

TOWN OF SAN ANSELMO

Minutes of the Town Council meeting of August 23, 1988

Mayor Sharp convened the regular meeting at 8:00 p.m., following a closed session regarding pending litigation pursuant to Government Code Section 54956.9(a), Yeakey vs. Town of San Anselmo, and pursuant to Government Code Section 54956.9(c), Richard E. Nagley and Michael Carradine, beginning at 7:15 p.m., with Councilmembers Chignell, Walsh and Zaharoff present and Colteaux not present.

2. OPEN TIME FOR PUBLIC EXPRESSION

There was no public comment.

3. PRESENTATION REGARDING MARIN'S COMMUTE COMPETITION, BY FAIRFAX MAYOR WENDY BAKER.

Mayor Baker explained that following the success of last year's carpool competition, a Commute Competition was planned for October 6. Commuters were being asked to pledge not to drive alone to work that day, but to use an alternative form of transportation. Each city was being challenged to sign up the most commute pledges, while persons making a pledge would be eligible to win a prize. Volunteer coordinators were being assigned in each town. Chignell volunteered to be a coordinator. Baker asked the Councilmembers to talk to people about the competition.

4. FINAL MAP, SOHNER COURT PARTNERSHIP, ROSS AND MARIPOSA AVENUES, A/P 7-284-27, 7-284-37, 7-284-41, 7-284-42 AND 7-284-47.

This item had been continued at the meeting of August 9 to allow detailed review by the Councilmembers of the conditions needed to be met prior to approval of the Final Map. Roland Mays, project developer, Public Works/Planning Director Kottage, and Councilmember Colteaux met to review the conditions. The agreement with the Housing Authority was amended to clarify the conditions imposed on the transfer of title of the below market rate unit, and it was recommended that the Council review and approve the conditions of approval, including colors and landscaping, prior to issuance of occupancy permits.

Mays was not present at this time and therefore the matter was delayed to follow the next item on the agenda.

5. APPEAL OF PLANNING COMMISSION APPROVAL OF AR-6, QUARRY MOUNTAIN, INC., END OF TOMAHAWK DRIVE, A/P NOS. 177-220-50, 177-250-40 AND 177-250-41, UNITS 1 AND 3 - 12, BUILDING AND ROOF COLORS.

The Planning Commission action on this application took place August 15, and the appeal period will end August 25. Sharp asked whether the Council could act on the appeal prior to the conclusion of the appeal period. Town Attorney Roth advised that the appeal has been publicly noticed and could be heard this evening, and that if the appeal is heard and another appeal is filed, the second appeal should be heard. He said the hearing on this appeal could be continued to a special meeting.

Russell Reiff, buyer of one of the Quarry Mountain homes, said that as of the next morning, he and his family will have no place to live unless they are allowed to move into the home they purchased. He said they were under the impression that all that was holding up issuance of a certificate of occupancy was a decision on the color, that this decision would be made this evening, and therefore the

papers had been signed for his family to assume occupancy the next day. He said he shared everyone's concern about the color and wanted the color of his home to be accepted by the community. However, he needed to be able to move in the next day, and he would be willing to state in writing that he would adhere to the conditions on color directed by the Council if he was allowed to move in prior to Council action on the color.

Larry Stack, 10 Alice Way, said the appellant, Alan Almquist, assumed the appeal would be heard in September and was out of town.

John Reynolds, real estate broker working on the sale of the Reiff's house, asked whether the Council was empowered to deal with the Reiff's situation, adding that they had no quarrel with the color of the house, and they were willing to sign a statement that they were willing to comply with the color directed by the Council.

Roth advised that a conditional certificate of occupancy could be issued as long as it was not prejudicial to the appellant.

Doug Elliott, project developer, said he was willing to submit a cash deposit of twice the amount of the cost to paint the Reiff's house, and a letter stating they would comply with the Council decision on the colors, and that if they did not comply with the color decision, that the Town could use the cash deposit to paint the house.

Stack said that Almquist would be back in town Wednesday or Thursday. Stack wanted to present documentation on the history of the color selection.

It was the consensus of the Council to continue the hearing on the appeal to the end of the appeal period on August 25. Zaharoff said she was interested in trying to accommodate the Reiffs to allow them to move into their home prior to the Council decision on the appeal. The other Councilmembers expressed concern about the possible detriments of taking this approach.

Elliott said that the issue of the appeal and the issue of whether a dwelling could be occupied without a decision on the color were separate issues. If the purpose of not allowing occupancy prior to conformance to the color decision was to retain leverage, that leverage could be created in another way through an instrument of security in the form of an agreement approved by the Town Attorney and a cash deposit.

Lew Tremaine, The Fax, said the issue was the color of a house, not safety issues, and it seems absurd to withhold permission to occupy a house because the color decision had not been made.

Zaharoff said that the Council could preserve its rights to make sure that the colors approved are the ones used on the Reiff's home through the use of written agreements provided by the developer and the Reiffs, and approved by the Town Attorney, and the cash deposit of twice the amount of the cost of performing the work.

Roth advised that he did not see any problem resulting from the issuance of a conditional occupancy permit that would prejudice the appeal.

Kottage noted that there are still a few safety items that must be completed prior to issuance of a certificate of occupancy.

Stack said there was also the issue of the color of the roof, and that Almquist had intended to do a neighborhood survey on roof colors prior to the hearing on the appeal.

Elliott stated his willingness to be bound on the roof colors through a written agreement and cash deposit.

M/S, Chignell/Walsh, to continue the appeal to August 25, 1988, at 5:30 p.m. Motion passed unanimously.

M/S, Chignell/Zaharoff, that the Council direct the issuance of a conditional occupancy permit, conditioned on the health and safety conditions that the Public Works Director feels are still necessary are satisfied prior to occupancy, and secondly, that the developers sign and the prospective purchasers sign a separate agreement that they will all agree to follow the direction of the Town Council with respect to the colors of the building and the roof within 30 days of receipt of such notice, or alternatively, if not, then within that time to allow the Council through the Public Works Director to hire a contractor to do the work out of monies placed on deposit with the letter of agreement, in the sum of \$10,000, with the letter of agreement being in a form approved by the Town Attorney. Motion passed unanimously.

6. RETURN TO: FINAL MAP, SOHNER COURT PARTNERSHIP, ROSS AND MARIPOSA AVENUES, A/P 7-284-27, 7-284-37, 7-284-41, 7-284-42 AND 7-284-47.

Roland Mays, project developer, said he had seen the staff memorandum, and that he is finding himself approaching a similar situation as Quarry Mountain in that he will be ready to request an occupancy permit September 15.

Kottage explained that the approval for issuance of an occupancy permit could be done by the Council, as stated in the staff report, or it could be delegated to the Planning Commission or staff.

Roth recommended that the authority be left with staff, noting that the staff decision could be appealed.

Kottage noted that the two areas where staff is in disagreement with Mays include the colors of the homes and the substitution of a chain link fence for a wood fence. He said the occupancy permit would be denied by staff unless the developer is in conformance on these items.

Chignell stated his confidence in staff having the authority for issuance of the occupancy permit, adding that the project was not controversial. Zaharoff said she was confident in staff issuance of the permit since Kottage shared her concern about the color of the homes. Walsh supported staff issuance of the permit, noting that she was satisfied with the color. Sharp stated his confidence in having staff handle this matter.

Mays stated his willingness to stipulate and agree that any and all conditions of approval of all permits will be met prior to issuance of the certificate of occupancy. He noted that the staff was the authority in the code for issuance of occupancy permits.

M/S, Zaharoff/Walsh, to accept the recommendations of staff, in the memorandum dated August 23, 1988, as amended to allow staff to issue the certificate of occupancy. Motion passed unanimously.

6. APPOINTMENTS

- (a) Tax Equity Board - The three-year term of Judith Brown has expired. The consensus was to advertise the vacancy.
- (b) Marin County Homeless Shelter Committee - Chignell volunteered to serve on this committee.

7. CONSENT AGENDA

- (a) Approve minutes: August 9, 10, 16 and 17.
- (b) Approve warrants: 2460 - 2474, and 7004 - 7215 in the amount of \$614,157.22.
- (c) Approve Resolution No. 3065 regarding disability retirement application of Donald E. Nelson.
- (d) Continue appeal of Planning Commission's approval of V-2172, variance for an accessory structure within rear and side setbacks, Libby Hayes, 14 Elm Court, A/P 7-081-15 to September 13, 1988.

It was noted that approval of Resolution No. 3065 regarding the application for disability retirement of Donald Nelson and finding that he is not incapacitated within the meaning of the Public Employees Retirement Law for performance of the duties of the position of police sergeant was being done without prejudice.

M/S, Chignell/Zaharoff, to approve the Consent Agenda. Motion passed unanimously.

8. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS, COMMENTS AND DIRECTIONS TO STAFF; STAFF MISCELLANEOUS ITEMS.

Sharp clarified that he had told the Independent Journal that the Council would not be reviewing the Town Administrator's salary prior to adoption of the budget. He asked that the issue of developing a performance review procedure for this position be placed on the next regular agenda.

9. ADJOURNMENT.

M/S, Chignell/Zaharoff, to adjourn at 9:10 p.m.

Beth Pollard