

**TOWN OF SAN ANSELMO**  
**Minutes of the Town Council Meeting of June 24, 2003**

Present: Breen, Chignell, Kilkus, Kroot, Thornton

8:00 p.m.

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

Mayor Kilkus reported that no action was taken in closed session.

- OPEN TIME FOR PUBLIC EXPRESSION.

Jerry Arbini, Bella Vista, requested a change in starting times for construction from 7:00 AM to 8:00 AM as the Walgreen's construction project are starting as early as 5:00 AM. Town Administrator Stutsman will call the contractor and remind them of the correct starting time.

David Fenan, John Sweeter, Ron Asslestine, Chris Carlucci and Harvey Hunnerberg, all residents on San Anselmo Avenue, requested the Council's assistance for their young children's safety because of the increased number of cars speeding on the street between Scenic and Humboldt Avenues. Mayor Kilkus recommended they file a petition with the Traffic Safety Committee, using a form from the Town's newly adopted Traffic Calming Guidebook.

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

Councilmember Chignell requested the Police Department be notified to regularly monitor the traffic on the 1300 San Anselmo block. He also asked for a status report on the skateboard park proposal. In addition, he requested the Ross Valley Fire Department do a nuisance abatement at Brookside Dr., where the property has been vacant for ten years. Finally, he requested the traffic light timing at the Hub be adjusted to improve the traffic flow. On this latter item, Town Administrator Stutsman said the State specifies minimum pedestrian crossing times and the timing will be a part of the Drake Traffic Study coming before the Council in July.

Councilmember Kroot asked that the Public Works Director have the timing adjusted at the two intersections eastbound on Red Hill Avenue, beyond the Hub, where the traffic signals are not synchronized.

Town Administrator Stutsman, announced the Budget Hearing will be scheduled at the July 22<sup>nd</sup> Council meeting and since the possibility exists that the State Budget will not have been adopted, the Town will have some alternative measures in place.

1. CONSENT AGENDA: ITEMS ON THE CONSENT AGENDA MAY BE REMOVED AND DISCUSSED SEPARATELY. DISCUSSION MAY TAKE PLACE AT THE END OF THE AGENDA. OTHERWISE, ALL THE ITEMS MAY BE APPROVED WITH ONE ACTION.

- (a) Approve minutes: June 10, 2003.
- (b) Acknowledge and file warrant numbers 45526-45856 during the month of May 2003 in the amount of \$992,691.15.
- (c) Approve the General Fund Revenue and Expenditure report for the period ending May 31, 2003.
- (d) Approval and second reading of Ordinance No. 1033 amending Title 10 (Zoning Ordinance) of the San Anselmo Municipal Code regarding residential second units.
- (e) Announce term expirations on the Historical Commission and the Volunteer Program Advisory Board.
- (f) Acknowledge and file report regarding informational insert in property tax bills to explain to property owners the effect of the 1978 Proposition 13 on property tax

allocations to local government.

- (g) Acknowledge and file report regarding changes to program administration for the Town's Workers' Compensation program.
- (h) Approve resolution calling and giving notice of the November 4, 2003 election submitting to the voters the question relating to the Town's award of a five-year franchise for refuse, recycling and green waste collection services; requesting County of Marin to consolidate said election; requesting election services by the county clerk; and authorizing the Town Clerk to carry out the necessary procedures.

Councilmember Chignell requested items 1(d) and 1(h) be removed for discussion. Louise Mathews, Foothill Road, requested item 1(a) be removed.

M/s, Kroot/Thornton, to approve items 1(b), (c), (e), (f), and (g). Ayes: All

#### Discussion

On item 1(a), Louise Mathews, Foothill Road, said her comments were not entirely reflected in the Minutes of June 10<sup>th</sup>.

On item 1(d), Councilmember Chignell stated that the Planning Staff has not done a proper analysis and the ordinance does not protect the current provisions and the rights of the second unit owners will be violated. He urged the Council not to pass this ordinance.

Peter Breen asked Planning Director Tom Bell whether this ordinance puts the Town's rent control in jeopardy. Mr. Bell responded that the rents would be based on HUD's Low-Income levels, which are higher than the Town's current rates for second units.

Rich Gould, Skyline Road, would like to see the ordinance passed due to the outdated current rent schedule permitted by the Town.

Louise Mathews, Foothill Road, said that the Council has no choice but to adhere to AB1866 and the Town can maintain ministerial control.

Councilmember Breen stated that the Town has a system of controls for second units that haven't worked and now the Town must look to the future, since State law is superceding these controls on July 1<sup>st</sup>.

M/s, Breen/Thornton, to adopt and waive the reading of Ordinance 1033 amending the zoning ordinance Title 10 of the San Anselmo Municipal Code regarding residential second units. Mayor Kilkus requested a roll call for this motion. Ayes: Breen, Kilkus, Thornton. Noes: Chignell. Motion passes.

On item 1(h), Councilmember Chignell asked that this resolution be postponed, as the ballot language in Section 3 does not reflect the efforts by the Town for a comprehensive and competitive bidding process. In addition, since representatives of Marin Sanitary District were unable to attend this meeting, he wanted this item rescheduled.

Mayor Kilkus inquired about the legality of the ballot language. Town Attorney Hadden Roth said that the Council has the final authority for the wording and was confident that the language is impartial and will not be contested as it is currently written.

Suzanne Lindelli, Tunstead Avenue, submitted a letter advising that she will be the person submitting the ballot argument and rebuttal for the "No" response.

Louise Mathews, Foothill Road, stated that the Council never made a motion at their August 27<sup>th</sup>, 2002 meeting for a five-year franchise, so the term should not be included in the ballot wording. Town Attorney Roth responded that the entire contract has been negotiated for five years.

M/s, Chignell/Breen, moved to continue this item to July 8<sup>th</sup>, 2003. Ayes: All

## 2. APPROVE LIBRARY FINE INCREASE OF \$.05 PER DAY, BRINGING FINE TOTALS TO \$.30 A DAY PER ITEM FOR ADULT BOOKS AND AUDIOS AND

\$.15 PER DAY FOR CHILDREN'S BOOKS AND AUDIOS.

M/s, Chignell/Breen, to approve the library fine increase. Ayes: All

3. APPEAL OF PLANNING COMMISSION APPROVAL OF HILLSIDE DESIGN REVIEW OF PROPOSED 3,077 SQUARE FOOT, THREE-STORY SINGLE FAMILY DWELLING AND 488 SQUARE FOOT GARAGE (EXISTING 700 SQUARE FOOT DWELLING WILL BE REMOVED IN CONJUNCTION WITH THIS PROJECT); 240 REDWOOD ROAD, A/P 007-095-01, APPLICANT: SENECA PROPERTIES, LLC; APPELLANTS: ANDREW AND NANCY SCHUMACHER.

Andrew Schumacher, Appellant, presented his objections with the aid of photos and diagrams. The main objection is that the proposed house exceeds in mass, size and intensity of neighborhood houses and is in conflict with the general plan. This structure will cause light pollution and view blockage. The house has been moved closer to the road, possibly infringing on the setback requirements. Mr. Schumacher said the project would cause adverse water flow and drainage to the downhill properties. He stated the engineer's report failed to consider the fact that a spring exists below the proposed house that will affect the natural water absorption in the area and the uphill property owner is responsible for the downhill properties. Further, Mr. Schumacher stated the Planning Commission did not follow the General Plan recommendations and made errors of law in their opinion that "they had no authority to regulate the size of houses in San Anselmo." His final objection is that there were only four Planning Commissioners available to consider this high impact project.

Anthony Richards, Architect, said he has designed over 200 houses, most on hillsides. He stated the most logical site is on the steepest part where the house should be anchored, leaving the front lot open. Mr. Richards said his forte is designing houses that reflect the neighborhood styles and he displayed drawings of his built designs to show visual comparisons of 2,500, 3,000, and 3,500 square foot homes. He considered a 3,000 square foot house to be a reasonable size. He stated that the drainage plan on the property is not his responsibility but was prepared by civil engineers.

Lawrence Jatsek, owner of 240 Redwood Road, said that there are two houses in the neighborhood that are larger in square footage than his proposed house. He has walked in the neighborhood and looked at twenty-seven houses and noted that each one has the water dispersed on the ground or onto the street, but an engineer designed the drainage system on his property.

Stephanie Fein, Redwood Road, said that although she likes the design, she objects to the size of the house and asked that Council take the time to look at the size and heights in this neighborhood and require a reduction in size for this project.

Gay Kagy, Redwood Road, said the Planning Commissioners unanimously agreed that the size and mass of the house was too large for the lot. She commented on the visual impact uphill of a forty-foot high house that would obstruct the view, which the neighbors want to preserve. She suggested the Planning Commission findings were inadequate. In addition, she expressed concern of a shallow slide that occurred in the area five year ago.

Janice Pryzybylski, Redwood Road, said she has little natural light currently into her house and would lose it all if this project were approved. She noted the story poles have moved and wondered if they are located correctly. Another concern is access to her driveway, which is situated on a blind curve and this project will create an even greater hazardous situation.

Katrina Chase, Redwood Road, stated that the owner has done an outstanding job in the house and in its location on the lot. However, she understood the concerns of some of her neighbors and thought perhaps the Town should have more rigid guidelines in place. She thanked the Council for all their considerations.

Councilmember Kroot said he liked the design but was torn over the size and location.

He gave assurances that the Department of Public Works will be thorough and rigorous in its review of the drainage plan. He thought it might be wise to have the project's size reduced.

Councilmember Chignell agrees the house is too large, out of character with the neighborhood and should be redesigned and brought back to the Planning Commission.

Councilmember Thornton stated she liked the design of the house but also agreed it was too large for the downhill neighbors and the neighborhood itself. In regard to the drainage, she expects it to be as good or better than it is currently.

Councilmember Breen wondered why the easement couldn't be utilized as the present driveway is located on a curve of a busy narrow road and the space can accommodate four cars. He stated he liked the design but agreed it was too large and would affect the neighbors downhill on Floribel with mass and night light pollution.

Councilmember Kilkus did not oppose the project. In regard to size, he was of the opinion that neighbors would still have objections if the house was only 2500 square feet. He noted that while walking or driving, there is no view on Redwood Road. He considered the house to be well designed on a lot that is flatter than most in the neighborhood. He thought the Planning Commission did a good job in their assumptions.

M/s, Chignell, Breen to uphold the appeal on the grounds that it exceeds mass, size and intensity of neighborhood houses and is in conflict with the General Plan and refer the applicant back to the Planning Commission for 10–15% size reduction and discretionary review. Ayes: Breen, Chignell, Kroot, Thornton. Noes: Kilkus

4. PUBLIC MEETING REGARDING PROPOSED SETTLEMENT AGREEMENT REGARDING USE OF PROPERTY LOCATED AT 125 REDWOOD ROAD, SAN ANSELMO.

Town Administrator, Debra Stutsman, stated that there had been ongoing controversy over the use of the accessory structure at 125 Redwood Road that culminated in abatement proceedings because of its use as an alleged residential second unit without Town permits. The Town Attorney, with Ms. Johnstone's representative, have proposed a settlement agreement for public discussion.

Leonard Rifkind, Attorney for Ms. Johnstone, asked for approval of the settlement agreement regarding the use of the property that will give exact assurances, achieve code compliance and regulate the use at 125 Redwood Road.

Alan Mooers, Savannah Avenue, referred to a letter submitted to the Town Council dated April 28, 2003 signed by The Neighbors Redwood Rd. and Savannah Ave. wherein they wanted to go on record to state their disappointment at hearing of a proposed "deal." He said it was unfair for the Council to put the neighborhood in a position of being "spoilers" of an agreement that essentially has been agreed to. He suggested the Council do nothing but increase the daily fine allowed to the \$1,000 level, and record a lien against the property and notify the lender who will foreclose if Ms. Johnstone does not comply. He stated that this is one way to solve the problem. Mr. Mooers also referred to his letter dated January 15, 2002, which listed sixteen major issues the neighbors had. In summary, Mr. Mooers asked the Council to give the owner the storage facility as originally requested and require the lower unit to be completely gutted, including floor joists. He recommended not forgiving fines or accumulated penalties and charge for what the Town has spent on this case as a result of years of Ms. Johnstone's defiance. He added the Town must demand compliance with the original configured usage, including the landscaping that was never done and set a deadline and enforce it with a bond of perhaps \$50,000 that can be forfeited if not paid on time. Mr. Mooers stressed that no one should be rewarded for his or her outlaw behavior. This is a matter of zoning, not public opinion, as a two-level duplex was built not a single story storage facility. It is the duty of the Council to enforce the zoning ordinance. He stated the key point is that Ms. Johnstone is the supplicant and the Town does not need to settle with her. The proposed agreement, he stated is totally unenforceable and asked the Council not to sign it. Should Ms. Johnstone

apply for a second unit after July 1<sup>st</sup>, the illegal unit must be brought into code compliance first.

Mr. Rifkind said there were a number of misunderstandings of how the law works and on the enforceability of the agreement. The Town Attorney has diligently worked on the agreement to see that it is enforceable. He stated there were a number of misstatements made and the Town has inspected the structure. The lower floor is a storage facility and not habitable.

William Clark, Savannah Ave., noted that the list of items to be done was not attached to the agreement and he hasn't seen the list of violations. He asked whether the sideyard setback requirement is in compliance. He is very upset as the zoning ordinance is being violated and despite what Mr. Rifkind said about the storage shed, Pat and Ralph Johnstone lived there for a number of years. They have refused inspections for eighteen years and now they want to legitimize their building. This is the wrong thing to do.

Peggy Dodge, Allyn Avenue, urged the Council to sign the agreement, although intrusive, Ms. Johnstone agrees to uphold it. Ms. Johnstone has had some personal losses in the past few years, including financial difficulties. The Town should supply work-force housing and Ms. Johnstone is doing so by renting the main house to her goddaughter who is a teacher in the community. She stated she was concerned that teachers who must commute and can't afford to reside here impact quality of education.

Cotton Banks, Redwood Road, supports the agreement, including a neighbor who could not be present at the meeting.

Rosanne Brombaugh, who works for Pat Johnstone, said she is part of the work force who can't afford to live in Marin and relies on being able to rent affordable second units. If Ms. Johnstone loses her residence, she would be unable to continue to be the school's director. She urged the Council to sign the agreement.

Katherine Donery, Savannah Ave., stated that this discussion has become too personal and is not about the usage of the property. She thinks this is a clear and strong agreement.

Makesha Allan, tenant at 125 Redwood Road, said she is a public school teacher, born and raised in San Anselmo and wants to remain in this community and asks for approval of the agreement.

Carol Giddleman, Saunders Avenue, has known Ms. Johnstone personally for many years and said she has given much to San Anselmo. She urged the council to sign the agreement once she gets the necessary permits.

Town Attorney Roth requested wording changes in the agreement: Page 2, Line 13, (3) judgement *in Marin Superior Court, CV021564*, entered pursuant to the Town's Settlement Agreement; ~~and the Town's Cross-Complaint for Injunctive Relief~~, and Page 8, Section 10., Line 10: This Settlement Agreement may be enforced pursuant to *all statutory enforcement procedures, including Code of Civil Procedure, etc.*

Councilmember Thornton asked to defer the decision to the next Council meeting.

Attorney Rifkin responded that postponing a decision would make Ms. Johnstone unable to obtain a loan needed to correct the violations and satisfy the Town's lien.

Councilmember Breen stated the Town needs a legal document to achieve compliance of the Code violations. The settlement agreement is a result of Court action to bring an equitable solution, because the Town loses control when the Courts are involved. He objects to the insinuations that the Town has cut a "deal." He stressed that this agreement has nothing to do with a second unit approval. He considered it was much better to have an equitable solution that meets the needs of the parties concerned.

Attorney Rifkind stated that this is a court order and Ms. Johnstone is bound by judgement of the law and would be in contempt of court if she didn't comply with the agreement. He added that Ms. Johnstone could not apply for a second unit until the code

violations have been remedied.

Councilmember Chignell stated the agreement becomes the contract between the Town and Ms. Johnstone but asked to defer the decision until the Town determines if Ms. Johnstone qualifies for the second unit.

Both Attorneys Roth and Rifkind agreed that Ms. Johnstone could apply for a second unit but must have the proper criteria before the Town can approve it.

Councilmember Kroot voted to continue this item, as it is an emotional issue and still with the courts. He added that this is a good agreement but now is not the time to sign it.

M/s, Chignell/Thornton, to have the settlement agreement continue until the Planning Director makes a determination on the second unit application by Ms. Johnstone or her representative. Ayes: All. It was agreed this item is to be scheduled for the August 12<sup>th</sup> Council meeting.

5. ENVIRONMENTAL REVIEW, ZONE CHANGE FROM R-1, R-3, AND & C-L TO PPD/SPD, USE PERMIT & DESIGN REVIEW FOR THIRTEEN RESIDENTIAL UNITS ON .874 ACRES, INCLUDING PROTECTIVE APPEAL FILED REGARDING THE DESIGN REVIEW AND USE PERMIT CONSIDERATIONS. APPLICANT: COBY FRIEDMAN, M.B. VENTURES, LLC; 790 SIR FRANCIS DRAKE BLVD, APN 006-091-02, 34, 35 & 62.

Tom Bell, Planning Director said that at the previous Council meeting, the soils and traffic issues were discussed and this evening the Council would evaluate the zoning, intensity and visual impact for the project. He stated that before the Town could consider approval of a zone change, design review and use permit application, it would first be required to approve a negative declaration. In order to approve the negative declaration, the Council must find that all the environmental impacts are determined to be less than significant and State Law says that this document must be acted upon within 180 days. Mr. Bell outlined the key points in the staff report, including the options.

Fred Divine, Project Architect, stated that several revisions have been made since the last Council meeting due to feedback from the previous Council meeting. Some of these changes are: the buildings have been lowered, the grade has been lowered by 2 to 4 ½ feet, oaks and redwoods will be planted in the 50 foot setback to provide screening, landscaping will be adjusted, two living units have been removed, roof pitches have changed, and areas have been opened up for improved articulation. By the aid of new drawings, Mr. Divine proceeded to elaborate on these changes mentioned.

Discussion of Land Use Planning and Aesthetics

Jonathan Braun, Open Space Committee Chairman, cautioned the Council not to grant any entitlement to the applicant in the matter of zoning unless it is a reasonable use. His arguments are that it is overly dense on an inappropriate site because of the geology, geotechnics, traffic and general plan conflicts. Based on the plans at Town Hall, Mr. Braun made some calculations that showed the mass to be much greater than the General Plan allows for hillsides. He stated that there were no plans for the driveway and asked whether a retaining wall would be built to protect it.

Susan Baird, Bella Vista, is concerned on the aesthetics of planning a serene development abutting the noisy and heavy traffic emanating from Sir Francis Drake Blvd.

Cherilyn Gilboy, Luna Lane, stated the access on the upper side should be discouraged as the road is too steep causing tires to squeal and too narrow for fire engine access. She added that the hillside above is unstable and since the property above belongs to the Town, it will be liable.

Additional Discussion of Geology/Soils and Traffic

Jonathan Braun, Open Space Committee Chairman, said he made calculations of the number of cubic yards of earth removal translates into 12,000 truckloads which would

impact the traffic greatly. He added that the slope above is over 50%. He pointed out the traffic report did not address that the time period for cars merging onto Sir Francis Drake is only four seconds.

John Walters, Santa Cruz, voiced his concern that the coating on the upper part of the hillside bracing may cause the water to flow at an accelerated rate. He added that Redwood trees do not grow on or near basalt formations.

Patrick Haven, Luna Lane, stated his concerns on all the traffic congestion that this project would generate. He said there are traffic snarls currently with the Walgreens project and parking areas are taken up by construction crews. Since the access to the area is so difficult, he suggested a traffic signal should be installed at Madrone. He stressed that the project is too intense a use and asked the Council to deny the negative declaration.

Jerry Arbini, Bella Vista, said the area is unstable and cited a slide occurred just left of this proposed project, even though the engineers were thorough.

Gay Kagy, Redwood Road, said the best use of the property would be under the current zoning. The use is too intensive. There will be significant impact on visual aesthetics, drainage, unstable soils, traffic congestion and poor circulation. Test borings have found the groundwater at 17 feet. She stated that the negative declaration is not appropriate.

Fred Divine, Project Engineer, stated there are no driveway retaining walls as it is in grade level. The trees will buffer the traffic noise and view of the houses. Not all the soil will be removed but the majority will be reworked on site. The soils engineer says the soils will be made stable. He said that in the general context of the zoning change, design review and use, the applicant has responded to the general plan policy. He asked the Council to be specific in the changes they would like to see in order to approve the project.

Mayor Kilkus stated he didn't have any major reasons not to approve the negative declaration with mitigations based on what has been presented to date.

Councilmember Jeff Kroot is not concerned about soils and traffic, as they have received assurances from professionals but is concerned about the density of the project. He thought the amended plans are an improvement but is not consistent with the General Plan. He would like to see more changes such as a two-story maximum, fewer units and less crowding. He asked this go back to the Planning Commission for review of the changes in design.

Councilmember Breen expressed interest in the suggestion of installing a traffic light at Madrone and said it appears to be a good solution but would need a major redesign. He stated his concern about the visual impact as the mass is too great and also losing affordable housing opportunities.

Planning Director Bell said the Council's options are: to deny the project without prejudice; to approve as proposed; or to approve the negative declaration with the mitigation measures regarding geology, construction, etc. and added mitigations because the SPD is not consistent with the General Plan.

Councilmember Kroot asked whether the Planning Director would offer options for the next meeting so that the Council can make a proper decision.

Councilmember Chignell agreed he would also like to have available options from staff and everybody is tired at the lateness of the hour.

Mayor Kilkus encouraged letters from the community, making recommendations on what they felt would be appropriate for this site. He requested more detailed direction from staff regarding the negative declaration. Planning Director Bell said he would draft the mitigation statements for the Council.

M/s, Breen/Kroot, to continue this item to the next Council meeting. Ayes: All

6. CONSIDERATION OF COUNTYWIDE PROGRAM FOR THE REGULATION OF TAXICAB TRANSPORTATION SERVICES.

Kevin Carroll, cab company owner, stated that the proposed regulations resulted from problems in Sausalito and San Rafael. He objected to some of the onerous regulations stated in 28 pages based on an Orange County model to regulate only about fifty-five taxis in Marin. The cab companies have never been notified or invited to participate. He agrees with the drug and alcohol testing issue and the currently the City of Novato is the only city implementing this. Based on their program, it takes one staff person one hour every three months to review the drug tests done by an outside agency. He agrees with background checks on the drivers. Additional fees charged by the JPA will be passed on the passengers. He recommended the Town Administrator and ask that the city managers meet with the cab owners and come up with a workable plan. He suggested the Sheriff's office regulate the drivers.

M/s, Breen/Kroot, to continue this item to the next meeting. Ayes: All

7. ADJOURN.

The meeting was adjourned at 12:15 P.M.

Respectfully submitted,

Rose Wager, Senior Administrative Services Assistant