

TOWN OF SAN ANSELMO

Minutes of the Town Council Meeting of January 8, 2008

Present: Breen, Freeman, Greene, House, Thornton
Absent: None

7:00 p.m.

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

ANNOUNCE ACTION TAKEN, IF ANY, IN CLOSED SESSION

Freeman stated no reportable action was taken.

OPEN TIME FOR PUBLIC EXPRESSION.

Arnie Scher, Durham Rd, asked Council to discuss more global issues beyond the specific issues of San Anselmo.

Louise Mathews stated she received a response from the District Attorney McBride regarding her letter of cure and correct.

Ms. Mathews noted the Tamalpais Union High School District is working with the Park & Rec. Commission regarding Red Hill Community Park. She believes Tam District may be trying to use facilities bond monies from Measure A to improve the project at Red Hill Community Park.

Ms. Mathews also requested Council to provide a definition of “no reportable action”.

Town Attorney Epstein noted that Ms. Mathews did write a cure and correct letter in which the Town paid the Town Attorney to respond to the letter, and the community paid the District Attorney to analyze the letter. The District Attorney rejected the contentions made by Ms. Mathews.

Epstein responded to Ms. Mathews request for a definition of “no reportable action” in which he stated the Brown Act is very clear about what is and what is not reportable action in a closed session isn’t and the Town adheres to the Public Records Act.

Greene has concerns with Mr. Scher’s comments and asked if the Town has a policy in taking positions on matters that are bigger than our community.

Stutsman stated the policy to not take on global issues was an informal policy and believes it would be good to propose a formal policy. The informal policy is a balance so that it does not take away from the regular business of the Town. If the issue affects San Anselmo, Council can request that it be on the agenda.

Breen noted that the Town’s Flood Committee pertaining to the Ross Valley Flood mitigation will be meeting on Monday, January 14, 2007 in the conference room at Town Hall.

Greene noted that there is a technical way to fill sand bags and is wondering if there is a way to communicate to the community to show them how to do it right.

Stutsman stated she will address the subject of sandbags in her newsletter and also make it available on the Town’s website.

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 ITEMS MAY BE APPROVED WITH ONE ACTION.

- (a) Approve minutes of December 11, 2007
- (b) Acknowledge and file warrant numbers 59578 to 59764 issued during the month of December 2007 in the amount of \$1,552,380.91.
- (c) Approve the Revenue and Expenditure Report for the period ending November 30, 2007.
- (d) Approve the Recreation Revenue and Expenditure Report for the period ending November 30, 2007.
- (e) Approve Emergency Projects Fund (flood related) Revenue and Expenditure Report for the period ending November 30, 2007.
- (f) Accept the project and authorize filing of notice of completion of contract for the 2007 Road Paving and Repair at Allyn Avenue, Butterfield Road/Arroyo Ave, Oak Springs Drive and San Anselmo Avenue Project.
- (g) Approval and second reading of Ordinance No. 1062 adding a maximum time limit of four hours to the time limits already set for parking meter zones in section 3-5.1211 of the San Anselmo Municipal Code.
- (h) Announce expirations on Measure G Monitoring Committee and direct staff to advertise for applications.

The public session opened.

There was no comment from the public.

The public session closed.

House requested Item a) to be pulled from the Consent Agenda. She requested the minutes reflect that she voted no on item 4. Regarding item e) she requested clarification of the \$124,000 Allyn Ave. expenditure in the Emergency Projects Fund.

Finance & Administrative Services Director Pendoley stated the expenditures were made last year and we recognized that we were going to get reimbursed; we set up a receivable so when the \$124,000 was received in November it was applied against this receivable.

Breen requested Item D be pulled from the Consent Agenda. Breen stated the Towns Recreation Fund revenue is only exceeding its expenditures by 11% of the first quarter of this year and projected out over the year this indicates the fund will be \$120,000 over budget. He feels it is appropriate that the Recreation Director bring to Council a plan of how we are going to meet this deficit and asked staff to bring back to Council a more definitive plan within the next month.

Stutsman stated Recreation Director Long is presently at the Arts Commission meeting and he will be able to address this issue later on during the meeting when we discuss the Mid-year Budget Review.

M/s, House/Thornton, to approve the Consent Agenda with the amendment to the minutes. Ayes: All.

2.) APPOINT MEMBERS TO THE HISTORICAL COMMISSION (2) AND THE OPEN SPACE COMMITTEE (3).

Stutsman stated there are several vacancies on the Historical Commission. There have been two applicants; Patricia Swenson, an incumbent, and Julie McNair who was unable to attend tonight's interview.

The public session was opened.

There was no public comment.

The public session was closed.

M/s, Breen/Thornton to appoint Patricia Swenson to the Historical Commission. Ayes: Freeman, Breen Thornton, House. Abstain: Greene.

Stutsman stated there are 4 vacancies on the Open Space Committee, and three incumbents have applied: Linda Hoch, Barbara Dwyer and Leonard Charles.

The public session opened.

There was no public comment.

The public session closed.

M/s, Thornton/House to appoint Linda Hoch, Barbara Dwyer and Leonard Charles to the Open Space Committee. Ayes: Freeman, Breen Thornton, House. Abstain: Greene.

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(3).APPEAL OF PLANNING COMMISSION APPROVAL OF 48 RAYMOND. APPEAL OF PLANNING COMMISSION APPROVAL OF A USE PERMIT TO DEMOLISH A SINGLE FAMILY DWELLING; AND FLATLAND DESIGN REVIEW OF A 1,365+ SQUARE FOOT UPPER FLOOR AND A 2,419+ SQUARE FOOT MAIN FLOOR OVER A LOWER LEVEL IN A NEW 3,784+ SQUARE FOOT SINGLE FAMILY DWELLING WITH A 456+ SQUARE FOOT COVERED PORCH AND 672+ SQUARE FEET OF DECKING AT 48 RAYMOND AVENUE, APN 007-171-28. APPLICANTS: IVAN LUKRICH FOR DAVID AND CLAUDIA EISEMAN, P.O. BOX 1642, SANTA ROSA, CALIFORNIA 95402. APPELLANTS: MARY AND KEVIN DAVIS, 411 LAUREL AVENUE, AND REX THOMPSON, 40 RAYMOND AVENUE, SAN ANSELMO.

Freeman noted at the meeting of Dec 11 the Council heard presentations from: staff, appellants, applicants and took public comment on the item. Although public hearing was closed at the last meeting Council will take public testimony from anyone who did not have an opportunity to be heard that night or if someone has something new to say.

Wight stated at the last meeting staff presented the appeal of the Planning Commissions decision and the various reports were presented; soils, drainage, arborists, historical survey, shadow and landscape. The appellants concerns raised at the meeting were privacy, removal of a one hundred year old house; request a deed restriction for not having a lower floor in the future. The applicant's comments were that the applicants had made some changes to the original project and that a deed restriction was not warranted.

The public session opened.

Paul Steede (son-in-law to Rex Thompson, 48 Raymond) noted the drainage was an issue in the latest storm and did cause some flooding into the basement of the Thompson home. He requested Council to take a close look at drainage issue and thanked Council for hearing their comments.

Paul Smith, Tiburon, (applicants representative), drainage studies showed on site detention and retention and that this work has not been done yet, so when this work is done it should solve any current drainage issues.

Jeff Kroot, Crescent Road, stated the Town's Code section No.10.3.1305e was created to encourage preservation of historic homes of cultural value. He believes the demolition of 48 Raymond will adversely affect the neighborhood and by doing so will destroy the general welfare of the Town. Also that if Council does approve demolition of 48 Raymond they will be setting a precedent for the neighborhood and paving the way for the gradual replacement of our historical community. Kroot feels that it is especially significant that this property is for sale and asked Council to take our history seriously and save this home.

Anne Marie Crow, 217 Crescent Road, believes if the home is demolished that it will change the neighborhood and she is here to support her neighbors.

Karlyn Strand, 20 Yolanda Ave., a member of the Historical Commission, noted that building the proposed house as shown would definitely impact the historical context of our town and feels if this project were to be approved that it would deteriorate and diminish the culture of the neighborhood and that Council should protect this home.

Mary Davis, 411 Laurel Ave., stated the reason they have appealed the Planning Commission decision was because the Commission felt their hands were tied based on the limited range of considerations they can make and she is hoping for a different outcome with the Council. She considers the house at 48 Raymond a historic landmark for many reasons, one being her great-grandfather built the house and she requests that this house not be demolished and that Council strengthen the historic house ordinance so this situation does not happen again. Davis believes the only people that benefit from this project will be the applicants and the Town will lose history that can never be replaced. Regardless of the outcome she hopes that some long term good for San Anselmo will come out of the time and energy spent on the hearings regarding 48 Raymond. It is important that Council consider the long term impact on the neighborhood and Town and they make the correct decision. Davis noted they do appreciate the opportunity to use the public forum to address their concerns.

Scott Thompson, Rex Thompson's son, apologized that we all had to go through this yet it seems that the neighborhood has indicated this project is not quite right for the neighborhood.

Helen Milowe believes the Council has the authority and obligation to act to protect the quality of the neighborhood and that Council has the ability as a body to put some meaning behind and influence the into Historical Commission. She feels the only to guarantee the property owners do not develop the under-story is with a deed restriction and hopes that Council finds the courage to act to protect the quality of our neighborhoods.

The public session closed.

Greene is concerned regarding the strong thrust Council is charged with to protect, preserve and restore buildings of local historic value in San Anselmo and believes 48 Raymond is of local historic value. He believes it is important to note that the property is for sale and if we approve the demolition we would be giving approval of a process where money of interest can come into town, develop property (land speculation), and never have intention to live here or be a part of our community and because of this he votes to sustain the appeal.

Breen requested legal opinion as to whether the Council has the ability and right to make the appropriate finding to sustain the appeal.

Town Attorney Epstein noted that Staff would want to come back at the next meeting with a resolution and that this is design approval and is a subjective determination by the Council. It is Council's obligation to apply the Municipal Code and its zoning rules to this proposal and decide in their judgment whether it meets them. Epstein noted decisions concerning design approval are much tougher for a court to overturn.

Breen noted that land speculation is not what we really want in San Anselmo. While the Town encourages speculation in the downtown area to help our economic and commercial basis, land speculation is not what we really want in our residential neighborhoods and votes to sustain the appeal.

Thornton stated in listening to the public's comments and letters they have received and their comments regarding deed restrictions, she acknowledges the neighborhood has many older homes that have been restored and/or maintained. She believes Council should sustain this appeal and has concerns whether Council needs to have findings to sustain the appeal in regards to the Town's General Plan.

Epstein stated that Council would have to have findings whatever decision Council makes; if the General Plan policy is relevant to those findings, they will site those findings.

Epstein stated in cases like these the question is whether there is evidence in this record that is being created now that is sufficient to support whatever decision Council chooses to make.

Freeman believes there is historic value in the neighborhood and wishes to preserve that atmosphere and he agrees with rest of Council and wants to sustain appeal.

Epstein stated what staff seeks from Council tonight is Council's decision whether to grant or deny this two appeals and then to request that staff come back with a formal resolution that Council can adopt that will have the findings necessary to make that decision permanent for your record, that staff would bring back on the Consent Agenda.

Freeman asked Epstein what he is suggesting is that Council not vote on this issue tonight but rather give direction to staff.

Epstein suggests continuing this matter to the next meeting so staff can come back with a resolution for Council's consideration. Now that Council is giving staff direction to where they are headed and considering the level of debate, time and attention that has been paid to this issue staff would like to have time to bring it back to Council for their final decision.

M/s, House/ Breen to continue the item until January 22, 2008. Ayes: All

4.) DISCUSSION AND APPROVAL OF MID-YEAR BUDGET REVIEW.

Stutsman stated staff has reviewed the revenues and expenditures to date and has projected estimates for the fiscal year end. Year-to-date figures indicate the General Fund revenues may meet or slightly exceed budgeted amounts. With continued tight control on expenditures staff projects that the Town will end the fiscal year on budget.

Assuming continued stability in the second half of the budget year, uncommitted reserve funds totaling \$350,571 are currently available for appropriation. Staff recommends the following items for Council's consideration.

1. Transfer \$181,221 to the Emergency Projects Fund to support remaining costs associated with Town Hall flood recovery activities.
2. Transfer \$130,000 to the Recreation Fund to support declining revenues.
3. Increase the Town Council budget by \$2,000 to fund new Councilmember training.

The General Fund uncommitted reserve is currently \$350,571. Funding recommendations listed above would reduce the reserve to \$37,350.

Stutsman noted the Recreation Department has been faced with challenges from other private recreation organizations. Also it is common in other cities for the General Fund to support the Recreation Fund anywhere from 20 to 40%. The Town's General Fund support of Recreation is currently 10%.

Freeman asked if there were other reserves in the budget beside the Contingency Fund.

Stutsman stated the Contingency Fund is just the General Fund money that is not committed and that the Town has \$1.5 million in reserves for unanticipated expenditures and emergency situations.

Greene asked what amount was given to the Recreation Fund last year.

Stutsman stated approximately \$100,000.

The public session opened.

Mathews has concerns with the Recreation Budget and would like to see the salaries of Recreation Department employees.

Pendoley noted that Item 1C of the Agenda contains the budget as well as the year to date expenditures from the General Fund to support Recreation and Item 1D is the Recreation's revenue and expenditures.

The public session closed.

Recreation Director Long talked about the forecast for the Recreation budget. They are looking at what can be done to increase revenues and come up with ideas for the summer program that other camps in the community are not offering. Robson after school program has slowed down so we are trying to mitigate with sports programs at the schools after school. The Recreation Department is going to online registration which may provide an easier way for people to register for programs and they are considering raising some of the fees. A new brochure with new programs will be coming out in a few weeks.

Breen stated he does not want to approve the transfer at this time and would like to see more specifics than generality. He would like to set this money aside for the Recreation Department but would like to see more detail as we move forward in the budget.

Thornton asked if there were things that we can do now that may decrease the overrun by the end of the fiscal year.

Long stated they are trying to mitigate the loss somewhat by the end of the year and they are looking at changing some programs and adding some programs and will be working on this until July 1.

Thornton thinks the Recreation programs are important and thanked Recreation Director Long for the great programs they put on.

M/s, Breen/Greene to approve Resolution No. 3824 with the amendment that the \$130,000 that was initially recommended for transfer to the Recreation Fund remain in the reserve for contingency; the Recreation Director will come back with an outline of plans that shows how they will be moving forward on bringing this fund into conformity with the budget. Ayes: All.

5.) FIRE STATION 19, 777 SAN ANSELMO AVENUE, FLOOD RECOVERY AND IMPROVEMENT PROJECT:

5a) PRESENTATION OF ALTERNATIVE FINANCING OPTIONS AND APPROVAL OF PREFERRED ALTERNATIVE.

Staff report was presented by Finance and Administrative Director Pendoley. Pendoley stated there are two options the Town might consider in financing the construction work over a 10 year or 15 year amortization period: Certificates of Participation (COPs); or Municipal lease. For the purposes of discussion, Stone and Youngberg has provided three levels of financing: \$1.5M, \$1.7M and \$1.9M, each with COP's and Lease options and each with a 10 year and 15 year amortization. A municipal lease would provide the most cost effective method of financing the Fire Station construction.

Breen requested clarification regarding the operations of a municipal lease and that the Town would not be transferring the deed to the property.

Pendoley stated that the Town would not be transferring the deed to the property and it would be like a double lease.

Greene requested confirmation that the municipal lease cost less and has shorter duration and you can't expand the loan amount and the COP cost more to get but your pay back time is longer and you have more flexibility to get more money if you need it.

Pendoley confirmed Greene's statement and stated that you commit to a pay back period and the lease is up to a maximum of 15 years. COP's can 10, 20 or 30 years. So you have more flexibility that way, but once you commit you are committed. In terms of the amount of money that we are borrowing, this is a one time deal and she is not certain the Town has the capability to add money on at a later date without going through this process all over again..

Greene asked what staff thinks is the best financing.

Pendoley stated the financially prudent thing to do is to borrow as little as possible and to pay it back as soon as possible because that is going to be the least expensive and we need to be prudent on how much we commit to pay back every year.

Stutsman said staff would recommend 1.7 million for 15 years.

Freeman agrees that it is best to borrow as little as possible so the payment would be as little as possible and asked if there are monies from FEMA that are not included.

Stutsman stated they have taken into consideration every cent FEMA will provide.

Thornton asked what impact it will have on current budget and how are we going to achieve this.

Stustman stated that some equipment and capital projects purchases would not happen. Though this year does seem to be a difficult year with the possibility the state might take money away from us, Stutsman suggests the possibility of a budget workshop to talk about revenue and expenses for next year. Council would be able to give staff their direction in a workshop setting.

Pendoley stated that it is not just an effect on next year but the years to follow. Pendoley stated payments would start in 2009 but we would like to get the proceeds before the end of the fiscal year, before we have to pay back the TRAN money.

The public session was opened.

Louise Mathews, Foothill Road, has concerns that local agencies have to be careful how much debt they carry. She believes the Town should have some structure before we move forward and suggest having a public meeting.

The public session closed.

Stutsman noted staff needs direction in the form of a motion so we can come back with paperwork for Council's approval.

M/s, Thornton/House, to direct staff to draw up the paperwork necessary for a \$1.7 million municipal lease at 15 year maturity. Ayes: House, Thornton, Breen, Freeman. Abstain: Greene.

5b) AWARD THE PROJECT TO LOW BIDDER SEB CONSTRUCTION, INC., BERKELEY, IN THE AMOUNT OF \$1,295,000.00.

Public Works Director Elias presented the staff report stating they had received 5 bids for the flood recovery and improvement project for the Firehouse and that he recommends awarding the contract to SEB Construction Inc., the low bidder in the amount of \$1,295,000. The contractor has previous experience with firehouse construction as they did the construction at the Oakland Firehouse and they can do it in the time allowed.

Freeman asked what is the 15% contingency.

Elias stated it is for Change Orders and extra work.

Thornton asked if the Town can get solar funding for this project.

Stutsman stated they already have and it is at zero % interest.

The public session opened.

Louise Mathews asked who is the owner of SEB Construction.

Elias stated the owners name is Yuval Bobrovitch.

Mathews stated that at a previous Planning Commission meeting the commission has stated they feel 15% is too low for a contingency.

The public session closed.

M/s, Breen/Thornton, to award SEB Construction Inc. the contract of Flood Recovery and Improvements for the Firehouse at 777 San Anselmo Ave in the amount of \$1,295,000. Ayes: All.

6.) AUTHORIZE STAFF TO CONDUCT REQUEST FOR PROPOSAL (RFP) PROCESS FOR SOLICITING CONTRACT PROPOSALS FOR THE TOWN'S AUDIT FOR 2007-08 THROUGH 2009-10.

Finance and Administrative Services Director Pendoley presented the staff report stating the Town has contracted with OUM for a total of 6 years and staff agrees with the common accounting practice of changing audit firms every five to six years. Staff recommends that Council authorize staff to conduct a Request for Proposal (RFP) process to solicit contract proposals for auditing services for fiscal years 2007-08 through 2009-10.

Thornton asked if staff still feels it's a good idea to change auditors at this time with all the FEMA paper work.

Pendoley noted staff has no problem with that however she is concerned because it is very difficult to get proposals for small organizations. She did talk to OUM and asked them if they would interested in making a proposal again. OUM said they would be interested and said they would use different staff so different individuals would be involved in the audit.

Greene asked if the basic idea is to prevent fraud.

Pendoley stated yes and also that the auditors letter specifically state they are not looking for fraud; however, the auditors test your controls and your transactions and check to see if what you are stating is actual.

The public session was opened.

Louise Mathews, Foothill Rd. said that starting next year the finance dept will be forming their own numbers and sending it off to the auditors for their review. Mathews prefers bringing in someone new.

The public session was closed.

M/s, Thornton/Breen, to authorize staff to conduct a Request for Proposal process to solicit contract proposals for auditing services for fiscal years 2007-08 through 2009-10. Ayes: All.

7.) AUTHORIZE STAFF TO CONDUCT DRAINAGE IMPROVEMENTS AT ELM AVENUE AT SAN ANSELMO AVENUE AND AWARD CONTRACT TO MAGGIORA GHILOTTI IN THE AMOUNT OF \$ 43,343.

Public Works Director, Elias, presented the staff report. Elias stated this project consists of drainage improvements that are past due to the intersection of Elm Ave. and San Anselmo Ave. Invitations to bid were sent November 27, 2007 under informal bid procedure and bids were opened December 18, 2007. The engineers estimate was \$45,000. Staff recommends that Council award the contract to the lowest bidder, Maggiora Ghilotti Inc., in the amount of \$43,343.00.

The public session was opened.

There was no public comment.

The public session was closed.

Breen asked what is clearing and grubbing and how can there be \$8,000 difference in the cost of this unit price.

Elias stated that clearing and grubbing is the area above the natural ground surface which is to be cleared of all vegetation, such as trees, logs, upturned stumps, roots of downed trees, brush, grass, weeds. The explanation for the discrepancy in cost is that items of work completed early in the construction period such as clearing and grubbing have been increased proportionately more to cover the job burden and serves the purpose of helping reimburse the contractor for the initial costs of moving in, setting up, and commencing operations. Such moderate unbalancing of cost figures assists the contractor financially and minimizes its initial investment in the owner's project.

There was no public comment.

M/s, House/Thornton to conduct drainage improvements at Elm Avenue at San Anselmo Avenue and award the contract to Muggier Ghilotti in the amount of \$43,343.00. Ayes: All.

8.) CONDUCT PUBLIC HEARING AND APPROVE RESOLUTION DETERMINING THE EXISTENCE OF A PUBLIC NUISANCE AND ORDER THAT THE PROPERTY AND BUSINESS OWNERS OF GREEN FUSION DESIGN CENTER, 14 GREENFIELD, PERFORM WORK TO ABATE THE NUISANCE.

Kim Schulist presented the staff report. Town staff has identified enforcement matters that have not resolved through the code enforcement process. All matters involve violations of the Town's Municipal

Code and the goal is to encourage compliance of the Town code. If compliance is not achieved within a reasonable time the matter is turned over to the Town Attorney and the owners are notified of a Public Nuisance Hearing and the owners are given another opportunity for resolution. The present matter involves Green Fusion Design Center, located at 14 Greenfield Ave and owned by business owner Greg Snowden; the property owner is Ned Mac Donald.

Mr. Snowden is out of compliance with the color of his building, unpermitted signs and unpermitted mural.

Stutsman swore in Wight, Snowden and MacDonald.

Snowden stated that it is out of character that he be called a nuisance and apologized for taking the Town's time to do this and he appreciates everyone's hard work, it is not his intent to drag people through this. He intends to repaint his building, though he feels the green is very much a part of his business.

Snowden questions to why the Town does not allow murals; why does it have to be so difficult, it is not a safety issue but an aesthetic issue; why this can't be a simpler process; that he will comply and if there is any way to get it approved he would appreciate it.

Mrs. Snowden asked what is the color code to be in compliance in San Anselmo and noted that it would be helpful for businesses to know what the process is and would like to know who makes the decision, how is it made; and what is the criteria.

Wight referenced Section 10-3.1505 of the San Anselmo Municipal Code in regards to making findings of Design Review.

Ned MacDonald apologized to Council and the Town for having to go through this process. He stated that he has not signed the application because he would like some time to review it, though he believes Snowden's ideas are good he feels Snowden has acted irresponsibly.

Mathews stated that she likes the green color and feels Snowden has been raked over the coals.

Snowden stated he plans on making this as easy as possible and would like to talk to Wight later.

The public session was closed.

House noted that if Wight had approved the color she might have gotten in trouble with the Planning Commission. House stated she likes the color and regarding the mural it is not allowed in our code and suggests he use the process that the Town has set up and feels that Snowden needs to do what is recommended in the staff report.

Thornton is supportive of what Snowden has done; however she believes he needs to go thru the process and get the approvals. Thornton noted that through open time at Council Meetings he can suggest his ideas because that is how some of these changes can be made to achieve what we want in our Town. She suggests extending the time for the painting to enable Snowden to go through the Planning Commission.

Wight stated that she would need to have everything to her by the 17th of January.

Greene stated he does not believe color testing is ok now; Snowden is going to have to make a decision and live with it. Greene would like to see some sort of resolution.

Wight noted it was the sign ordinance sub-committee that recommended no murals.

Thornton stated she doesn't want to impose the costs on the business owner but feels that Council has to because if the process was followed in the beginning this would not be necessary.

Snowden stated he is hoping that what has happened here will make it easier for other businesses.

Breen stated there are unique mitigating circumstances; as policy makers we have the responsibilities to try to make it work and for this reason he does not want to impose a big fine.

Epstein noted that when Council is considering administrative penalties that they refer to the Municipal Code which is within their power; they may or may not impose penalties or fees;

Freeman suggests waiving the administrative fees and charging for the legal costs because they are direct costs to the Town.

Greene asked if Council made a decision to pursue this or is this administrative decision that now is in our laps.

House stated that staff came to council as they have with others; however this is the first one that we have had where the person has not brought themselves into compliance.

Epstein stated this specific case was not brought forward by Council and that the Town has a stack of these that are out of code. Staffs' understanding from the direction of Council is to encourage voluntary compliance with the code and it is necessary for the public to believe that the code is enforced.

Greene noted it was a general policy decision to enforce things that had lapsed and not a specific decision that was made about this particular case.

M/s, Thornton/House that staff approve Resolution No. 3823 determining a public nuisance and order the property and business owners of Greenfield Ave Fusion Design Center do the following:

- 1.) Apply for a sign permit for the lettering on the side and the front of the building within 30 days.
- 2.) Eradicate the tree mural; eradicate the green rectangle background that encompasses the green letters on the side of the building within 30 days.
- 3.) Return the entire building front and side to the previous approved blue color within 30 days or make a application to the Planning Commission by January 17, 2008 for a different color and abide by the Planning Commission's direction within 60 days of their determination.
- 4.) And to reimburse the Town for the Attorneys fees incurred in this matter in the amount of \$3,350.
- 5.) Pay a daily penalty rate of \$1,000 per day if the sign application is not filed and the tree mural is not eradicated within 30 days.
- 6.) If an application to Planning is made by January 17, 2008 and if not painted in conformance with the Planning Commission's direction, Owners to pay a daily penalty rate of \$1,000 per day, not to exceed \$100,000, from the compliance date of 60 days after the Planning Commission decision.
- 7.) If an application to Planning is not made by January 17, 2008, and the entire building is not returned to the previously approved color blue, pay a daily penalty rate of \$ 1,000 per day, not to exceed \$100,000, by the compliance date of 30 days after the January 8, 2008 Town Council meeting.

Breen asked for a roll call. Ayes: Freeman, House, Thornton. Noes: Breen, Greene.

The meeting was adjourned at 11:58 pm.

Respectfully submitted,

Joanne Kessel