

TOWN OF SAN ANSELMO

Minutes of the Town Council meeting of November 28, 1989

Mayor Walsh called the meeting to order, following a closed session regarding personnel matters beginning at 7:45 p.m., with Councilmembers Chignell, Colteaux, and Zaharoff present, and Sharp not present.

2. OPEN TIME FOR PUBLIC EXPRESSION

Barbara Schmidt, 59 Austin Avenue, submitted ordinance information regarding recycling and elimination of plastic products. Town Administrator Camuglia said staff would review the information and contact her.

3. PRESENT PROCLAMATION HONORING THE LATE ARTHUR SMITH, FORMER MAYOR AND COUNCILMEMBER

Walsh presented the proclamation to the late Arthur Smith's daughter, Arlene Carli.

4. CONSENT AGENDA.

- (a) Approve Minutes: October 24, 1989.
- (b) Acknowledge and file letter of support for state legislation creating funding for unreinforced masonry buildings.
- (c) Cancel Town Council meeting of December 26, 1989.

5. APPEAL OF PLANNING COMMISSION'S DECISION TO ISSUE A NOTICE OF VIOLATION IN CREATION OF THE LOT, AND APPROVAL OF A CONDITIONAL CERTIFICATE OF COMPLIANCE, NANCY L. THURMOND, ETAL, AND ROBERT L. THURMOND, ETAL, END OF OAK SPRINGS DRIVE, A/P 5-291-06.

The item was tabled until after agenda item #7.

6. DISCUSSION REGARDING DISCLOSURE OF LITIGATION COSTS.

The issue before the Council was public disclosure of the costs of pending litigation on an ongoing basis, outside of the budget review process.

Colteaux said he favored disclosing anything that does not do irreparable harm to the community, and that he did not see how disclosure of litigation costs by case could generate harm.

Town Attorney Roth advised that it was legally permissible to not disclose the costs of pending litigation, that it was in the public interest to provide the best legal attack, and that such disclosure could provide litigants with information useful to their case.

William Jelinek, 53 Florence Avenue, said two cities told him they disclose the information monthly, and that he did not see any difference between reporting it monthly or quarterly, as proposed by staff.

Town Administrator Camuglia stated it was her experience that the costs of litigation were disclosed only in the budget cycle.

Zaharoff requested information on whether other cities in Marin disclose pending litigation costs and if so, whether that created any problems.

M/S, Zaharoff/Chignell, to continue to the next appropriate meeting date commensurate with providing information on practices by other cities and towns. Motion passed unanimously.

7. INTRODUCTION OF ORDINANCE AMENDING TITLE 9 OF THE MUNICIPAL CODE BY INCLUDING CHAPTER 19 RELATING TO EARTHQUAKE HAZARD REDUCTION IN UNREINFORCED MASONRY BUILDINGS.

Public Works/Planning Director Kottage reported that the ordinance had been revised pursuant to the Council direction at the last regular meeting.

Colteaux asked that the exception clause be moved to the third page following the Administration section. He questioned how the approval of the Council would be obtained for an exception to the ordinance, and whether and how the Historical Commission would determine historical buildings.

Camuglia responded that the Historical Commission would make recommendations to the Council as to whether the buildings are historical and whether they should be demolished. Staff is taking a look at the duties of the Historical Commission to see if they need amending to accomplish this work.

Jeff Kroot, 222 Crescent, pointed to the previous day's San Francisco Chronicle article that the buildings that were reinforced survived the October 17 earthquake, and those that were unreinforced did not survive. He said too much time was being allowed under the ordinance to reinforce the buildings.

Assistant Public Works Director Braun recommended adopting a separate resolution stating the procedure for establishing historical buildings.

The item was tabled to follow item #11 to allow staff to prepare amendments to the ordinance.

8. REQUEST FROM SAN ANSELMO GARBAGE DISPOSAL COMPANY FOR RATE INCREASES AND EXTENSION OF FRANCHISE AGREEMENT.

Camuglia reported that the requested rates are comparable with other jurisdictions and that the rate increases experienced by other jurisdictions since 1985 are comparable to the increase in the current rates, set in 1985, and the proposed rates for December, 1989. She said she met with citizens interested in recycling services and created a wish list of changes they wanted to see in recycling services. She met with Ray Forrest, San Anselmo Garbage, and felt he was amenable to the concerns. She requested the Council's direction to work with the recycling group.

Colteaux said he appreciated the work with the recycling group, and requested clarification on what is meant by a rate base for garbage services, and said they needed to assure customers they are not making more than a reasonable profit. He said he was concerned the Town have an aggressive recycling program.

Camuglia said she would bring back a draft agreement, noting that the emphasis with the recycling group what services the community wants, now how they're provided.

Chignell expressed concern that the Town could not abrogate the franchise agreement due to dissatisfaction with recycling services. He asked whether the amount of the franchise fee and the Town's collection of default payments would be changed. Camuglia said these items would be looked at in the course of the review of the franchise agreement.

Barbara Schmidt, 59 Austin Avenue, asked to be on the Recycling Committee.

Sarah Nome, 77 Alder Avenue, said the Town should not collect bills for San Anselmo Garbage. She said not enough people were using recycled paper, and suggested an

ordinances for businesses requiring the use of recycled paper.

Peter Lacroix said the first priority is looking at the rate increase, that he did not think the public was getting the information on the rate increase.

Joyce Brown, Elan Fitness Center, Greenfield Avenue, said the service of San Anselmo Garbage is superior to the service she gets at home in San Rafael from another garbage company.

Glen Miwok, Comforts Restaurant, San Anselmo Avenue, said he has saved money by recycling and that San Anselmo Garbage has been very cooperative.

Walter Robb, Manager of Living Foods, Greenfield Avenue, said the rates proposed for commercial garbage were very fair, especially compared with East Bay rates, and that the service was excellent. He noted that the City of Berkeley had mandatory commercial recycling.

Jamie Gray, Cordone Drive, said she had no problem with the service; the issues were the rate increase and recycling, and they should be tied together. She said that if there was an effective recycling program, there would be less garbage to dump, lower tipping fees, and therefore lower garbage rates.

Fredericka Conrad, Alderney Road, expressed concern that there was no way of defining a reasonable profit for the garbage company, and asked how the company establishes a cost of living increase.

William Jelinek, 53 Florence Avenue, asked whether the franchise fee was in line with other franchises in town, and garbage franchise fees in other communities.

Ed Cunningham, Lincoln Avenue, said the rate increase was fair.

Bob Capurro, 15 Lincoln Avenue, said the garbage company provided tremendous service, and the community needed to educate themselves about recycling.

Colteaux commented that it will be discovered that recycling costs money, and that it has to be undertaken for environmental reasons.

Zaharoff said that the 28% increase was a big jump, and that she did not like it, but she could not find anything to logically disapprove it. The end result of the increase puts San Anselmo rates comparable with other communities, it is just that it took so long to have a rate increase requested. She said she was annoyed that it has taken so long for a rate increase, because making up for lost ground makes it overwhelming. She supported a policy that would encourage San Anselmo to come in more often for rate increases if it was justified, which would give consumers a reasonable expectation of the rates. She said she wanted the Town to write to residents with suggestions of programs of which they can avail themselves.

Chignell said his gut tells him not to support the rate increases, but he could not find any rational reason for that position. He said San Anselmo Garbage provides fantastic garbage services, but felt there should be no rate increase until an agreement is worked out on recycling services. He supported having a standing committee for recycling, at minimum annual or semi-annual curbside pickup, the lifeline service changed to weekly pickup and offered to people in need rather than limited to persons over age 65, and a viable education program.

Walsh said she supported the rate increase as recommended by the Town Administrator, adding that they are dealing with volatile landfill issues, and maybe they should consider compulsory recycling in some form.

M/S, Colteaux/Zaharoff, for conditionally approve the requested rates, December 1, 1989, as follows:

1. San Anselmo Garbage Company agree to abrogate the previous contract and enter into negotiations for a new contract.
2. The new contract would incorporate the recycling recommendations of the Town Administrator.
3. There be a clear definition of the rate base in the new contract, which would include information as to the assets and the liabilities of the garbage company, as well as the income and expense statement of the garbage company.
4. The rate comparison be expanded outside Marin County, to include communities comparable to San Anselmo, where garbage services are provided by companies that do not service Marin County.
5. The new contract contain provisions by which the Town can change rates up or down in the event of a variance from a reasonable rate of return as set in the contract.
6. Any other conditions that are suggested by the Town Administrator or by the Council in further hearings on the Administrator's recommended draft of the new agreement.

Chignell asked the Town Attorney if the garbage company could legally agree to abrogate the contract as a condition of the rate increase.

Ray Forrest, San Anselmo Garbage, said he had no objections to reasonable requests that are made by representatives of the rate payers, as long as they are allowed to bring forward the impact they will have on San Anselmo.

Colteaux said that if a new contract is not negotiated, the new rates will be null and void, and the garbage company would have the option to resubmit a request for a rate increase.

The question was called. The motion passed unanimously.

5. APPEAL OF PLANNING COMMISSION'S DECISION TO ISSUE A NOTICE OF VIOLATION IN CREATION OF THE LOT, AND APPROVAL OF A CONDITIONAL CERTIFICATE OF COMPLIANCE, NANCY L. THURMOND, ETAL, AND ROBERT L. THURMOND, ETAL, END OF OAK SPRINGS DRIVE, A/P 5-291-06.

David McPherson, attorney for the appellants, had submitted a brief to the Council the previous day on the appeal. He said the Town's proposed Certificate of Compliance was not acceptable.

Town Attorney Roth said he did not agree with all the comments made by McPherson on changes to the certificate.

McPherson agreed to meet with the Town on this matter. He said if they did not come back to the Council, it was because they were unable to agree and would proceed with litigation.

M/S, Chignell/Zaharoff, to continue the matter to December 12, 1989. Motion passed by the following vote:

AYES: Chignell, Zaharoff, Walsh

NOES: None

ABSENT: Sharp

ABSTAIN: Colteaux

7. INTRODUCTION OF ORDINANCE AMENDING TITLE 9 OF THE MUNICIPAL CODE BY INCLUDING CHAPTER 19 RELATING TO EARTHQUAKE HAZARD REDUCTION IN UNREINFORCED MASONRY BUILDINGS.

This item had been tabled from an earlier time in the meeting.

Town Attorney Roth recommended the following changes to the ordinance: On page 2, under "Qualified Historical Building": "The procedure for designation of structures or buildings deemed appropriate for historical designation shall be established by resolution." On page 3, Section 9-19.06, Administration, (c) Appeal of Order, the second sentence of the second paragraph be amended to read: "In order to grant an appeal, the Town shall make the finding that there is sufficient justification for such building not to be within the scope of this chapter."

M/S, Chignell/Zaharoff, to waive reading on the ordinance. Motion passed unanimously.

M/S, Chignell/Zaharoff, to introduce Ordinance No. 907 amending Title 9 of the Municipal Code by including Chapter 19 relating to earthquake hazard reduction in unreinforced masonry buildings. Motion passed unanimously.

9. 1535 SIR FRANCIS DRAKE BOULEVARD, EUROPEAN ATTENTION TO DETAIL, LENNY LERNER: APPEAL OF PLANNING COMMISSION USE PERMIT CONDITIONS: (1) LIMITING ON-SITE OVERNIGHT PARKING TO FOUR VEHICLES AND DAYTIME PARKING TO 17 VEHICLES; (2) NO "FOR SALE" OR SIMILAR SIGNS ON THE PREMISES OR IN VEHICLES; AND (3) REMOVAL OF THE TRAILER FROM THE PROPERTY.

Public Works/Planning Director Kottage presented the staff report on the appeal.

George Silvestri, attorney for the appellant, made the following comments:

1. The original use permit did not have conditions regarding storing private vehicles on-site.
2. Limited mechanical work was not in the use permit.
3. If the use of the property was residential, it would have six units, which would generate 17 cars. That is the number of cars on the property during the day. He said Lerner was not anticipating using all the parking spaces at night, but the restriction was a burden on the use. He said they have legitimate reasons for wanting to keep more than four cars overnight, such as when the detailing work takes more than one day, or vehicle parts have to be ordered.
4. Requiring the removal of signs from customer vehicles parked on the lot is ludicrous and raises the question of first amendment rights. He said the owner is not interested in operating a used car lot.
5. The owner has always obtained the appropriate permits for his Christmas tree lot.

Councilmember Sharp arrived at 10:20 p.m.

Town Attorney Roth said that according to the Planning Commission minutes, the intent of the motion was to prohibit for-sale or similar signs.

Planning Commissioner Julin said the rezoning of the property in July 1987 was the result of an acrimonious debate among the neighbors regarding the high intensity use of the property. The Specific Planned Development District zoning was intended to give the Town control over the use of the property. Vehicle storage was part of the application, and the applicant said he would store three vehicles. In September, 1988, the use permit was amended to allow 12 cars to be parked outside during the daytime and four overnight. She said that little by little, the trust has gradually been eroded from what the Commission thought was a compatible use to something that is a different picture. She said there has not been compliance with some of the conditions, such as landscaping. She said there was a car parked on the lot with a sign stating a phone number and "inquire within", and when she telephone the number, an employee gave a price quote.

Sarah Nome, 77 Alder Avenue, supported the parking proposal.

William Jelinek, 53 Florence Avenue, said some garages have allowed overnight parking, resulting in an unsightly appearance. He did not support the application.

Silvestri said he was concerned about the lack of trust, that the Commission has nitpicked this ad nauseam. Some things may appear small but are very important to Lerner's business, and the Commission's action hamstrings the business from being able to survive. He said the traffic and parking restrictions should be no more than what is allowed for residential use. The dismantled vehicle has been removed from the property.

Chignell requested clarification on the evolution of the permitted uses, and stated his support for the appeal with respect to allowing for-sale signs.

Zaharoff said the Commission had wrestled with the rezoning of the property due to the concern over the intensity of use on the site. She said Lerner's application seemed to fit what the Commission envisioned, particularly because overnight parking was inside the building. However, the use of the property has evolved, and she did not support allowing anything beyond its current allowed use. She suggested that for-sale signs be prohibited from vehicles parked outside overnight.

Colteaux supporting prohibiting for-sale signs entirely.

Walsh said she did not have a problem with cars parked outside overnight. She said the for-sale signs on the lot give the impression that the use of the property has changed.

Silvestri said that they would withdraw the for-sale sign portion of the appeal. Lerner said they had been providing their customers a service of answering phone inquiries about their cars for sale, but they would end that service.

Sharp commented that the more cars on the property, the greater the traffic generated, and he could not make the finding that the use does not adversely affect the neighborhood.

M/S, Sharp/Colteaux, to deny the appeal of Lenny Lerner, 1535 Sir Francis Drake Boulevard, A/P 5-153-01, U-629/U-633,

with specific reference to conditions (1) limiting on-site, overnight parking to four vehicles and daytime parking to 17 vehicles, and (2) no "for sale" or similar signs on the premises or in vehicles.

Chignell said he felt the application should go back to the Planning Commission, for reasons stated by Kottage and Julin, that other conditions have not been met.

Motion passed by the following vote:

AYES: Colteaux, Sharp, Zaharoff

NOES: Chignell, Walsh

Silvestri said he felt there was confusion in the record about signs, he objected on the grounds of due process that a Councilmember who was not in attendance at the first portion of the hearing not only voted on the motion, but even made the motion. He said he objected to photographs being submitted that were not part of the staff report, and were taken by a Planning Commissioner.

Kottage stated that the photographs were taken by staff.

Sharp stated that he had read the minutes of the Planning Commission hearing very carefully, and felt he was fully aware of what the Planning Commission had done.

Roth advised that as long as Sharp felt he had sufficient information, he could act on the appeal.

Silvestri said his interpretation on the signs is that the only restriction that applies to the signage is no "for-sale" or similar signs.

Sharp noted that no action was taken on appeal item (3) with respect to signage because Silvestri said he was withdrawing that portion of the appeal.

10. STUDY SESSION ON CAPITAL RECONSTRUCTION PROGRAM.

Camuglia reported that the Council had indicated interest in reviewing information on the Capital Reconstruction Program prior to its review by the Long-Term Finance Committee.

Due to the lateness of the hour, it was the consensus of the Council to continue the item to a special meeting on December 20th or 21st with the Long-Term Finance Committee.

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

Francis Avenue skateboard: Walsh noted that a letter regarding a skateboard at 9 Francis Avenue had been sent to the Town.

Commercial recycling: Colteaux expressed concern about trash that might appear in the business district due to commercial recycling efforts.

Town Administrator: Camuglia announced that she would be out of town the next week, and that Administrative Assistant Pollard would be the Acting Town Administrator in her absence.

12. ADJOURNMENT.

The meeting was adjourned at 11:15 p.m.