

**TOWN OF SAN ANSELMO  
PLANNING COMMISSION MINUTES OF JUNE 15, 1992**

The regular meeting of the Planning Commission was convened at 8:00 p.m. in the Council Chamber by Chairman Kroot. Commissioner's present were: Harle, Sias, Julin and Mihaly. Staff present were: Planning Director Ann Chaney and Planning Consultant Lisa Newman.

**B. CONSENT**

1. Minutes - June 1, 1992

**C. PUBLIC HEARINGS - CONTINUED**

1. **V-9208 - John Oldfather and Holly Ford, 158 Pine Street, A/P 7-251-31,** 1) a 4'8" side yard variance; and 2) a 1' front yard variance to construct a second floor addition; and 3) a two car parking variance to locate parking within the front and side yards, on property located within the R-1 Zoning District. CONTINUED TO THE MEETING OF AUGUST 17, 1992

2. **Water Well Ordinance - Town of San Anselmo** - A General Plan Amendment and Ordinance Code Amendment to allow private domestic water systems and the adoption of a well ordinance relative to their construction, reconstruction, maintenance, removal and monitoring. CONTINUED TO THE MEETING OF JULY 6, 1992

3. **V-9213 - Harry Kraft, 214 The Alameda, A/P 5-054-07,** a 20' front yard and 8' side yard variance to allow a 7'3" existing fence and trellis structure to remain within 0' of the front and side property line, on property located in the R-1 Zoning District. AFTER-THE-FACT. - CONTINUED TO THE MEETING OF JUNE 29, 1992

4. **DR-9208 - Robert and Vicki Gerstenkorn, 241 Oak Springs, A/P 5-293-16,** Design Review to construct an addition, on property located within the R-1 Zoning District (above 150 feet mean sea level). CONTINUED TO THE MEETING OF JULY 6, 1992.

5. **V-9210 - Dean and Diana Randle, 13-A Smith Lane, A/P 6-251-20,** a 10' street sideyard variance, a 2' east sideyard variance, and a 2' rearyard variance to construct a second story living addition within 2' of the street side property line, within 6' of the east side property line, and within 18' of the rear property line, with a 2' roof overhang; and 2) a 2' street sideyard variance to construct a new enlarged covered front porch within 10' of the street side property line; and 3) a parking variance to allow substandard parking to remain, on property located within the R-1 Zoning District. CONTINUED TO JUNE 29, 1992

**D. PUBLIC HEARINGS**

1. **DR-9210/PDP-9201/LLR-9202 - Michael Gill, 663 Oak Avenue, A/P 7-154-07,** 1) Design review and Precise Development Plan for the construction of a new 4,994 square foot single family dwelling with detached garage/guest quarters on a 3.25 acre parcel and demolition of existing single family home and illegal second unit. The project also includes the construction of a 40,450 gallon water tank; and 2) Lot Line Relocation to exchange an equivalent amount of land between 7-201-10 (neighboring parcel) and 7-154-07 (subject parcel) on property located within the R-1H Zoning District.

The applicant's, Neil Sorensen their Attorney, and Scott Hochstrasser their Consultant, were present.

Lisa Newman presented the staff report, going into detail about the project description, including background information on the site, environmental determinations, ridge line and ridge zone information relative to this project, visual impact, public access, and public services. Staff presented an analysis on the project, including design review, and lot line relocation.

Ms. Newman presented photographs of the site as well as a visual simulation as viewed from the distance at the foot of San Francisco Blvd. She noted that it was almost impossible to view the proposed dwelling and the simulation was done without planting new vegetation on the site.

Ms. Newman passed out modifications to the Staff Report Conditions of Approval.

Modifications were as follows:

#3. Rerword as follows: No heritage trees (more than 75 inches in circumference) shall be removed from the site without first notifying the Planning Director, making application for a tree removal permit, and being granted permit approval. Removal of trees not specifically identified on the Precise Development Plan for removal (PD-1 dated 9-26-91) shall be considered a modification of the Precise Development Plan. Therefore, no additional trees may be removed without first notifying the Planning Director for an administrative review and approval. The Planning Director's decision may be appealed to the Planning Commission.

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#14. Add the following text to the end of this condition: No more than two households shall be served from the 40,450 gallon water tank.

**New Conditions To Be Added:**

1. The owner(s) shall waive their rights to refusal to establish a future public access easement along the dirt road connecting Worn Springs Road and the driveway to the subject site (#663 Oak Avenue). This condition shall be recorded prior to issuance of a building permit.

2. The building elevations shall be modified to indicate that no areas below the main floor can be used as potential living space (i.e. that no space greater than 8'x10' has a ceiling height of 7.5' or more). In order to ensure this, the applicant may do one of the following: 1) Reduce the understory area by lowering the building; 2) construct a sub floor with headroom less than 7.5'. 3) Increase backfill to raise the ground elevation sufficiently for the understory to have less than 7.5' clearance.

3. The design recommendations of the Salem Howe geotechnical report dated August 23, 1991 shall be incorporated as part of the Precise Development Plan and implemented.

Director Chaney stated that Interim Public Works Director John Hill and the applicant's surveyors differ with regard to where the ridge line drops off. The orange line on the map indicates where Mr. Hill feels the ridge line is and that it then dies off in the field and that the finger indicated on the map was not part of the ridge.

Commissioner Harle explained that the line was drawn on the General Plan Map to define a zone area for visual effect. The definition can differ depending where the site is viewed from. He felt the definition of ridge zone in the General Plan was inadequate.

Commissioner Harle noted that the area of the lot line relocation could be a future building site. Ms. Chaney said that density in the General Plan allows for a maximum of three houses on the Gill property and staff did not feel that the even change of property of the Gills and Broakrick lands would jeopardize that density maximum on either property.

Commissioner Julin asked why the Initial Study was not in the staff report. She wondered what kind of impact fees besides school fees would be required. Ms. Newman responded that an Initial Study was not prepared in this instance because there were no significant impacts relating to this project.

Mr. Gill stated that his wife grew up in Mill Valley and he lived in Marin in the 70's and 80's and then moved to Chicago for business reasons. He said they view this as a homecoming and their intent is to live in this new house and raise their family. They have tried very hard to be sensitive to the environment, the intent of the General Plan and want to create a balance from a homeowner's approach as well as to preserve the land. They have done a lot of planning to be sensitive to preserve the public interest. The utilities will go underground and they agree to build a berm along Warn Spring Road.

Scott Hochstrasser stated that he has worked very closely with staff and is in agreement with most of the statements in the staff report except for some modifications to the conditions and the location of the ridge line. He stated that there has been a lot of debate as to the location of the ridge line. There have been many trips to the site, with staff, the Town Engineer, Open Space Committee members, the Commission as well as the public. He said that they had the area surveyed and it showed that the line was clearly off the Gill property and therefore it differed from that of the Town Engineer. He stated that he documented his concerns about the differences in a letter dated March 23, 1992 to the Planning Director. He presented a demonstration of where and how the surveyor defined the ridge line and the difference between his surveyor and that of the Town Engineer. He said that the location of the proposed house was specifically picked because it would be below the ridge line. If the house had to be reduced to 30 feet from the proposed 35 feet, the house would have to be moved lower down the slope and cut into the hill and would be more visible than the present location. With regard to staff's conditions of approval, Mr. Hochstrasser had the following comments: Staff's Recommended Condition #1: "They object to this condition and request that this condition be eliminated. It is our strong belief that the proposed house is not located within the Ridge Zone and in accordance with the zoning code a maximum height of 35 feet is permitted. The proposed house does not exceed the 35 foot maximum height allowed." Applicant's Recommended Condition #1. "The new single family house proposed for development at 663 Oak Avenue shall be constructed as proposed on the project drawings and shall not exceed the 35 foot maximum building height permitted by the zoning. Staff's Recommended Condition #6: "We object to this condition because it only specifies two of the Ross Valley Fire Department requirements namely the sprinkler system and the new water tank. We must also build a fire road with a turn around, fire hydrant and comply with fire safety building standards. To be clear the condition should be modified as follows." Applicant's Recommended Condition #6. The applicant shall satisfy all of the requirements of the Ross Valley Fire Department. Design approval of a 40,450 gallon water tank is granted and a

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building permit for the tank much be secured prior to construction. Staff's Recommended Condition # 11. "Staff found, based on the visual analysis that was prepared at applicants expense, both time and money, that the project has no visual impact. The condition to require a revised landscape to: eliminate the view of the building understory and first floor, and substantially screen the view of the upper story is not necessary. We understand that staff may want revisions to the landscape plan to soften the building elevations. We do not object to working with staff on minor revisions to the landscape plan. However, to require a significant changes that would require additional meetings at the Planning Commission seems time consuming for both the applicant and your Commission." Applicant's Recommended Condition #11. The landscape plan at the northwest building elevation should be augmented to include vines, shrubbery to soften the building elevation at the building understory and the first floor elevation. The revised landscape plan shall be reviewed and approved by the Planning Director and the applicant. Staff Recommended Condition #13. "We strongly object to this condition for several reasons. First, the easement location is not safe for walking due to steep unstable slopes and vegetation. Construction of a trail in this location would create great liability for the applicant, the adjacent property owner and the Town. Secondly, the trail location is not consistent with the General Plan. Finally, we believe that this condition maybe a taking of the applicants property without compensation." Applicant's Recommended Condition 13. Eliminate this condition. Staff's Recommended Condition 14. "The wording of this condition should be corrected to be more direct. The "evidence" is a letter from MMWD stating that the requirements for water service have been met. Secondly, the applicant should not be denied a building permit if the adjacent property has not arranged water service from MMWD." Applicant's Recommended Condition #14. Prior to the issuance of a building permit, the applicant shall submit a letter from MMWD which states that all water service requirements for the project have been met.

Commissioner Mihaly asked about the applicant's condition #11. Mr. Hochstrasser stated the Negative Declaration stated that no mitigated negative Declaration was required because the house was hidden by vegetation and there is no visual impact. The applicant has no objection to softening the area with additional vegetation. Commissioner Mihaly further asked if the owner wanted to remove any trees, under the applicant's wording for condition #11, would the Town have any recourse. Director Chaney responded that in Staff's Condition #3, wording was such that no trees were to be removed and this should be recorded so there will be no question with current or future owners. Therefore suggest Condition #3 have a recordation statement.

Neil Sorensen, Attorney for Mr. and Mrs. Gill, addressed the issue of Condition #13 regarding a pedestrian easement over a portion of the property. He said that under a development agreement, the Government Code states that the Town and the applicant have to agree to enter into a development contract that allows the applicant to have vested rights and this is usually used for large subdivisions or commercial property. He did not think this was what staff meant because he was not aware of a Town Ordinance or Resolution that implements that Government Code section. Also, the concept of the development agreement requires the meeting of two minds, the applicant and the Town to agree that a certain kind of development will occur. He stated that the second issue was substantive and that deals with the idea of whether there should be an easement or not. His client is opposed at this time to the creation on an easement on this parcel for the following reasons:

1) It is a piece-meal approach; 2) it doesn't make much sense to put the easement in the area requested; and 3)it is inconsistent with the General Plan. The end of Oak Avenue does not border the Gill property. It is quite a distance down on Oak Avenue and there is no intervening access. This could encourage trespassing, and there is not adequate parking to accommodate hikers. The General Plan Map 5, Open Space Conservation Map, states that trails should be on a private road, not on the Gill property. The proposed location to the rear of the property presents physical problems in that it is steep, heavily wooded and not the best location for a trail. With regard to the legal issue of a pedestrian easement, he asked what the applicant would gain from this. Mr. Gill is not building on or near a trail and therefore there is no legal basis for requiring this. They met with the Open Space Committee and have no object to the concept, they object to the specifics of putting the easement on this particular part of the property for the reasons stated. With regard to Staff's Modification to Condition #3 regarding trees, he objects to the wording because it will not allow for removal of trees for fire protection and it is not feasible to have to contact the Planning Director each time safety pruning is necessary. He questioned the Town's authority in requiring this outside of the regular Town Ordinance regarding trees. He suggested setting a certain size, perhaps set a diameter limit. With regard to Modification to Condition #14, he said this was within the purview of the Fire Department and Water District, not the Planning Department. With regard to the New Conditions To Be Added by Staff, he had no object to # 2 or #3 but objected to # 1, because it is asking the Gill's to give up future property rights that really have no direct bearing on this application and therefore considers this a nexus issue. He is also being asked to give up property rights without due regard to what may happen in the future. He was also not sure that there was any authority in the Zoning Ordinance or General Plan to require the waiver of future rights.

Commissioner Mihaly stated that if Condition #14 were not allowed how would the Planning

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Commission be able to make the finding necessary to support the negative declaration. He also asked if the Gills would be interested in entering into a quit claim deed instead. Mr. Sorensen stated that with regard to Condition #14, the Gills have been informed by MMWD that is the size tank required. With regard to the quit claim, the question would be difficult to answer without a valid reason for the quit claim deed..

Jonathan Braun 479 Scenic, stated that as Vice Chair of the Open Space Committee he had the following comments. The Open Space Report presented in the staff report was not prepared for this project, rather for a project years ago. The Open Space Committee met with the Gills in August 1991 for the purpose of interacting with the applicants in the hope of purchasing the parcel as specified in the General Plan. This is a green belt area, and they are adjacent to 18,000 acres of public water shed land which is occupied by many trails and fire roads. It has been used by thousands of people over the years for recreational use. He said that they want to preserve and protect the ridge as well as the hillside areas, the recreational issues, and trail system to service these open space areas. The Gills however want to build their home and are not interested in selling. He quoted Policy 4.4 of the Open Space Element of the General Plan which establishes a requirement for public access through this property. "Subdivision and development proposals for properties adjacent to or abutting existing or planned public open space shall include provisions for providing public access over a trail system. Trails should be provided separate from roadways and sidewalks." He quoted Policy 4.7 which states that "the Town will require, as part of the subdivision or development proposal, the installation of a trail system on subject property as shown on the adopted open space conservation map". He said there were solutions to the potential problem of too many vehicles accessing Oak Avenue to reach the open space trails. The roadway could be posted to state no vehicles allowed or no parking allowed, an electric gate could be installed to ensure privacy and protection for the private property owners. He also stated that with regard to liability, Civil Code 946 that states there protections already in place for property owners. With regard to the layout of the trail system. He would like to see a section of Oak Avenue to continue to Warm Springs Road on the dirt portion. With Regard to Policy 4.4, he felt this was the right time to implement this conceptually, with the details to be worked out. He stated that Warn Springs Road was a major therefore for hikers. He felt there was a need to look at cumulative growth of the 13 potential houses in the area at this time and would like a specific plan that indicates potential growth. Perhaps an Environmental Impact Report should be prepared. With regard to his personal comments he stated that by standing on the deck of his Father's home on Scenic, we was able to view four story poles where the proposed house will be. The north elevation will have a considerable impact on him. He would like to see the trim made darker and see more rapid growing trees used. He also stated that the plans for the water tank do not show any road for access. Would there be a need to remove trees for the installation of the leech field. He would like to see that. He also wanted to know what kind of construction vehicles are to be used and how many trips would be necessary. The information that he has seen does not seem realistic at all. He concurs with staff's analysis of where the ridge line is.

Lloyd Denfield, 600 Oak, had no objection for the Gills to build on their property but was opposed to a public easement that would create additional traffic. He also wondered who would maintain the private road if the easement was granted.

Bill Albright, 190 Oak Avenue, felt that an enormous estate was going to be constructed which will change the character of Bald Hill. His peace would be disrupted by the construction vehicles. He was opposed to the possibility of hooking up to the sewer system because of the potential growth inducement. And he was generally concerned about this project opening the flood gates for more development.

Jerry Draper, 295 Los Angeles Blvd, stated that the questions really is the location of the ridge and ridge line. He stated that it was very clear to him of the location of the ridge line when he was on the site. He stated that by looking at the second telephone pole on Warn Springs, site up the pole and count seven posts up and then it is obvious that the ridge dies out into Bald Hill. He also noted that the green line on the Open Space Conservation Map does not exactly correspond with the General Plan. He said that maps are open to interpretation and there is a margin for error. He urged the Commission not to grant the height because there would be precedent setting. He felt that the architect for this project should be able to reduce the height of the house by 5 feet without too much difficulty. He also asked if there has been a determination about whether or not the water tank was in the ridge zone. He also questioned the capacity of the tank and the requirements from the Fire Department. He also asked about the clearance around the tank. He suggested that the Planning Department and the Fire Department meet to discuss this issues. He hoped that the goals of the Planning Department would be conveyed to the Fire Department. He stated that the General Plan provides for a trail when there is public land to the other side. He said that in his conversation with Mrs. Gill she was against the trail being higher up on their property because of privacy. He agreed that the trail should be on the lower end of their property. He suggested a floating easement to the lower portion of the parcel. There is no public access now to the watershed area and he felt this was really an opportunity to gain access. Mr. Draper asked if the Commission would grant additional development on this parcel in the future. He stated that the Gills have been very sensitive to the

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area and have already moved the house down the hill so as not to be so visible.

Gay Kagy, 280 Redwood, was in support of a public access and urged the Commission to get an easement. She opposed the 35' height limit as well as allowing the maximum size house for this zone, suggesting it would be precedent setting if approved. She wanted to know what the impacts would be to landscaping and if any grading was required for the typical tank and leech field. She questioned the need for a 40,000+ water tank and asked what would happen to this tank if their proposal was granted through MMWD for a larger tank in conjunction with other property owners farther up Oak Avenue.

Scott Hochstrasser stated that no trees are to be removed for the septic system. He stated that the new water tank will be built on the same slab that the existing one is on and there is a bench cut into the hillside that would be used for the access road currently used. MMWD requires a ring road around public tanks but this is a private tank.

Mr. Sorensen stated that it should be noted that his clients are not seeking a variance for the building height because it is their feeling that they are out of the ridge zone. They do not dispute the wording of the General Plan regarding public easements but that do not feel it applies to their parcel and fail to see the nexus with their parcel. He stated that the ridge line as shown on the General Plan Map should be considered accurate and not be left for interpretation or a 3% to 4% difference. He also noted that the Gills are not a part of the application with MMWD for the larger tank.

Commissioner Julin felt that the General Plan ridge line is general and not the precise measurement. She was in agreement with the Staff Report and felt that 30 feet height was the maximum allowed for the house. She did not think that moving the house further down the hill would be acceptable and was hopeful the applicants could work with the architect to reduce the height. She wanted clarification on what size of water tank was required from the Fire Department. The access road to the water tank needs to be addressed. She also felt trail access was very important.

Commissioner Sias stated that the plan was excellent and shows sensitivity to the area. He said that there is a great deal of debate over the ridge line and concurred with staff's argument. The house should be reduced to 30'. He was not concerned about the color of the trim because the house was well concealed. He would like to see additional discussion about the preservation of trees with regard to the leech field. With regard to landscaping around the house, he preferred oak trees, although slow growing, they would be better in the long run over bay trees. He supported the open space easement through the Gill property.

Commissioner Mihaly stated that the map used to define the ridge line is drawn on a scale that is so small that it should not be the controlling map. He was inclined to believe that the ridge was rather flat as shown on the map that indicated the yellow line in the aerial photograph presented by Mr. Hochstrasser and that the green line is almost undetectable. He said the ridge closest to Town is the most visible ridge and therefore he supported staff's appraisal of ridge line. With regard to the open space easement, he did not think the applicant can be asked for land that he does not own. He also suggested a gate to prohibit vehicles into the area. He wanted clarification on the language referring to trees.

Commissioner Harle felt the proposal was very nice and also that the staff report was well done. With regard to Staff Condition #1, he stated that it looked like only the peak of the roof and the 2 turrets exceeded the height and did not consider it significant in the overall architectural analysis. He still did not feel that anyone has provided him with a good definition of the ridge. He felt the principal should be applied of what really can be seen. In this case he would be willing to say the ridge line is far enough away and agree with the applicant. He felt that trail accesses should be preserved and will support under the circumstances presented by staff. He could agree with the applicant that landscape was used to soften and felt that was reasonable. In summary, he supported the staff report, with the exception of Condition #1 relating to height, for the reason that the impact was so little and it did not seem that it would be precedent setting.

Chairman Kroot stated that the issues of the ridge line were confusing and wondered if there might be two ridge lines, one just higher than the other. He was not convinced that the project should go back for redesign and suggested that perhaps the applicant and staff could meet again to discuss the ridge line. He stated that it appears the plans indicate the house is 35 feet above grade but noted that for planning purposes it is calculated as an average. He thought that the applicants should reverify this. He supported the open space easement but did not think this was the right place. The right place would be the existing dirt road on the neighboring property. However, it sounds like the Town cannot get use of this existing dirt road although it had been used for access to the watershed for decades. If the Town eventually gets the use of the road for access to the watershed then perhaps that easement could disappear at that point. He also wondered if it would be possible for the neighbors to remove their dirt road. He thought it was a health and safety issue for the fire vehicles and perhaps the Town should exercise eminent domain for fire protection and an open space easement. He did not object to the lot

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line relocation or the design review although if the owners decided to tone down the trim he would not object to that. He felt that this project really respects the intent of the Town and wanted that conveyed to the applicants.

Commissioner Mihaly suggested that staff consulting with the Town Attorney on the issues brought out tonight.

M/S Sias Julin, to continue DR-9210/PDP-9201/ LLR-9202 - Michael Gill, 663 Oak Avenue, A/P 7-154-07, 1) Design review and Precise Development Plan for the construction of a new 4,994 square foot single family dwelling with detached garage/guest quarters on a 3.25 acre parcel and demolition of existing single family home and illegal second unit. The project also includes the construction of a 40,450 gallon water tank; and 2) Lot Line Relocation to exchange an equivalent amount of land between 7-201-10 (neighboring parcel) and 7-154-07 (subject parcel) on property located within the R-1H Zoning District. This is continued to the meeting of July 27, 1992. Motion approved.

2. Marin Countywide Plan - Town of San Anselmo, will involve general discussion of the Countywide Plan with possible recommendations being forwarded to the Town Council.

Commissioner Harle was satisfied with the comments from the last meeting.

Chairman Kroot supported the 10% of new development involving 10 units/lots or more for affordable housing. He did not want to include Commissioner Julin's comments as part of the recommendation to the Council.

Commissioner Julin stated the memorandum was really provided as an information and really applies to any large development projects but felt it closes the loop to get the control that we need.

Commissioner Sias was disappointed in the goal statement. He felt the community was getting the short end of the stick to help subsidize new development and he would like to see a balance.

The consensus was to provide the recommendations in the staff report (including the attachment by Commissioner Julin) to the Town Council.

**H. ADJOURN**

The regular meeting of the Planning Commission was adjourned at 12:00 a.m. to the special meeting of June 29, 1992.

BARBARA CHAMBERS