

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES FOR JUNE 27, 1994**

The special meeting of the San Anselmo Planning Commission was convened at 7:40 p.m. in the Council Chamber by Chairman Mihaly. Staff present was Town Attorney Hadden Roth and Associate Planner Lisa Wight.

A. CALL TO ORDER

Commissioners present: Harle, Ollinger, Julin, Israel, Mihaly
Commissioners absent: Sargent, Hayes,

B. CONSENT

1. Minutes - June 13, 1994, June 16, 1994, and June 20, 1994

M/S Julin, Ollinger to approve Minutes of 6/13/94 with the following amendment: Page 5, 2nd paragraph to bottom should be changed to read as follows: "Commissioner Julin said the spring/well discussion may be academic and the hook up to MMWD should be a required and....." The Attorney for the SF Theological Seminary's name should be changed to Oak Dowling.

Ayes: Harle, Ollinger, Israel, Julin
Abstain: Mihaly
Motion Carried.

M/S Julin, Ollinger to approve Minutes of 6/16/1994 with the following amendment: Page 3, 2nd paragraph to top should be changed to read as follows: "Therefore the Committee did not make a specific recommendation". The Attorney for the SF Theological Seminary's name should be changed to Oak Dowling.

Ayes: Israel, Ollinger, Julin
Abstain: Mihaly, Harle
Motion Carried.

M/S Julin, Ollinger to approve Minutes of 6/20/94.

Ayes: Harle, Ollinger, Mihaly, Julin
Abstain: Israel
Motion Carried.

C. PUBLIC HEARINGS-CONTINUED

1. **V-9417/USE AMEND. - Carolyn Handelin, 176 Tunstead, A/P 7-213-45, 1) a 16' rear yard and 3' side yard variance to reconstruct and add to an accessory building to be used for day care in conjunction with ABC Academy within 4' of the rear property line and 5' of the side property line; 2) a use permit amendment to allow day care for children in grades K-3 sponsored by ABC Academy; and 3) a parking variance to maintain existing on-site parking when expanding the use, on property located within the (R-3) Zoning District.**

D. OPEN TIME FOR PUBLIC DISCUSSION

There was none.

E. PUBLIC HEARINGS

1. **Oak Avenue Master Plan and Development Agreement - David Hansen APN's 7-154-02, 7-154-05; Michael and Linda Gill APN's 7-154-08 and 09, 7-154-11, William Broderick APN's 7-154-10, 7-201-02, 7-201-12; The project site is located on the northeastern slope of Bald Mountain. It is bordered by Oak Avenue and scattered residential housing to the north and east, and by open space to the south and west. The subject property is comprised of 8 parcels of land totaling an estimated 16.2+ acres. The proposed project, which includes a master plan and development agreement, focuses on buildout of some, but not all, of the properties at the end of Oak Avenue. The proposed master plan and development agreement seek entitlement to construct four (4) new homes, appurtenant structures, and infrastructure improvements. The documents do not include the design level information required by the Town to approve specific homes or any of the other entitlements needed before construction can begin.**

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Mr. Roth explained that the Commission is required to make a decision tonight because the deadline for this project is July 22, 1994, by Court order, and the Town Council must have two meetings within this timeframe. However, the Town Council could meet after a 5 day interval but only if necessary. Therefore, it is important for the Commission to act tonight.

Commissioner Israel was concerned that the modifications from June 13th have been incorporated into the documents before the Commission.

Chairman Mihaly asked the Commission to list the unresolved issues so the meeting could move along as quickly as possible.

Commissioner Julin would like further discussion on the easement describe in Notice of Consent of Land and Roadway Improvement plan. She did not have a complete set of exhibits and wondered if it was okay to take a vote without those documents. Mr. Roth said it was not essential to have the Stipulated Judgement. Commissioner Julin did not have a copy of Exhibit C or D. Mr. Roth did not feel it was necessary to have that either.

Chairman Mihaly said he did not have the amended Development Agreement. Mr. Roth said he is working on that now.

Commissioner Ollinger wanted to discuss the issue of the gate and the term of the Development Agreement. Also, Exhibit H was discussed at the meeting on the 16th and he has not seen the revisions. Mr. Roth stated that there is a letter from Mr. Sorensen that states what they are willing to agree to. Mr. Sorensen said that the only changes to the Mitigation Monitoring Plan are related to water.

Kathy Sanders, Redwood Road, wants to know who will pay for, and maintain the access easement. She would like some discussion on the easement and a definition of promoting versus advertising and the types of maps it may appear on. Also, she questioned the wording about the Town being the sole representative in any litigation in the future. Mr. Roth said he will provide the language.

Ms. Wight said that although Commissioner Hayes is not present he expressed to staff that he is willing to agree to 5 years for the Development Agreement but is not willing to support the gate.

~~Commissioner Israel would like to discuss the revised map, tree preservation and landscaping changes from the last Planning Commission meeting.~~

Chairman Mihaly opened the discussion with Water as the topic.

Mr. Roth summarized a letter that was prepared by Mr. Sorensen dated June 23, 1994. Mr. Sorensen has suggested potential mitigation impacts. He has eliminated mitigation 2 and 3 and concurs with Mr. Roberto's suggestion of number 1, with some fine tuning. He noted that the wording is in the conditions of approval as well as the Mitigation Monitoring Plan.

Harriet Nelson, Vice President, San Francisco Theological Seminary distributed a written statement of Harriet Nelson, dated June 27, 1994, as well as read her testimony to the Commission. In summary, the wells will have a negative impact on the Seminary. The consequences of the loss of water on the Seminary will also impact the general public. The Seminary feels they are entitled to continue its perpetual, reliable water supply.

R. Oak Dowling, Attorney for the San Francisco Theological Seminary, distributed the written statement of R. Oak Dowling, Esq, dated June 27, 1994, as well as gave a summary of his testimony. He said the cumulative impact will very likely have a environmental negative impact on the 104 year old spring. The water supply has been perpetual and reliable. Regarding the water law, they have the right of appropriation. They only have to share the water with people who already use it. This would not happen if the Gills would hook up to MMWD. He said the burden is on the agency to make the analysis of alternatives. The EIR should identify project alternatives and state whether they are feasible or infeasible.

Mr. Dowling also responded to Mr. Kresse's report, stating that he did not look at the broad water table. They want a perpetual water supply. The Gill's are prepared to drill a well, but once that is completed, they will leave. That is not sufficient. He commented on the mitigations but is not conceding to have an EIR.

Mr. Dowling commented on Mr. Sorensen's letter, stating that if the well fails, MMWD will come in. This is not sufficient, they want a water supply that will last 104 years. In summary, they want their spring and they want a EIR.

Chairman Mihaly asked if the Seminary would be satisfied if the Gill project was hooked up to MMWD. Mr. Dowling affirmed. Mr. Dowling added that he is being told by Mr. Gill where they will build the well, and there has been no study of where a reliable well should be built.

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Commissioner Israel asked Mr. Dowling if the applicant met all the Dwyer Study, would that be sufficient? Mr. Dowling said no, they feel the EIR is still required.

Mr. Roth stated that he thought there were only surface rights, not underground rights and asked Mr. Dowling for the case rights. He also wondered why the detailed Dwyer analysis couldn't wait until the analysis on the water has been performed and if necessary, prior to installation to the MMWD. To which Mr. Dowling responded they want the perpetual right to water as they have already had it and feel the analysis is very important.

Chairman Mihaly stated that if they wait for the results of the Dwyer analysis it will not allow the Town to approve a Tentative Map without proving water. An EIR will not be any more detailed than the Dwyer study. He asked if this could be a condition to the Tentative Map and perhaps a condition of the building permit. Mr. Dwyer said that MMWD has not really been considered and he does not understand why the Court deadline is so important when the deadline can easily be extended.

Mr. Dwyer distributed a report addressed to R. Oak Dowling, Attorney at Law, dated June 27, 1994. He also gave a summary of his report. There are 6 items discussed in his report as follows: 1) Initial results of water impact study; 2. Full EIR versus Negative Declaration; 3) Modifications to mitigation measures; 4) Revisions to conditions of approval-water-related issues; 5) Factors and costs of developing a replacement water supply; and 6) conclusions and recommendations.

Mr. Dwyer stated the purpose of his report was to get a better overview on the affects of water wells on the Seminary springs and on Bald hill in general. His report is different than the Kresse report. The Dwyer study is not complete. The spring is still flowing and has for 104 years. The spring flow does decrease during the summary time and is sensitive even without the drawing down on the aquifer of Bald Hill. The initial results of the Water Balance Study reveal that cumulative impact on the Seminary spring is almost a certainty. Additionally, a substantial amount of residential water use provided from proposed wells will not be recharged back into Bald Hill, but rather transported away from the area via the sanitary sewer system. This development will also have a detrimental affect on the environment. They feel a full EIR should be done. They have commented on the Modifications to the Mitigation measures although they still feel that a EIR should be required. In conclusion Mr. Dwyer stated there will be cumulative impacts on Bald Hill. Based on this evidence a full EIR should be done .

Mr. Roth asked Mr. Dwyer if the study shows that there is no mitigated impact would that work? Mr. Dwyer said if it could be shown to the Seminary that there is no impact based on appropriate tests. Mr. Roth asked why that can't be done prior to development. Mr. Dwyer said that his study shows that there is very likely going to be a negative impact and anything less than MMWD would not be satisfactory.

Mr. Dowling stated that based upon Dwyer's Study, there are cumulative impacts and why wait until the Tentative Map stage.

Commissioner Harle thought they were going to drill a test well and see if the spring will be impacted. It is a really big issue after agreements have been sealed.

Commissioner Israel asked what benefit Mr. Dwyer saw through the EIR process. Mr. Dowling said it will give them time so everybody can comment on it and analysis it.

Barry Hex, Geologist, the Seminary has measured the size of the fields and on occasion water is left over that is used elsewhere. He explained the amount of water per gallon that comes out of the spring. The Town also has a Well Ordinance. The aqua fir is on the top of the hill and although common in Marin, is unusual. He has had a chance to observe the water budget and is convinced that there is not a lot of water that goes in or goes out. By looking at the areal photographs of Bald Hill it can be observed by the forest. If undue water is taken out, there will be a substantial change in the vegetation. When wells are mixed with springs, it will eventually cause serious damage. Why wait? The water is not there for large scale development and at this point if 5 homes are built, it will be far in excess of the water available. Also, the study that has been done is not adequate, however the study proposed by the Seminary, the Water budget, is the only way to determine the water availability. If the water is not there, the Commission might want to consider different measures, some that have not already been considered. The Commission has a right to ask for reasonable use. This project is unique because it has a public sewer, but private water. He suggested to the Seminary the use of leech fields and it is his understanding that Mr. Gill also has a leech field. A leech field will reduce the impact. The Commission has the option of this. The \$72,000 refers to the Ross Valley, the Seminary also offered a proposed settlement of what they have had in the past, and that was not accepted.

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Frank Fresse, Consulting Geologist, was hopeful that the Commission has read his three reports regarding this matter. There is documentation regarding the flow of the spring and has repeatedly asked for, but have not received, this information. He is convinced that a well is more dependable than a spring. He said there are inconsistencies out of all the testimony. There are a lot of wells in San Anselmo. They may be some changes in the environment, but it will not be substantial. He felt there is enough recharge in the wells. His preference is to drill for a well on the side of the hill.

Mr. Roth asked about cumulative impact. Mr. Kresse said as long as the houses are in the sizes talked about there is sufficient recharge. There are springs on some of the parcels now, but they prefer wells.

Mr. Roth asked what would be a sufficient mitigation measure for the Seminary? Mr. Kresse responded that a well should be drilled. This would be the time to drill for a well, not during the rainy season.

Mr. Gill stated that prior to MMWD all the houses on the hill were served by the spring. There is an abundance of water on the hill. Therefore, historically, there have been 4 or 5 springs serving up to seven or eight homes. At one point one spring served 4 homes. Also, regardless of the well issue, they have the right to use the water.

Mr. Sorensen stated that he has researched the issue of water rights very carefully and the law states categorically that you can not appropriate ground water. One person cannot claim it all. With regard to an EIR, it is an informational document and will not guarantee that water will be available. The best the Commission can do is to mitigate the potential affects. Mr. Kresse has proven that the water budget from Dwyer is false. There is 4 to 5 recharge area. Even if MMWD is required, that is no guarantee as a source of water for the Seminary because landscaping water has been eliminated in the past. Mike Wood, Botanist, has prepared a report on the plant and wildlife and he has stated there will be no significant adverse impact. With regard to the settlement raised, they met with the Seminary, they asked that we write them a check and then they would go away. Mr. Gill did not think that would satisfy the mitigations. The \$72,000 is asking for three wells, not one, and they felt it could be done for \$10,000 to \$12,000 if the spring is affected. The applicants are not sure that if the spring dries up, it would be their fault because Fraser has just successfully drilled a well. In summary, they request that the negative declaration be adopted.

Commissioner Israel wondered what would happen if there was a dry year and the Seminary well dried up. Mr. Sorensen said they cannot guarantee that their spring will never go dry for a variety of reasons. The testing of the wells would hopefully provide that information.

Chairman Mihaly wondered if sufficient studies will be done with regard to flow prior to the Tentative Map.

Mr. Sorensen agreed to quantity and quality in concept.

Chairman Mihaly heard testimony about the reliability and non reliability of the spring but not much conflict over a study, just the type of study.

Commissioner Israel questioned the claim about the EIR. Mr. Sorensen responded that if there is a substantial impact than an EIR is required and the only testimony is that of the water budget.

Mr. Roth asked about the cumulative impact. Mr. Sorensen thought the Town took that into account when they adopted the Well Ordinance.

Commissioner Julin wondered when the right to access will take place. Mr. Roth explained that it is a permanent easement in perpetuity. Commissioner Julin asked what would happen in the event the Development Agreement is signed and not implemented; does the easement stay? Mr. Roth affirmed. Commissioner Julin asked about signage. Mr. Roth explained that it is a limited access agreement and will only appear on Town documents but not advertised on other documents. Commissioner Julin wanted to suggest alternative wording to indicate public easement. She questioned the location of the gate. Mr. Gill said there would only be two gates, one on either side. Commissioner Julin asked if there would be a sign for each gate.

Commissioner Israel asked Mr. Roth if the Town is required to perform an EIR. Mr. Roth responded that if there is substantial evidence that a substantial negative impact exists, then an EIR is required. Commissioner Israel said that is why he was reluctant to taking well water as well as spring water. When natural run off starts being depleted there could be a substantial negative impact. He has a similar situation with his 300 year oak tree and is concerned about the oaks up on Bald Hill. Mr. Roth responded that there should be substantial evidence, evidence with substance.

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Commissioner Harle felt there has been substantial evidence that there should be a focused EIR on the spring.

Commissioner Julin said her concern goes back to the General Plan and the use of public water supply. It is a major public policy issue in that wells are being proposed. Therefore she was surprised to learn that wells are being proposed in a jurisdiction that has public water. She read the General Plan Policy issue. She is not satisfied that this is consistent with the General Plan policy. She is also concerned about the cumulative affect of the water, and contrary to good public policy. She is not sure at what point a tank will be required. The Fire Department talks about one size, MMWD talks about another size and all this has been done outside of the planning arena.

Commissioner Julin thought the EIR is a moot point if the applicants were hooked up to MMWD. Mr. Roth stated that if MMWD is required, an EIR would probably be required for the tank. Commissioner Julin responded that the Bald Hill working group felt a public water supply was very important.

Commissioner Ollinger said if they accept the negative declaration with stipulations, this will go to the Town Council. It doesn't mean that we have not filled the Commission's obligation in terms of the timeframe. Mr. Roth responded that the timeframe would not work if an EIR were required. Also, the applicant still has the option to still go back to Court.

Commissioner Ollinger stated that he would like to see this resolved through additional mitigations if necessary, to move the project along. There should be a study done to define the water flow impact analysis. He liked some of Mr. Dwyer's wording. In summary, if the wells do not work they have to go to MMWD. Also, as part of the Development Agreement, if water is available, they must hook up to it.

Commissioner Harle suggested the focused EIR because of the evidence of two qualified experts that are totally opposed to proceeding at this time without additional information. Therefore, he an unable to evaluate the mitigations at this point.

Chairman Mihaly stated that this Town has spent enough money on this law suit; there have been hundreds of hours to reach a consensus for the citizens to reach the watershed area. He thought the testimony produced today was expert and intelligent. He is interested in protecting the interests of the Town and an EIR is not an attractive solution and will be very costly unnecessarily. Therefore, he is looking for a solution. The mitigation measure has to be tailored enough; it has to be memorialized now so it can proceed. He is concerned about the testimony that has been produced about the possible affects on Bald Hill regarding too many wells. There is evidence that this might be a big problem but he would like to have this process move ahead. Therefore, he proposes that this condition be rewritten to state that the Seminary be protected and want this application is to come back to the Commission.

Commissioner Julin asked about the further development on Bald Hill. If public policy is being bent, will we continue to bend? Commissioner Mihaly responded that the Town was forced by State law to put in a Water Well Ordinance. If necessary there can be further discussions with MMWD and the Fire Department on these issues.

Chairman Mihaly said that this actually is a consensus on issues on Bald Hill and now it has been established that the total amount of homes in that area has diminished. The Seminary is really interested in protecting their water rights.

Commissioner Harle said that if there is a mechanism that can bring the matter back to the Commission with the facts as they come out, that would be fine for him and an EIR would not be required.

Commissioner Ollinger wanted to get consensus so the Commission could go forward.

Mr. Dowling said they cannot possibly comment on this issue tonight and that they feel the legal mechanism is an EIR.

Commissioner Julin did not feel she could vote on this tonight. Chairman Mihaly said he will not know any more in a week then he does tonight.

Mr. Roth said is does not seem rational to resolve this tonight and an alternative is to continue this matter prior to the July 12, 1994 Town Council meeting.

Commissioner Harle wanted to preserve the momentum but wants it to be binding.

Chairman Mihaly suggested wording to be reviewed by both the Seminary, the applicant and the Town Attorney prior to the next meeting.

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M/S Mihaly, Vested rights are conditioned as follows, Exhibit I, page 8, B3, and shall state: that an application for a tentative map or, in the case of those parcels which do not need a tentative map, any application for design review, whichever is first, be accompanied by a study undertaken by the applicant pursuant to the reasonable direction of the Planning Director and Public Works Director, which study must be part of the submittal for the applications prior to acceptance as complete. The study shall evaluate the effect of the proposed water wells in the Bald Hill Planning Area on the applicable aquifer in general, and specifically on the San Francisco Theological Seminary spring serving Bouick Field. A condition precedent to the issuance of the tentative map (or design review for the first dwelling, whichever comes first) is a determination by the Town of no significant detriment to the aquifer and a mechanism to guarantee the water supply to the Seminary equivalent in flow, quality, and duration of the existing spring.

Chairman Mihaly stated that the other items to be discussed at the next meeting are: The easement, "public access" on the sign, the gate, and the timing of the agreement.

Chairman Mihaly wanted Kathy Sanders to rely comments about the gate to staff prior to the next meeting to move the meeting forward.

Commissioner Ollinger wanted the applicants to be more specific on the location of the gates. Mr. Roth said that legally they have a right to put in the gate. Chairman Mihaly asked that the location be worked out prior to next meeting.

M/S Julin/Harle to continue to the meeting to the meeting of July 5, 1994, with the meeting to convene at 7:30 p.m. Motion unanimously passed.

F. GENERAL DISCUSSION

There was none.

G. REPORT OF UPCOMING APPEALS TO TOWN COUNCIL

There was none.

H. ADJOURNMENT

The special meeting was adjourned at 12:30 a.m. to the next special meeting on July 5, 1994.

BARBARA CHAMBERS