

**TOWN OF SAN ANSELMO  
PLANNING COMMISSION MINUTES  
JUNE 15, 2009**

The Planning Commission was called to order in the council chamber at 7:00 p.m. by Chair Overberger.

Commissioners' Present: Brown, Harris, Krebs, Overberger, Sisich, Zwick  
Commissioners Absent: Schinner

Staff Present: Deputy Town Attorney Hurd, Planning and Building Director Wight, Public Works Director Myrter, Assistant Planner Chambers

**OPEN TIME FOR PUBLIC EXPRESSION**

None

**CONTINUED ITEMS**

1. **DR-0904/V-0903 – Alice Tompkins, 24 Cypress Road, APN 006-113-14,** Hillside Design Review and Setback Variance to construct a one car, ±239 square foot garage within 2'-6" of the north side property line and 6" of the rear property line (Code: 8' and 20' respectively); and for the two uncovered parking spaces to be substandard in length between 16'-4" and 18'-3" (Code: 19'), located within the R-1 zoning district above 150' msl elevation. (staff: Chambers)  
**CONTINUED TO 9/7/09**

**PUBLIC HEARING ITEMS**

**CONSENT AGENDA**

1. **Minutes – June 1, 2009**
2. **V-0904 – Tim and Agnes Heiman, 59 Woodland Avenue, APN 007-282-02,** Setback Variance to raise the roof ±2'-3" over a portion of the porch within 10'-9" of the front and ±3' of the side property lines (Code: 20' and 8'), and Lot Coverage Variance to permit a 270 square foot single story addition that conforms to all setbacks (existing: 37.4% proposed: 37%) (Code maximum: 35%). (staff person: Chambers)

Krebs requested minor changes to the minutes to clarify his comments regarding 24 Cypress.

M/s Krebs, Brown, and unanimously passed to approve the consent agenda as amended, and based on a 10 day appeal period to the Town Council.

**REGULAR AGENDA**

**TOWN OF SAN ANSELMO** – Review and comment upon proposed ordinance that would create new permit requirements for certain excavation, fill, and grading activities on private property.

Wight introduced the new Public Works Director, Steve Myrter to the Commission.

Public Works Director Myrter presented the staff report, noting that this is strictly for those properties that wish to grade or excavate, but excludes those projects that require building permits.

Brown commented that 2 cubic yards of soil is too small an amount, e.g., this could be done by just bringing in top soil for gardening. He would suggest 10 cubic yards as a minimum. Overberger and Zwick affirmed.

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Myrter said there can be more criteria and the number can be raised because we are not targeting gardening projects. He noted that 2 cubic yards is a very conservative number.

Procedurally, Deputy Town Attorney Hurd said this is the time for the Commission questions but the Commission should not formulate an impression until the public has had an opportunity to speak and the public hearing is closed.

Harris asked if there is a legal reason 3 years for hold harmless has been used. Hurd responded that it seems like it is a statute of limitations but he will verify it.

Krebs, in reference to 9-18.05vii, suggested the word "damages" be discussed. Also, regarding 9-18.06i, is it common to see other ordinances with criteria that we can point to as a reason and criteria for discretion of the Public Works Director. Myrter said this proposed ordinance is consistent with other jurisdictions.

Overberger said there should also be a balance with bureaucracy and the citizens, therefore, perhaps criteria should be considered. Myrter said we will also be looking for things for public safety, drainage, etc., and evaluating the complications.

Regarding description of easements, Zwick asked if the title report would provide enough information for each of the owners, noting that surveys are not always required. Hurd said the onus is on the applicant to provide the information.

Myrter noted that it is not uncommon to go over a property line when excavating and/or grading but there must be permission from the adjacent property such as a temporary construction easement.

In response to Krebs, Hurd said he has never seen a cost included in an ordinance. Regarding the criteria, it could be included, but with limited wording.

Myrter said the reports discuss methods of excavating and sometimes peer review is necessary for the more complicated projects.

Regarding 9-18.08, Brown asked about the review procedure.

Zwick said it seems like we don't look at how much soil is taken off site for construction and would like to take that into consideration.

Myrter said this is only for grading ordinance, beyond the construction of the house. Zwick said there are some good criteria in the ordinance but if it is not used for construction, it is not a good ordinance.

Overberger said the project at 10 Foss had lots of excavation for the house and questioned how it would apply to this ordinance. Myrter said there were walls built that were not an integral part of the structure and those retaining walls would have been reviewed under this ordinance.

Zwick said he would like an excavation ordinance, with criteria, that also addressed construction of a house.

Overberger asked if the Council had a clear understanding that the ordinance did not include construction of the structure because it was her understanding, when she discussed the ordinance with councilmembers, that was not their understanding.

Brown asked how we determine what the calculation is. Zwick said it is not unusual to have that information at the Planning Commission for cut and fill and off site excavation.

Hurd said it sounds like the Commission wants design review findings included in 9-18.08. Zwick said he favored the idea of design review.

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Myrter said the discussion at the Council was 100 cubic yards and this is what is used in Fairfax and Corte Madera. He noted that other jurisdictions have different amounts. He noted that 100 cubic yards is subjective, but conservative.

Zwick would like more discussion in the slope and shoring section about Town liability.

Overberger asked what report would be used if there are two different findings. Myrter said the Town would hire an independent to make sure the design is proper. He would prefer the more conservative approach.

Zwick excused himself from the meeting.

Brown questioned when temporary shoring would take place. Myrter said that would be up to the discretion of the geotechnical engineer.

In response to Brown's question about additional conditions and requirements, Myrter said there should probably be more clarification, such as deemed necessary by the geotechnical in the field.

The public hearing was opened.

Cheryl Gilboy, Luna Lane, stated she likes the idea of adding more quantifiers on the permits to be issued and suggested perhaps 2 cubic yards on an unimproved property and more for a developed property. Her concern with the property next to her was excessive grading and drainage issues. She stated that 10 years is the status of limitations and the long term water effects would happen after three years. She felt it should be a covenant running with the land. Regarding the requirements for approval, dust and noise control are very important and should be added. Regarding natural landscaping not being removed unless necessary, she suggested adding wording that states relandscaping shall take place as soon as possible. Regarding security and insurance, she suggested including the wording "...in an amount sufficient..." not "reasonable". Regarding the raining season permits, (a) is very confusing and suggests stating that the emphasis should be that no rainy season permits shall be issued. Also, when a permit is suspended or revoked, does that include damage to the adjoining property owner? If it doesn't, maybe it should.

The public hearing was closed.

In response to Sisich, Myrter said a performance bond is always required for public works projects and the value is based on the cost to finish the project.

The Commission discussed the need for a permit to remove 2 cubic yards of soil.

Brown felt that 10 cubic yards was more acceptable than 2 cubic yards. Sisich said he would not go less than 10 cubic yards. Harris said he would like to see it geared more towards a certain type of project. In the abstract, 2 cubic yards is too low.

Hurd said the definition helps identify the type of project, which would exclude garden beds.

Harris suggested inserting the word "significantly change" in the definition for excavation and fill.

Krebs suggested using 5 cubic yards and use language that expresses intent and add the word "significantly change..." to the definitions as stated by Harris.

Overberger suggested 5 cubic yards.

Consensus by the Commission was to change the cubic yards from 2 to 5.

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Regarding 9-18.04(b), Overberger said she thought the intent was to review the project to make sure there is minimum cut and fill and would like criteria for Exception to Permit Requirements 8.18.05

The Commission discussed 9-18.05viii.

Hurd said this is not the typical hold harmless situation but rather a warranty and we may need to revamp this to make it the 10 years indemnification.

Krebs agreed and wanted it to include damages and it should apply to third party claims that arise because of this.

Krebs asked if a specific number of truck trips should be included. Myrter said he can include a threshold.

Regarding 9-18.05viii, Krebs asked if it should also have names and address of owners who will be impacted and would this include owners within 300 feet of the project. Myrter said they would only be notified if the adjacent neighbors would be impacted. Hurd said the neighbors could be notified within 300 feet for each project. Harris noted that there could be a potential overlap, particularly if they already have a construction project going on.

Harris said he would like the requirement of indemnity to be with the owner. Hurd said it is a condition of approval, and if the project is sold, the person who sold the property is still responsible for indemnification.

Krebs asked if there is a reasonable way to pass along the indemnity. Harris said if there is a way to securitize it, he would like that taken into consideration.

Krebs suggested wording to be added in 9-18.08vi that replanting take place as soon as possible, and have the arborist secure the trees prior to construction.

Regarding 9-18.06(b)i and iv, Krebs suggested it be consistent because one states "unlawfully" and the other states "improperly".

Regarding 9-18.06(a)i, Harris would like to include some examples in line 2.

Regarding 9-18.07, Harris asked if there can be an intermediary appeal to the Planning Commission rather than to the Town Council. Hurd said the Commission can make that suggestion to the Council. Overberger did not think it was a planning issue

Consensus is that the Commission is fine with whatever decision the Town Council wants.

Regarding 9-18.08v, Harris asked if a different standard would be more appropriate. Hurd suggested deleting "...will not be adversely necessary by the project..." and in vi add the landscaping and replanting.

Regarding 9-18.09, Harris suggested they look at the standard ob line 2 rather than what is "reasonable".

Regarding 9-18.10(a), Brown suggests changing the word "commence" to "continuing into".

Regarding 9-18.11(a), fourth line, Krebs suggested adding "shall be" rather than "be".

Regarding 9-18.12, Harris suggested adding "or any applicable law".

Regarding 9-18.14, Harris asked if the money accrues only after the conviction. Hurd said that needs to be separated.

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M/s Harris, Sisich, and unanimously passed, to continue the item to the meeting of July 6<sup>th</sup> in order for staff to consider the Commission's direction.

**DISCUSSION ITEM**

None

**ITEMS FROM PLANNING COMMISSION**

None

**ITEMS FROM STAFF**

None

The meeting was adjourned at 8:50 p.m. to the next meeting of July 6, 2009.

Barbara Chambers  
Assistant Planner