

**TOWN OF SAN ANSELMO
STAFF REPORT
September 16, 2008**

For the meeting of September 23, 2008

TO: Town Council

FROM: Debra Stutsman, Town Manager

SUBJECT: Town Property

RECOMMENDATION

That Council receive public comment regarding the Town property called the Lombard property, AP 005-300-15 and provide direction to staff.

BACKGROUND

In connection with the settlement of landslide litigation against the Town approximately six years ago, the Town received title to the Lombard property, which is an unimproved 11 acres. The lower end of the property is located off Idlewood Drive and Carlson Avenue. The upper portion of the property is accessed from Oak Springs Drive. Mid-way access is obtained via Cherne Lane.

The Town's insurance pool, the Bay Cities Joint Powers Insurance Authority (BCJPIA), provided a defense to the Town in the landslide litigation and the Town was required to pay \$500,000 into the global settlement and to repair the landslide.

Following the settlement, the Town conducted a substantial repair of the Lombard property at a cost of approximately \$750,000.

BCJPIA and the Town had a dispute regarding insurance coverage in the matter. The Town argued that the slide was covered by insurance and that it did not have the funds to repair the slide. The Town and BCJPIA settled their dispute via agreement made in August 2003, a copy of which is attached hereto as Attachment 1. BCJPIA would front the Town \$500,000 to fix the landslide, as required by the litigation.

The agreement further requires that the Town will pay the money back to BCJPIA, either outright or by marketing and selling the Lombard property and distribute the sales proceeds as follows:

- The first \$500,000 in net sales proceeds to BCJPIA to repay the \$500,000 fronted for the slide repair;
- The second \$500,000 to the Town;
- Then, reimbursement to the Town for expenses for slide repair over the \$500,000; and, finally,
- Equal sharing of the remaining available net sales proceeds between the Town and BCJPIA until BCJPIA is reimbursed its defense costs of \$137,000, with any remaining amount to the Town.

After the hillside repair was completed, action in pursuit of some type of sale was stalled by the Town's focus and attention on the December 31, 2005 flood and its aftermath.

DESCRIPTION OF PROPERTY

The 11 acre Lombard property is located in the middle of a residential area. The terrain is very steep for most of the upper part of the property, becoming nearly level at the lower end near Idlewood Drive. The property can be accessed at the end of Idlewood Drive, Carlson Avenue, Cherne Lane and Oak Springs Drive. The property is linked to the Hawthorne Canyon open space property at the top of the hill near the end of Oak Springs Drive by another Town-owned lot.

DISCUSSION

The Town must now make a decision on next steps with respect to the property in order to fulfill its \$500,000 obligation to the BCJPIA. The Lombard property is located in the middle of a residential neighborhood and those property owners will be affected by whatever the Town decides. This meeting is an opportunity to hear from the neighbors about their ideas for and concerns about this property. All properties within 500 feet received the attached notice (Attachment 2). Written comments received to date from neighbors are attached (Attachment 3).

The subject was discussed at the Town Council meeting of July 8, 2008 (Attachment 4 – Minutes of July 8, 2008). Comments from the audience centered around the desire to keep the property as open space, concern about slope stability, the steepness of the lot and drainage. Council directed staff to gather all the historical documents related to this property so they can be fully educated on the property. That information was forwarded to the Councilmembers several weeks ago and is also available for review by the public at the front counter in the Town Hall offices. A chronology of the property is also attached (Attachment 5).

FISCAL IMPACT

The Town has \$1.25 million invested in the Lombard property at this point, \$500,000 of which must be paid back to BCJPIA. The remaining \$750,000 is money that the Town spent settling the slide litigation and repairing the slide over the last six years.

Respectfully submitted,



Debra Stutsman
Town Manager

- Attachment 1 – Settlement Agreement with Bay Cities
- Attachment 2 – Notice to properties within 500 feet
- Attachment 3 – Comments received to date from residents
- Attachment 4 – Minutes of the July 8, 2008 meeting
- Attachment 5 – Chronology of Lombard property

SETTLEMENT AGREEMENT AND LIMITED HOLD HARMLESS

The Town of San Anselmo ("Town") and the Bay Cities Joint Powers Insurance Authority ("BCJPIA") desire to resolve any potential dispute concerning indemnity under the applicable Memorandum of Coverage for the Town's settlement payment in the consolidated cases entitled Lombard Acceptance Corporation vs. Town of San Anselmo, Marin County Superior Court Action No. CV 993346 ("the Lawsuit").

In the Lawsuit, BCJPIA provided a defense to the Town, and expended approximately \$137,000 in that defense.

In the Lawsuit, the Town settled the claims against it, without admitting liability, as follows:

- (a) The Town paid \$500,000 to the plaintiffs.
- (b) The Town received easements on two properties, the Conversano and Bulkley properties.
- (c) The Town received title to and ownership of the Lombard property, which is unimproved property consisting of approximately 11 acres, located in the Town and identified as Marin County Assessor's Parcel Number 005-300-15.
- (d) The Town confirmed its intention to plan, design, construct, place and maintain future repair of the landslide, which was the basis of the Claim.

The Town estimates the cost to repair the Lombard property will be approximately \$700,000, and contends this repair must be done

before the Lombard property can be developed or sold.

A difference of opinion has arisen between BCJPIA and the Town as to whether the \$500,000 paid by the Town constitutes "damages" and whether the Town has sustained an "ultimate net loss" as those terms are defined in the applicable Memorandum of Coverage:

(a) The Town contends its payment in settlement of the Lawsuit constitutes "damages" and that because of the condition of the Lombard property, the Town has sustained an "ultimate net loss."

(b) BCJPIA disagrees with these contentions. The Town and BCJPIA desire to resolve these issues, and thus agree as follows:

1. BCJPIA will pay to the Town the sum of \$500,000.
2. The Town will use the \$500,000 paid to it by BCJPIA and will itself pay whatever additional amounts are required to make the necessary repairs to the Lombard property.
3. The necessary repairs to the property will be completed within two years and four months from the date of this Agreement. However, at least six months prior to the expiration of the repair period of two years and four months, the Town may request and, after reasonable consideration by BCJPIA, may be granted an extension of time by BCJPIA to complete the repairs. If the Town's request for an extension is not granted, or the Town fails to complete the necessary repairs within the time granted by an extension, the Town will reimburse BCJPIA \$500,000.
4. Within one year from the completion of the repairs, one of

the following will occur:

(a) The Town will market and attempt to sell the property, and will allocate the proceeds as follows:

Tier 1 \$500,000 to BCJPIA as reimbursement for payment toward repair costs.

Tier 2 \$500,000 to Town as reimbursement for settlement costs.

Tier 3 Reimbursement to Town for expenses for slide repair over the \$500,000 BCJPIA payment, as well as expenses for slide maintenance and costs incurred in subdividing, marketing and selling the property.

Tier 4 Remaining sale proceeds will be shared equally between BCJPIA and the Town until BCJPIA's defense costs of approximately \$137,000 have been reimbursed to BCJPIA; any remainder belongs to the Town; or

(b) The Town will decide, not to market and sell the property, and will pay BCJPIA \$500,000; or

(c) After a good faith effort, the Town is able to sell the property but only for an amount less than \$500,000, in which case the Town will be obligated to BCJPIA to the extent of the proceeds net of sale expenses received from the sale of the property.

5. To assist in its efforts to market and sell the subject property, the Town will reasonably consider changes to its

General Plan and/or zoning regulations so as to enhance the property's marketability. However, the Town will not enact any zoning legislation nor changes to its General Plan nor any administrative action which may negatively affect the potential value of the subject property until the property has been sold and/or BCJPIA has been reimbursed \$500,000.

6. Any claims arising out of the performance of the repairs, or any alleged negligence or failure to perform those repairs properly, whether claims for property damage or bodily injury and whether by individuals working on the repairs or by others, will be solely the responsibility of the Town, which will hold BCJPIA harmless for any such claims, including all attorneys fees and costs associated therewith.

7. It is further understood and agreed that this Agreement is executed as a compromise of a disputed claim and that neither the described consideration given by BCJPIA and/or by the Town for this Agreement, nor anything else contained herein, shall be construed as an admission of liability on the part of the Town or BCJPIA.

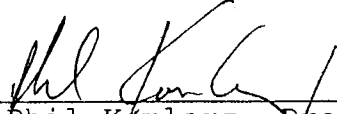
Dated:

8.27.03

Debra Stutsman

Debra Stutsman
Town Administrator
Town of San Anselmo (Town)

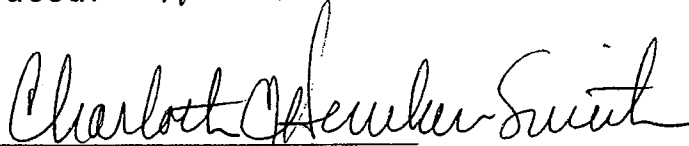
Dated:



Phil Kamlarz, President
Bay Cities Joint Powers
Insurance Authority (BCJPIA)

Approved As To Form

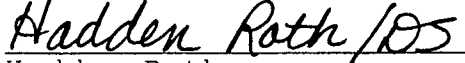
Dated: 9/2/04



Charlotte E. Hemker-Smith
Attorney for Bay Cities Joint Powers
Insurance Authority (BCJPIA)

Approved As To Form

Dated: 8.27.03



Hadden Roth
Attorney for Town of San Anselmo (Town)

Ted Freeman
Mayor

Peter Breen
Vice Mayor



Ford Greene
Councilmember

Judy House
Councilmember

Barbara Thornton
Councilmember

525 San Anselmo Avenue, San Anselmo, CA 94960-2682
www.townofsananselmo.org
(415) 258-4600 | Fax (415) 459-2477

Town Council Meeting

Tuesday, September 9, 2008
San Anselmo Town Council Chambers
525 San Anselmo Avenue
7:00 p.m.

The Town Council will be discussing the 11 acres of Town-owned undeveloped land accessed at the ends of Idlewood Drive, Carlson Avenue, Cherne Lane and Oak Springs Drive, AP #005-300-15

The Town of San Anselmo is the owner of 11 acres of undeveloped land located off Butterfield Road. The property is located in the middle of a residential area that is accessed at the ends of Idlewood Drive, Carlson Avenue, Cherne Lane and Oak Springs Drive.

The property itself is very steep at the upper end of the property, near the end of Oak Springs Drive. It becomes almost level at the lower end of the property, near the end of Carlson Avenue and Idlewood Drive.

The Town acquired this property in connection with the settlement of landslide litigation approximately five years ago. The global settlement agreement required that the Town pay \$500,000, take ownership of the property, and repair the slide. The slide repair was completed by the Town at a cost of \$750,000.

The Town's insurance pool denied coverage to the Town for the landslide; however, it advanced \$500,000 to the Town to do the slide repair, with the agreement that it would be repaid.

With the landslide repair complete, the Town has \$1.2 million invested in this property. The Town must repay \$500,000 to the insurance pool. One way to accomplish this is to market and sell the property or a portion of the property to generate these funds.

The Council will be discussing this issue at the meeting of **September 9, 2008, at 7:00 p.m.** in the Town Hall Council Chambers. The Council is interested in hearing ideas about the Town's options from interested residents.

Background materials prepared for the Town Council are available for public viewing at Town Hall, 525 San Anselmo Avenue, Monday through Thursday, 8:30 a.m. – 12 noon and 1 p.m. to 3 p.m.

Debbie Stutsman

From: bambraimm@aol.com
Sent: Friday, June 27, 2008 10:15 AM
To: dstutsman@ci.san-anselmo.ca.us
Subject: Vacant Land

Dear Ms Stutsman

I am writing in reference to the item in your newsletter that the town is seeking suggestions on the best use for 11 acres of property the town owns in Sleepy Hollow.

I do not know what impediments there are to the use of this property so my suggestions may not be possible or practical but my recommendation is that the town sell this property for private home development so as to provide additional revenue for our town both in the short term, from the proceeds of the sale, and in the long term from property tax revenue.

The future of our town depends on developing a strong property tax base and we already see the impact of failing to pursue this goal in the past.

Yours truly,

Ian Mousley

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Debbie Stutsman

From: Joe MacKie [jmackie@airtechusa.com]
Sent: Monday, June 30, 2008 11:20 AM
To: 'Debbie Stutsman'; 'Barbara Chambers'; 'Lisa Wight'; relias@ci.san-anselmo.ca.us
Subject: Developement of the land adjoining Carlson / Idelwood area.

I would like to thank you and congratulate your office on how it is going about this project. Making people aware in advance and letting them have a voice is a great way to build consensus for this must needed project.

Our family is interested in supporting a balanced project that is consistent and representative of the existing "Single Family neighborhood.

We understand the following:

1. The area is the subject of an expensive legal situation and the town needs to recover it's losses.
2. The area presently poses a serious fire danger to the community, and that thoughtful development would mitigate this risk.
3. The town is under pressure to approve some affordable housing in it's general make up.
4. Previously a project involving a lot of condo's was considered which engendered a great deal of local opposition.

What we would like to see happen (my 2 cents !..LOL).

1. Please consider a project like "Bay Wood Canyon" in un incorporated Fairfax.
2. There are plenty of market priced homes that raise everyone's comparables and our towns tax base.
3. They also included many SFD affordable homes on the less desirable lots, but they are still great looking homes in a great neighborhood.
4. Please consider a plan for affordable homes for RVFD, SAPD (or a combined RVPD.), and RV school districts personnel. Imagine a program / plan that encourages young fire fighters , policeman, and teachers to seek employment and remain within the community. I.e..maybe after every year of service they get 10% vested in the home...etc... We could turn this big mess into a huge win/win for everyone.

We own property that adjoins the back and has easement for drainage and sewer to Butterfield. We are open to discussions with the City and the developer.

PLEASE BE PREPARED FOR THE FOLLOWING:

1. There are some issues with the soil stabilization work that was performed there a while back. We are very grateful for that project, and please do not take offense at the following suggestion. The drain at the base of the slide is in disrepair. It appears to be fundamentally undersized. I would be happy to walk back there with someone and show it to you. Respectfully, it could over time, undermine the entire effort to stabilize that hill.
2. There are critics of the earlier project. They are also critical of the City in its stabilization efforts. I suspect they will be critical of anything that someone attempts to do. We understand that it is easy to sit on the side lines and be critical and a lot harder to come to the plate and work out a solution.
3. There will be concerns that all off the traffic will get put onto just one street. If the traffic is dispersed to many different streets it lessens the impact on any one particular neighborhood. Around the corner from Lisa's home is a drive way with a " private-no

trespassing sign", that appears to be on the extension of Idelwood down to Carlson. Some people have turned public right of ways into the personal domains.

MY GOAL:

1. I understand nature abhors a vacuum.
2. My home is there.
3. I want to see the best possible outcome that preserves the essential character to the neighborhood.

Joe MacKie
Airtech, Inc.
42 Digital Drive, Unit 9
Novato, CA 94949
Phone: 415-382-9000
Fax: 415-382-9700
Cell: 415-377-8102
Email: jmackie@airtechusa.com

5. RECEIVE PUBLIC COMMENT REGARDING 11 ACRES OF TOWN-OWNED UNDEVELOPED LAND ACCESSED AT THE ENDS OF IDLEWOOD DRIVE, CARLSON AVENUE, CHERNE LANE AND OAK SPRINGS DRIVE, AP NO. 005-300-15, AND PROVIDE DIRECTION TO STAFF.

Vice Mayor Breen and Councilmember House recused themselves.

Town Manager Debra Stutsman presented the staff report and noted that the Town has \$1.2 million invested in the property.

Councilmember Greene asked about the reference in the staff report that the Town sell the property and clarified that selling isn't the only option.

Jonathan Braun, Scenic Avenue, stated proposed property was purchased and designated to be public open space. Braun recommended initiating a planning study to determine what would have the least impact and allow the Town to make recommendations about the outcome of the property.

John Grey, Butterfield Road, noted property has been deemed undevelopable and is in contrast to the General Plan. Grey stated that the property is not stable. He presented an EIR on the property from the 80's.

John Fallet, Cherne Lane, noted that an alternative is a very serious consideration of working the Marin Open Space and other organizations to raise the \$500,000 owed the insurance company. Fallett asked if there was a deadline to pay the \$500,000 and Stutsman responded no.

Tom Hendricks, Carlson Court, expressed that he was in agreement with the prior speakers and offered assistance to the Town in resolving the issue in a way that would take care of the Town's fiscal needs and not expose the Town to risk and liability.

Andy Fessel, Kenrick Avenue, stated that the area is dangerous and that the amount of traffic that comes down Butterfield is excessive, so additional development is not something that is desired. Fessel asked the Council to make a decision towards conservatism when it comes to developing the area. Fessel suggested selling off a portion of the land that is stable and letting the rest go to open space.

Louise Matthews, Foothill Road, referenced a 2002 letter regarding feasibility analysis of residential development in the Oak Springs area. Matthews stated that she believed the area should be open space.

Guy Meyer, stated that the region is unstable.

Tony Grey, Idlewood, expressed concern about the number of slides that have occurred in the area. Doris Gamberdella, expressed concern about previous slides and urged the Council to leave the area as open space.

Dolores Gamberdello, Rancho Drive, said the property should stay as open space. She presented pictures of the mud and water in their neighborhood.

Joe McKie, expressed that the area is a unique opportunity and brought an engineering group to review it, and stated that the group was concerned about the drainage repair at the base of the area. McKie asked the Council if it did approve to develop the area, would the Town be liable for more damages if things went wrong.

Bill Werner, Woodside Drive, said it feels like a conflict of interest for the Town to sell a piece for development.

Al McPherson, Rancho Drive, referenced a 2002 letter from ISL Engineering that addresses a drainage issue and asked if the issue had been addressed. McPherson stated in the 2006 flood there were additional slides in the area and that the drainpipe has been undermined.

Councilmember Greene asked for specifics of the drainage pipe that is being undermined. McPherson noted the pipe was located on Idlewood and was blocked during the 2005 and 2006 floods.

Greene asked did the system stop working during the last rainy season and he said yes.

Peter Breen, Woodside Drive, stated that the Town needs to be aware that Oak Springs is the most slide prone area in Marin and that the Town faces a \$500,000 commitment. Breen suggested that the Council zone the property for one residence with all disclosure that would be required, but if no buyers were interested, then go back to Bay Cities and inform them that Town has tried to sell the property, but didn't know that the property was virtually unsellable.

Thornton stated that the property is problematic and stated that there are many complex issues to think about.

Greene stated that he has learned a lot about the history and nature of the property and stated that he would like to direct staff gather up all of the documents relating to the property and that he would like to see the property remain open space. Greene stated that the Council should consider zoning for one property.

Stutsman asked if there was consensus to gather the relevant information on the property and Greene answered that the boxes could be made available to Councilmembers for review.

HISTORY OF LOMBARD PROPERTY, AP 005-300-15

- 1979 Kintetsu proposed 19 units plus a pool and a pool shed; no action.
- 1980 Kintetsu proposed 14 cluster residential units and a recreational use. An Environmental Impact Report (EIR) was required and later approved.
- 1982 Kintetsu proposed 9 units; Planning Commission recommended 8 units to the Town Council with the same EIR. The Town Council approved 8 units with the same EIR. It was not built.
- 1989 Owner Schenk of two parcels adjacent to the Kintetsu property proposed a lot split so that Kintetsu's right to a maximum of 8 units and Schenk's right to a maximum of 1 unit would now change so that Kintetsu would have a maximum right to 7 and Schenk to 2 (Schenk would then have 2 acres to be allowed 2 units). It was denied by the Planning Commission and the Town Council because they didn't want to see a lot from the Kintetsu property, which was more hidden, to make it to the top of the hillside and be very visible. Since then Schenk has built one house now known as 33 Cherne.
- 1998 A landslide occurred on February 6 on the Bulkley property flowing downslope to the bottom of the hill onto the Lombard property.
- 1999 Complaint filed against Town and uphill property owners by Lombard Acceptance, owners of AP # 005-300-15.
- 2002 Settlement Agreement with Lombard Acceptance signed that required that the Town: a) pay \$500,000 into the settlement, b) take ownership of the Lombard property and c) fix the slide at an estimated cost of \$700,000.
- 2003 Settlement Agreement with Town's insurance pool, Bay Cities Joint Powers Insurance Authority, to front the Town \$500,000 for the slide repair, with the understanding that the Town would repay the money, either out of Town funds or by marketing and selling the property.
- 2005 Slide repair completed. Process to explore possibilities of paying back the insurance money stalled by flood of 12/31/05.
- 2007-08 Town works toward obtaining geotechnical and other reports to determine feasibility of selling a portion or all of the property to repay insurance money.