

Town of San Anselmo

Minutes of the Town Council Meeting of December 5, 1989

Mayor Walsh convened the special meeting at 8:00 a.m., with Councilmembers Chignell, Colteaux, Sharp and Zaharoff present.

2. Review of guarantee agreement for the purchase of the property at 22 Magnolia Avenue.

Town Attorney Roth explained the differences between the guarantee agreement he had drafted, and the changes proposed by the signatories of the agreement. The primary difference was that Roth recommended inclusion of a "joint and several" clause, which meant that if one or more of the signatories did not pay their share for whatever reason, the remaining signatories would be responsible for the unpaid share(s). The signatories to the agreement opposed such an arrangement, only wanting responsibility for their portion of the costs and not the portion of other signatories.

Walsh explained the process of how the six business persons came forward to sign the agreement.

Colteaux asked for clarification on whether the Town would be required to sell the property if the assessment district failed.

Chignell wanted to include a clause precluding any above-surface parking structure.

Joyce Brown, Elan Fitness Center, 230 Greenfield Avenue, said she was insulted by the joint and several clause, that it appeared the Town was questioning their integrity. She said she trusted the other signatories, but did not think they should have to be responsible for each other's payment.

Walsh estimated the potential losses on this arrangement at between \$2,800 and \$38,000.

Mozart Kaufman, owner of commercial property on San Anselmo Avenue, expressed concern that if there was a \$38,000 loss, and he was responsible for paying it all, it would create a great hardship on his family.

Colteaux said that as trustee of the taxpayer's money, he had to insist on the joint and several clause.

Sharp said he had faith in the persons signing the agreement, but if one person were to renege on the agreement, he was concerned that the other signatories could get off the hook of having to pay, the way the agreement was worded. As a policy matter, he did not want the Council to be put in the position of suing members of the community who sign the agreement.

Colteaux commented that the joint nature of something provides a platform to argue that the agreement was not in effect, and that attorneys always insist on a joint and several clause. He suggested that if the signatories have no problem with one another, then they would have no problem with the several clause.

Brown stated that the value of the property is as a parking lot.

Colteaux said he had no problem with the right of first refusal, but did not feel the Town should be compelled to

sell the property to the merchants if the assessment district fails. The land use of the property as a parking lot would not be a foregone conclusion if the assessment district is not successful.

It was the consensus of the majority of the Council that the signatories should have input on the disposition of the property if an assessment district fails, but that they did not need to go so far as to have joint consideration specified in the agreement.

The Council asked for clarification of the wording on recovery of attorney's fees.

After some discussion, it was the consensus of the majority of the Council that the staff expenses of the project not be included in the wording as part of the payment if the district fails.

It was the consensus of the majority of the Council to include the joint and several clause, and to exclude the clause allowing the signatories to receive any profits from the sale.

The signatories present said they would not be willing to sign the agreement with a joint and several clause.

3. ADJOURNMENT

The meeting was adjourned at 9:30 a.m.

Beth Pollard