

TOWN OF SAN ANSELMO
Minutes of the Town Council Meeting of January 13, 2004

Present: Kilkus, Thornton, Chignell, Kroot, Breen
Absent: None

8:00 p.m.

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

Mayor Chignell announced that no reportable action was taken in closed session.

- OPEN TIME FOR PUBLIC EXPRESSION.

Louise Mathews, Foothill Road, thanked the Town Administrator and Librarian Sara Loyster, for purchasing a copy of the California Ralph M. Brown Act covering how city meetings are run and noted to members that this document is now available in the Town library.

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

Breen noted he would like to see a policy set to determine what kind of paving rehabilitation is necessary, in the areas of the hub and Butterfield to Meadowcroft, based on particular needs of those streets in order to allow the best value on money spent.

Breen referred two issues to the Traffic Safety Committee for possible signage solutions and noted traffic concerns due to current patrol vacancies. The first issue is the problem of bicyclists not stopping at the designated stop signs throughout town and the second issue is the illegal left hand turns from Shaw Drive onto Sir Francis Drake Boulevard and the Walgreen parking lot.

Kroot would like to see a sub-committee of the Council and Planning Commission to review planning exceptions so that people do not have to apply for variances for such things as putting in a swing set or play structure.

Chignell noted to staff that Dorothea Schultz of Meadowcroft Drive thanked the street maintenance personnel for removing tree limbs from a street culvert. Also since the Art and Wine Festival has changed promoters he asks the Town Administrator to send a letter reinforcing the same conditions in terms of the street closure and any related attendant issues.

Debra Stutsman introduced new minute taker, Denise Phillips, Senior Police Administrative Assistant in the Police Department.

1. CONSENT AGENDA: ITEMS ON THE CONSENT AGENDA MAY BE REMOVED AND DISCUSSED SEPARATELY. OTHERWISE, ALL THE ITEMS MAY BE APPROVED WITH ONE ACTION.

- (a) Approve minutes of December 9, 2003

- (b) Acknowledge and file warrant numbers 47470-47676 issued during the month of December 2003 in the amount of \$988,336.50.
- (c) Approve Resolution No. 3672 authorizing the use of Citizens Option for Public Safety (COPS) funds for maintaining the Police Traffic Officer and Police Dispatcher positions currently funded under the COPS program.
- (d) Accept the project and authorize filing Notice of Completion of contract for the 02-03 Phase II Measure G projects in the amount of \$694,481.14. Contractor: Interstate Grading and Paving Inc.
- (e) Introduction and first reading of zoning ordinance amendment to the temporary signs ordinance, Title 10, Chapter 9, Article 3 of the San Anselmo Municipal Code. **CONTINUED TO THE MEETING OF JANUARY 27, 2004.**
- (f) Appeal of Planning Commission approval of a use permit to allow exceptions to standards for a residential 2nd unit, and variance to allow a retaining wall in excess of 4' with 0' of the front property line, located within the R-1C zoning district. Appellants: Michael and Nancy Goldstein. Location of project: 100 Forbes avenue (A/P No. 6-261-06). **CONTINUED TO THE MEETING OF FEBRUARY 24, 2004.**

M/s, Kroot/Breen, to approve consent agenda items (a) through (e). Ayes: All

2. APPOINT MEMBERS TO THE VOLUNTEER ADVISORY BOARD (3 SEATS) AND THE HISTORICAL COMMISSION (1 SEAT).

M/s, Breen/Thornton, to appoint Norma Keating, Susan Barstow and Ellin Purdom to the Volunteer Advisory Board. Ayes: All

M/s, Kroot/Thornton, to appoint David Schock to the Historical Commission. Ayes: All

3. CONSIDER REQUESTS FOR TOWN CONTRIBUTIONS.

- (a) Drainage project at 20 Veterans Place (Log Cabin), not to exceed \$12,574 from Measure G funds for cooperative drainage projects.
- (b) Hydraulic drainage study for Corte Madera Creek in the vicinity of Nokomis Avenue Bridge, in the amount of \$15,000 from Measure G funds for cooperative drainage projects.
- (c) Sidewalk repair at 95 Oak Knoll Avenue due to continuing damage from tree roots (General Fund).

Regarding item (a) Public Works Director Rabi Elias presented the staff report suggesting a town contribution of 50% of the estimate (current estimate is for \$25, 147) for repair of the covered creek culvert.

Kroot asked Elias if the 50% proposal was because it is the standard Measure G allocation to which Elias replied it was.

Cook Segale, Los Angeles Blvd., complimented Council on being fiscally responsible and a credit to the Town of San Anselmo. He noted the dilapidated state of the wooden cover over creek and stressed the importance of safety to children and public that frequent that area. He asked the Council to support the

cost split.

M/s. Kroot/Kilkus to approve the 50% expenditure in item 3 (a) in the amount of \$12,573. Ayes: All

Regarding item (b) Public Works Director Rabi Elias presented the staff report citing the cost of a report is \$20,000 with \$15,000 requested to cover the Town's share. He explained importance of the information to the Town and asked the Council to determine what they believe the Town share should be.

Breen asked Rob Evans of 15 Madrone Avenue what the 30 residents share would be and do any of them have a homeowner's policy that might cover the initial cost. Evans replied that they have not determined exact cost yet and that his insurance would not compensate in this matter.

Kroot asked Elias what length of the creek the study would cover. Elias said it would cover 300 yards before the bridge to 200-300 yds downstream.

Kilkus said that we should be careful how we conduct the study so that by one solution we are not creating other problems in other nearby areas prone to flooding, such as the downtown.

Public Works Director Elias replied that we can add this request to the study.

Bob Lewis, 15 Nokomis, as a representative for the neighborhood of Nokomis and Madrone asked for full support of study citing that in spite of diligent efforts on their own behalf toward preventative measures they still suffer heavy losses as a result of flood damage and seek additional solutions that may be provided through this study. He acknowledges and thanked Barbara Johnson of Nokomis and Rob Evans of Madrone in particular for their efforts.

Christine Craig, 78 Madrone, is in support of this study as she loves the creek, knows the danger and wants to make it less scary during winter

Rob Evans, 15 Madrone, stated that there is a lasting valuable benefit to the Town in terms of information provided.

Thornton appreciates input and energy from neighbors and thanked them for bringing a solution forward with costs for the Council to consider.

Kilkus said he is in support of study

Breen said he was very encouraged by this partnership but remains cautious because the Town's financial situation may require alternative methods of funding down the road.

Kroot stated that while in support of the study, wanted the residents to understand the financial pressure the Town is under therefore is undecided about how the split of costs should fall.

M/s, Kroot/Kilkus, to allocate \$15,000 from Measure G funds to conduct the hydraulic drainage study. Mayor Chignell notes that Measure G funds are near the end and what emanates from this study may require more creative ways of funding.

Regarding (c), Public Works Director Rabi Elias presented the staff report, recommending a denial for the appeal of cost sharing in removal of tree and sidewalk repair, based strictly on enforcement of the Town Code that states responsibility lies with the homeowner.

Breen asked if the Town should have allowed the tree to be removed when requested by the homeowner back in 1986.

Elias replied that yes they should have and these tree roots are shallow and do not belong in sidewalks.

Bob Parfitt, 95 Oak Knoll Avenue, stated that the tree should not have been planted there in the first place and he wanted to take the tree out when the damage first occurred in 1986 but was told by the Town that he could not remove the tree at that time. He is willing to pay 2/3 of the cost of repair/removal.

Kilkus asked how we can prevent this from occurring in the future and cites Woodland as setting a precedence. He commented that people should be more conscious of their tree issues.

Kroot stated that this situation was a little different than Woodland because he had asked to remove the tree previously and the Town wouldn't let him.

M/s, Kroot/Kilkus, to approve Town covering cost of new sidewalk. Ayes: All

4. CONDUCT PUBLIC HEARING AND CONSIDER APPROVAL OF SETTLEMENT AGREEMENT WITH PATRICIA JOHNSTONE REGARDING THE PROPERTY AT 125 REDWOOD ROAD.

Town Attorney Roth presented the staff report.

Alan Mooers, Savannah Road, said he is opposed to any kind of agreement with Ms. Johnstone. Ms. Johnstone has not lived up to any previous agreement and he sees no real enforcement in agreement. He cited several issues with conflicts contained within the agreement and reason to believe Ms. Johnstone is receiving preferential treatment and agreement approval rewards illegal behavior and reduces property value of the neighborhood.

Mayor Chignell asks Attorney Hadden Roth for clarification as to the conflicts contained within the agreement pointed out by Mr. Mooers.

Town Attorney Roth replies that this agreement is as enforceable as it can ever be with the ability to quickly go into court and have it be heard within a month. Provision's intent is strictly only for Ms. Johnstone and not any heirs nor new property owners.

Jacqueline Ryan, Redwood Road, stated she did not see removal of illegal 3rd unit anywhere in the agreement. She says she would like to see removal of the doors, floor, entryway and all four sides of the siding.

Bess Niemciwicz, Redwood Road, asked Town Attorney Roth in the event Ms. Johnstone is granted a 2nd Unit Permit would the code violations have to be met before she could apply for the 2nd unit?

Town Attorney Roth replied that the code violations would have to be fixed before she could occupy the unit.

Louise Mathews, Foothill Road, asked Town Attorney Roth if a new owner could make an application to turn the structure into a legal 2nd unit and is there any reason that he can see that the unit would be denied in that case? She also stated that she objects to the use of such actions as a way of processing code infractions in San Anselmo.

Town Attorney Roth states that there is a parking issue that may be a reason for denial of a legal 2nd unit. Ms. Mathews disagreed there was an issue.

Leonard Rifkind, Attorney for Ms. Johnstone, encouraged Council to approve the settlement agreement citing Ms. Johnstone's willingness to comply with the agreement and pointing out all that Ms. Johnstone stands to lose should the Council determine, in their sole discretion, that Ms. Johnstone has violated the agreement and stated the agreement couldn't be any tighter.

Mayor Chignell asked if Council has the authority to amend the agreement and Town Attorney Roth replies that they do but the opposite party has to agree to it.

M/s, Kilkus/Kroot, to approve the settlement agreement, for purposes of discussion.

Discussion of motion:

Kroot said that going to court may be more costly; he is willing to vote against the motion but would like to know the direction they are heading.

Mayor Chignell stated he does not support agreement based on the fact that it is an outstanding nuisance abatement, illegal 2nd unit and questions how it can even be legal under state law due to the parking issue.

Breen states it may be easier to deal with the issue if we start with a clean slate.

Kilkus stated that it's a waste of time and money to start over. This is a good and final solution.

Mayor Chignell asks for a roll call vote on the motion. Ayes: Kilkus, Thornton. Noes: Kroot, Breen, Chignell. Motion failed.

5. APPEAL OF PLANNING COMMISSION'S DENIAL OF A SETBACK VARIANCE TO CONSTRUCT A ONE-CAR GARAGE WITHIN 2' OF BOTH THE EAST SIDE AND REAR PROPERTY LINES; AND PARKING VARIANCE TO REMOVE AN EXISTING LEGAL PARKING SPACE AND REPLACE IT WITH THE NEW GARAGE SPACE AT 39 BELLE AVENUE, APN 7-302-04. APPLICANTS/APPELLANTS: MARGOT AND CHRIS ENBOM, 39 BELLE AVENUE.

Planning Director Bell presented the staff report and explained that the original house on the property was demolished by 50% or more in 1993 and at that time the owners had to comply with the new code requirements. The existing garage was removed. The new owners want to build a new one.

Architect Hank Taylor pointed out that this property has special circumstances due to the narrowness of the lot the options available to place a new garage are limited to next to the house where a neighbor would lose light and view, in the middle of the backyard in which the owners would lose use of their backyard or in the old location, where it used to stand. He feels this location is best based on precedence and qualification of special circumstance.

Chris Enbom, owner of property at 39 Belle, states that he and his wife purchased the property because of the backyard's potential for their growing family. No other homes in the neighborhood have garages placed in the middle of their backyards and feels it makes sense to locate the garage in the old location.

Jim Russell, 28 Bolinas, asked what is the distance from the grade to the site poles. Taylor answered 14 feet.

Kroot asked where the two neighbors garages were in relation to the owner's preferred location for the new garage. Mr. Taylor pointed out locations on the map.

Kilkus is in support as it meets requirement of special circumstances and makes sense.

Breen asks about a letter that points out that the new structure would obstruct light from a neighbor's garden and asked the distance between the proposed new structure and the garden site. The answer was about 65 feet and Breen commented that it doesn't really seem to pose a threat of obstructing sunlight.

M/s, Kilkus/Thornton to grant the appeal with conditions in staff report. Ayes: All

6. CONDUCT PUBLIC HEARING REGARDING PROPOSED ORDINANCE ESTABLISHING ZONING REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES.

Tom Bell, Planning Director, stated that the moratorium expires March 12th, 2004 and the Council has 3 options; do nothing and on March 12, 2004 the old ordinance will take effect, adopt this draft ordinance and the negative declaration, or send the ordinance out for review/revision by an expert attorney. He pointed out that more input has been received, since the staff report was released, that Council may want to consider.

Breen asked Mr. Bell if we were to do nothing is all the work preserved and usable to reintroduce as an ordinance at a later date, then commented that if something is adopted in haste, without first determining our legal authority in this, we risk potential lawsuits in the future.

Planning Director Bell agreed that it is important to make sure the ordinance will stand up legally, but feels it is difficult to determine what the legal role of Council is.

Town Attorney Roth commented that the most efficient way to deal with this is to ask Attorney Hobson to draft an ordinance, taking into consideration the input of the three attorneys, that gives the Council as much legal discretion as possible. He feels it is difficult to determine what the legal role of Council is in this matter.

Kilkus stated that ultimately legality is determined when somebody sues you and you go to court.

Jane Hall 31 Nokomis, stated that this isn't just about health and safety, but that we should have an

adequate process for obtaining information to properly assess need. She believes Hobson is industry biased and while she does not suggest a hasty decision believes the ordinance that is on the table in within the law.

Cindy Guefft, 51 Austin Avenue, pointed that we need to have a way to gather information to know that we are compliant with FCC Telecommunications Act of 1996 standards. She considers Hobson to be industry biased and would be dismayed if the ordinance fell into the biased attorney's hands for revision. she acknowledged that while she feels the document is quite legal she is not opposed to revising the language to avoid possible litigation as much as possible. The committee would like to revise it themselves with the help of legal opinion, to keep it unbiased.

Theresa Allen, 14 San Francisco Boulevard, thinks it would be good if we would join with other communities to draw up the agreement together. But the main thing is to change the law for health and safety reasons. She suggests a letter to research whether people have become ill from this.

Barbara Winches, 20 Holstein Road, has recently moved due to illness from cell site of previous home. She states we have 42 transmitters in the community and with a device she has can find high levels of radiation in certain parts of the town. She believes this needs to be assessed.

Christine Craig, 78 Madrone, wanted to thank all that have worked on this issue.

Thornton states she has looked into this issue on all levels and believes that each attorney's view is based on the area that they are focused on; if we bring all the areas together we can accomplish what we need. Based on this she recommended that we establish a committee of legal, town staff, council, and citizens to provide guidance in establishing a final ordinance.

Kilkus stated that while a noble thought, it is likely a waste of time and effort. The idea of having each company come back and re-measure each transmitter, when the radiation from them is nothing compared to everything else we have in our lives. He would however like to have a reasonable ordinance and would support the proposal.

Breen supports Thornton's idea.

Kroot also supports Thornton and thanked the committee for putting in tremendous amount of work on this issue.

Chignell commented that he sees nothing wrong with the ordinance as it is now, other than one or two phrases for revision on legal language. He mentioned we haven't done any kind of compliance on current antennas. He questions who should sit on the proposed committee and that we will need appropriate legal advice if a Council member be included on the committee.

Thornton stated we already have comments from various legal and the committee would take a look at the comments we already have and determine appropriate conditions, maintaining strong input from everyone on committee, not just legal.

Town Attorney Roth explained that the goal is to gain as much legal control as possible.

Thornton volunteered to work with the committee consisting of citizens, town staff and legal assistance

and give an interim report the first meeting in February.

Kilkus pointed out VanZandt's goal is not to regulate antennas but to eliminate them.

Chignell states VanZandt is also interested in fair process.

Kilkus stated we already have an ordinance on the books that would go back into effect next month so clearly nobody is going to be in jeopardy of health and safety problems.

Chignell said that the ordinance doesn't contain a 3rd Party Review and some of the other things that people have been working on.

Chignell clarified that the new ordinance may not possibly go into effect before the moratorium expires, based on timing.

Breen asks if we are authorizing the expenditure of any funds or outside legal services. Thornton and Chignell conclude, not at this time.

M/s, Breen/Thornton motion to appoint Council Member Thornton to work with a committee of citizens, town staff and the Town Attorney and provide an interim report the first meeting of February, 2004.
Ayes: All

7. APPROVE RESOLUTION # 3673 ENCOURAGING RESIDENTS TO NOTIFY ADJOINING NEIGHBORS BEFORE APPLICATIONS OF AIRBORNE PESTICIDES AND ESTABLISHING A REGISTRY OF RESIDENTS WHO HAVE SENSITIVITIES TO PESTICIDES FOR DISTRIBUTION TO COMMERCIAL APPLICATORS.

Dean Nyberg, Parks Director, presented the staff report recommending the approval of the resolution that encourages private property owners to notify their neighbors at least 24 hours prior to making airborne pesticide applications. This would also include a public information campaign and established a registration list for all pesticide sensitive residents which would be given to commercial applicators during the business license registration process.

Breen requested that we change the language to include "voluntary" in the registration of pesticide sensitive residents.

Louise Mathews, Foothill Road, stated that the resolution has no penalty for non-compliance and does not outline cost factors involved. She cites concerns about the registration list posing privacy rights issues and requests that the Town use existing municipal institutions to facilitate the distribution of information instead.

Roy Smith, San Rafael, wanted to point out that this will not protect his health and safety. He is chemically sensitive and this is a very important issue to me.

Breen stated this is voluntary and is good public policy and good for the community and is in support of it.

Kroot would like to do something a little stronger but given current legislation this is the best solution

and is in support of it.

M/s, Kroot/Breen motion to approve resolution with the addition of “voluntary” in the registration program section. Ayes: All

8. APPROVE RESOLUTION # 3674 AMENDING PLANNING DEPARTMENT FEE SCHEDULE.

Tom Bell, Planning Director, presented the staff report. He reminded everyone that a subcommittee was formed to modify the fee schedule and is recommending that Council adopt the new fee schedule.

Louise Mathews, Foothill Road, states she is opposed to the fee increase.

M/s, Kroot/Thornton to approve Resolution #3674. Ayes: All

9. APPROVE FIVE-YEAR FRANCHISE AGREEMENT FOR SOLID WASTE, RECYCLING, AND GREEN WASTE SERVICES WITH MARIN SANITARY SERVICE.

Debra Stutsman, Town Administrator, presented staff report stating that now that we are clear to award the franchise to Marin Sanitary, the agreement has been reviewed by all parties and is essentially in the same form that was presented a year ago except for the necessary date changes.

Patty Garbarino, Marin Sanitary, said they are pleased to be in Town and would like to thank all of the volunteers.

Louise Mathews, Foothill Avenue, wants a statement that Brown Vence has been paid only once.

Breen states we don't need a transition plan because it's already been done.

Ms. Stutsman states it was left in there because it memorialized the work that had been done. Councilmember Thornton said an effort was made to change as little as possible in the agreement.

M/s, Thornton/Kilkus to approve the five-year franchise agreement with Marin Sanitary Service. Ayes: All

10. DISCUSSION AND APPROVAL OF JOINT POWERS AGREEMENT (JPA) BETWEEN THE TOWN AND THE TAMALPAIS UNION HIGH SCHOOL DISTRICT TO ESTABLISH THE RED HILL COMMUNITY PARK, AND APPOINTMENT OF TWO COUNCILMEMBERS TO THE JPA BOARD OF DIRECTORS.

Debra Stutsman, Town Administrator, presented the staff report citing that the only change from the previous presentation is the governing authority makeup of five elected officials from the members.

Breen points out that we are not establishing a commission or advisory board, but rather a JPA that is accountable to the board.

Paul Orbuck, Alpine Lane, is in full support of the project but is concerned about what legal issues might arise as a result of who sits in the 5th seat, currently a Ross Valley School Board member.

Louise Mathews, Foothill Road, quoted the Brown Act and its applicability to this JPA.

M/s, Breen/Kilkus to approve the JPA between the Town and the Tamalpais Union High School District for development of the Red Hill Community Park and appoint Councilmember Thornton and Councilmember Breen to the JPA Board of Directors. Ayes: All

11. ADJOURN

The meeting was adjourned at 11:30 p.m. in honor of Joe Preciado.

Respectfully submitted,

Denise Phillips