colors have not been determined by the Planning Commission. It was an oversight by the developer not to contact the Town before now to get approval on colors. He indicated that it was not necessary to hold a public hearing but out of courtesy, a notice was posted at the site.

Commissioner Julin felt the color of the roof is part of the color palate and that it should all be presented at one time. This is especially true because it is such a controversial project. In December she told the applicant that they should submit the color palate as quickly as possible. She felt the neighbors should have due process.

Commissioner Yarish said he could consider approving the roof color if it was neutral, although he would prefer seeing the whole palate.

Bruce Burman said he understood the point of view of the Commission but because of an oversight they did not get approval. He felt it is impossible to stop roofing because of their time constraints but the colors they have chosen are dark and basic.

Commissioner Sias asked when the complete color palate would be ready for review. Mr. Roberto said the first meeting in June.

Commissioner Manning said he felt the Commission would be exercising a fair amount of control over the colors if they are limited to basic colors, and it would be a hardship on the applicant if they had to wait three additional weeks.

Commissioner Sias felt this project was very controversial and highly visible and he wanted to see the entire palate before making a decision.

Bruce Burman said because of his time constraints he will have to roof without the permission of the Commission if they can not make a decision tonight. If necessary, he will change the roofs color in the future if they prove to be unacceptable. He was asking for color guidelines from the Commission if they could not make a decision.

John Roberto restated that no public notice is necessary, just approval from the Planning Commission on the colors.

Commissioner Yarish felt the neutrality of the color would allow for flexibility in the color palate. Further there seems to be a minimal amount of roof visibility associated with the design and waiting would be a hardship on the developer.

Because a decision could not be reached at this meeting, the application will next be heard at the public hearing in June at which time the complete color palate will be ready.

C. PUBLIC HEARING

PP-10/V-2209 - Lee Cole Properties, The Alameda, South of 443 The Alameda, A/P 177-220-54, to construct a driveway within the existing easement to provide access to a property located in the County of Marin jurisdiction (required by SAMC Section 10-3.1906(a)); and review of the mitigated Negative Declaration (referred back to Planning Commission by Town Council).

Michael Carradine, representative, present.

John Roberto presented the staff report dated May 12, 1988.

Jan Back, 439 The Alameda, stated the information presented tonight is no different than at the previous meetings and she wanted to know why the Town is paying for staff time and why is the Planning Commission hearing this application when the proposed house is in the County.

Frank Burger, 324 The Alameda, has carefully read the documents in the file and believes that no new information is being presented. Regarding the soils report, the last report does not seem to have any additional information in it than the previous ones. Regarding the EIR, it is the same as on the November 12, 1987 check list and does not feel that it is appropriate. There should be a new one completed for this parcel. He strongly feels that a focused EIR is necessary before this project can be considered. Regarding the long range affects of the driveway, he would like to see that it and the trees that will be removed be staked. Regarding flooding, he wondered if the Town was assuming liability by requesting the \$15,000 from the applicant for the improvements. Regarding traffic, one home will generate 6 to 8 trips a day and he feels the developer should be required to upgrade the roads. Regarding the Negative Declaration, if one house is approved it would be difficult to deny other homes in the future. He felt that the ridge line and open space should be addressed along with perhaps having the developer post a bond for road improvements.

Joe Arone, 424 The Alameda, wanted to know why the Commission has to hear this application again when they have already denied it and why staff is now directing the Commission to approve it. He said that if one home is approved, it will open the door for more. He feels there needs to be a focused EIR before proceeding any further.

Johnathan Braun, 479 Scenic, supported the comments of Frank Burger, adding that while the parcel is not contiguous to open space land it is close to the Open Space District. He suggested if the variance is approved there be a pedestrian and equestrian easement.

Alan Freidman, 500 The Alameda, is concerned because his house is right below the site. During several severe storms an avalanche of water has repeatedly run off the site, destroying his landscaping and kitchen. The Soils Engineers he hired felt that the applicant's site is unsafe.

Charles Richardson, 429 The Alameda, said the proposed culvert will go under his house and there has been no examination as to whether the culvert will handle it. Also, no one has talked to the property owners affected by this culvert. He also does not think it is a legal lot.

Dan Goltz, 107 Holstein, with regards to the legal question of it being a land locked parcel - this is called planning by legal loop hole. The Town has the right to ask the applicant to have a complete application. Any R-1 H parcel must have a Preliminary Plan and this one has not. There should be a Preliminary Plan of what will happen to the other three parcels. If a variance is granted the Planning Commission is going to make it impossible for the applicant to gain on street siting of the homes on The Alameda. How will the other three parcels be accessed or sited? He felt the parcel should be annexed to the Town.

Jim Jacobson, 400 The Alameda, said the applicant would abide by the soils reports but the report dated April 2, 1980 says that no test borings were done in the roadway.

Frank Burger, presented a letter from Supervisor Harold Brown and read it to the Commission.

Commissioner Yarish asked if the culvert size could be increased? He wanted more information on the drainage issue.

Commissioner Julin wanted to know if the applicant has paid his outstanding bill with the Town and if not, how much is still owed. Mr. Carradine said the three additional home sites owned by J. K. Naylor are in bankruptcy. The amount still owed on his bill is approximately \$2,500 for this parcel. Commissioner Julin said the EIR checklist was prepared on all the parcels and wondered why there wasn't a new one prepared for this parcel. Commissioner Julin wanted a breakdown on what the \$15,000 would cover. Regarding the soils report, does it include the roadway? Mr. Roberto said the report of December 11, 1987 addresses roadway exclusively. Commissioner Julin also raised the question of multiple deeding of the easement and still was unclear on this issue. Lastly, she said the Town is processing an application for a parcel that is in the County and would therefore like to see this parcel annexed to the Town.

Vivianne Bramy, 411 The Alameda, wondered why the Town should take responsibility to annex the parcel.

Don Goltz, 107 Holstein, did not realize the Town would have to pay for the annexation and again stated that because this parcel was R1-H that there needs to be a Preliminary Plan. The applicant has represented that this is part of a bigger application and that he has already indicated that he does not propose to develop those lots with access directly from the street. That is germane to this problem. The law says he needs a Preliminary Plan. He expects to conform to the Planning Commission denial for variances and at the same time gain access to the upper properties. He feels that applicant should take the application back and show the Commission how the other properties will be accessed. There is no reason why the Commission has to approve this application at this time.

John Roberto said that he, as staff, could not require a Preliminary Plan for the Naylor properties. Lee Cole properties is exercising their right to take access over the easement through the Naylor properties. We are only looking at someone wanting to improve an existing easement.

Commissioner Manning, feels very strongly that the Commission should not proceed on this application until the applicant has paid back fees and that Mr. Carradine has an obligation to the Town to pay those fees. Also, there is concern about the determination of a legal non conforming use of the lot. Perhaps that it is not a fundamentally sound proposition. He thinks the County made certain assumptions without looking at it in depth. It seems the

owner should come forward and make that showing. Also, this is a Nevada Corporation and the owner legally has no right to conduct business in California and therefore we have no obligation to proceed.

Mr. Carradine said that Lee Cole is not doing business in the State, they are only a holding property.

Mr. Roberto said he will have to defer to Commissioner Manning and asked that a memo be drafted to the Town Attorney.

Joe Arone, 424 The Alameda asked Mr. Carradine if it is really true that Mr. Harry Johnson is the owner of Lee Cole Properties. Mr. Carradine responded by saying no.

Jan Back, 439 The Alameda, wondered if the roadway was owned by Lee Cole or is it owned by the three parcels in bankruptcy. Mr. Carradine said it was not part of the bankruptcy.

There were several questions from the audience and the Commission relating to the roadway and the three parcels that are no longer part of this application and the long range effect if a roadway is approved.

John Roberto said that Lee Cole properties and J. K. Naylor have decided to split and are going to apply as separate applications. He said he sees the effects of the road but also sees the right of Lee Cole to use the easement and build on the lot. The Town Attorney has said we must proceed and therefore he can not recommend a denial, but has suggested that several conditions be placed on the approval. However, the Commission has to make the final decision.

Commissioner Sias felt there were many unanswered questions about what the \$15,000 specifically includes, unresolved questions on drainage, and questions about grading and paving. He wants to insure that if this application is approved that grading be kept at a minimum, that the driveway and trees be staked out and he still had questions on what effect the driveway had on the development of the other three properties.

John Roberto explained that the three properties in the Town do have frontage on to The Alameda. That the application before the Commission is a variance to pave an already existing driveway easement. The Town has in its records (1) soils reports from licensed soils engineers on the roadway and (2) a memo from the Town Engineer addressing how the run off can be handled.

Commission Yarish wanted to know if Mr. Carradine would be willing to provide the following: 1. Pedestrian and equestrian easement; 2. A roadway bond for improvements to The Alameda; 3. Provide a plan for direct access to each of the three properties from The Alameda; 4. Provide further detailing regarding mitigation of flooding of the lower area.

Mr. Carradine responded as follows: 1. Lee Cole Properties can not grant pedestrian and equestrian easements on land he does not own and that is also in a state of bankruptcy. It would be appropriate to ask J. K. Naylor that question when he applies to the Commission. 2. Regarding the bond, he would accept further discussion. 3. Regarding accessing from The Alameda, the three properties are in a state of bankruptcy. 4. It comes as a surprise that further details have not been provided by the Town. He would prefer to pay the mitigation fee to the Town then we will not have to get involved with any reconstruction on, or near private

property. Regarding the debris rack, he gave an explanation of what the Town Engineer was proposing as a solution to the existing problem.

Commissioner Manning wanted to know if Lee Cole is a creditor of J.K. Naylor. Carradine said no. Commissioner Manning wanted to know what form of bankruptcy the Naylor property was in and is Lee Cole attempting to purchase these properties. Mr. Carradine said it was a reorganization and he did not think Lee Cole Properties is preparing to purchase the Naylor properties but he has no way of knowing. He has heard some discussion that J.K. Naylor might be selling the properties separately. Commissioner Manning did not feel prepared to act on the Negative Declaration because of the unanswered questions on drainage and flooding. He was in favor of a focused EIR.

Commissioner Yarish was in favor of a road improvement bond of approximately \$25,000. He was concerned about the growth inducing impact and prefer that the bottom portion of the driveway be reconfigured to allow houses to be built on the lower portion of the site.

Commissioner Julin was also concerned about the growth inducing impact. She wondered how the Commission could put a condition on the Naylor properties when they are in the County. She feels very uncomfortable about the ownership of the easement.

John Roberto said the Town can not take away the rights of Naylor to use the easement but Naylor will need a variance to pave.

Commissioner Sias could not make a decision because of so many unanswered questions and felt his colleagues had the same concerns. He suggested a continuance to discuss the drainage questions at another meeting with the Town Engineer and perhaps the legal questions should be addressed with at the Town Attorney. His questions related to hydrologic solutions; breakdown of \$15,000 mitigation fee; all the options available to the Commission for the applicant; construction of road details and a construction management plan; and effects of growth inducement along with annexation to the Town.

John Roberto said the three Naylor parcels are not growth inducing because they have frontage on The Alameda. They do not have a barrier to access. The question is if these property owners burden themselves by the creation of this easement by their own will, and create the hardship upon themselves, is the Town required to get them out of it by creating variances. The hardship can not be created by the applicant. It has to be the nature of the land. If the applicant created the hardship then there may be no reason to create the variance for the other three properties.

Mr. Carradine said the easement was created in the 1960's when there was no special requirements. Variance requirements came after the easement was created so the Commission can't use hardship to stop the houses from being built. The houses can be built. The discussion of growth inducement should only be related to the Carrie Property and we know it is only zoned for one house on the applicant's property with access for only two other building sites. The Commission should only be discussing the Lee Cole Properties at this time, not the J.K. Naylor Properties.

There was discussion among the Commissioners and Mr. Roberto about the deadlines relating to this application.

M/S Yarish, Manning to continue PP-10\V-2209 - Lee Cole Properties, The Alameda, South of 443 The Alameda, A/P 177-220-54 to the regular meeting of May 16, 1988 for the purpose of obtaining additional information from the Town Engineer and Town Attorney so for further deliberations of this Commission regarding the Negative Declaration and the Variance request.

Motion passed unanimously.

Mr. Burger requested that a copy of the soils report be forwarded to the Town Hall prior to the next meeting.

Roberta Stoddard, 444 The Alameda, wanted to know if the applicant could stake out the property prior to the next meeting. Mr. Carradine said there would not be enough time to accomplish this before the next meeting.

D. APPROVAL OF MINUTES - April 18, 1988 and May 2, 1988

M/S Julin, Yarish to approve minutes of April 18, 1988 as written. All ayes. Motion Passed.

M/S Julin, Yarish to approve minutes of May 2, 1988 as written. Ayes: Julin, Yarish, Sias. Abstain: Manning.

E. ADJOURNMENT

The special meeting of the Planning Commission was adjourned at 11:10 p.m. to the next regular meeting of Monday May 12, 1988 at 8:00 p.m.

BARBARA CHAMBERS
Administrative Secretary/Technician