

TOWN OF SAN ANSELMO
Minutes of the Town Council Meeting of December 11, 2001

Present: Breen, Chignell, Hodgens, Kilkus, Kroot
Absent: None

8:00 p.m.

- CALL TO ORDER.
- PLEDGE OF ALLEGIANCE
- ANNOUNCE ACTION TAKEN, IF ANY, IN CLOSED SESSION

Mayor Hodgens announced that there was no closed session this evening.

- INTRODUCE RECENTLY HIRED POLICE COMMANDER JAMES PROVIDENZA.
- OPEN TIME FOR PUBLIC EXPRESSION.

Louise Mathews, Foothill Road, asked that the agenda language be as clear as possible. The language for the nuisance abatement on this agenda did not specify the municipal code sections.

Roberta Robinson, Crooked Road, noted how nice it is to live in such a nice community where things get done.

- COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS, QUESTIONS AND COMMENTS TO STAFF; STAFF MISCELLANEOUS ITEMS.

Breen noted that on December 1 there was a flood threat downtown and there was nothing broadcast on AM 1610. He'd like the Town Administrator to look into the protocol for the radio station and report back.

Breen noted that he would be absent from the Town Council meeting of February 26.

Kroot thanked the Public Works Department and Street Crew for cleaning the downtown benches so quickly.

Chignell said he has twice requested information about increasing safety at the Madrone crosswalk. He'd like a report back.

Chignell said the Council has received reports on the progress of construction at 55 Alder and 1029 San Anselmo Avenue. He'd like another report on those two structures.

Chignell said Council received a letter from Hillary Dillon regarding the dog waste cleanup issue. He'd like something put in the Recreation brochure scheduled to go out in January.

Chignell said that on July 24 the Town Council approved a staff report on short and long-term issues regarding the eastbound backup at the hub on weekends. One of the short-term solutions was to change the timing of the light. Has the timing change been made? If not, he would like the timing change to be made.

Town Administrator Miles said he could have a report on the Madrone crosswalk at the January 8, 2002 meeting.

1. CONSENT AGENDA: ITEMS ON THE CONSENT AGENDA MAY BE REMOVED AND DISCUSSED SEPARATELY. OTHERWISE, ALL THE ITEMS MAY BE APPROVED WITH ONE ACTION.

- (a) Approve minutes: November 27, 2001.
- (b) Acknowledge and file warrants Nos. 40260 – 40591 in the amount of \$1,471,826.82 for the period ending November 30, 2001.
- (c) Approve Resolution No. 3581 regarding application for disability retirement of Patrick A. Goss effective May 31, 2001.
- (d) Appropriate \$1000 from Contingency to share the cost with SAVE of a computer consultant to establish a universal database of donors, volunteers, neighborhood coordinators, community, business and school contacts.
- (e) Approve new classification and set salary range for Recreation Supervisor in the Recreation Department; reclassify the Senior Administrative Services Assistant to Recreation Supervisor, with an increase of 5% in monthly salary, from \$3,971 to \$4,187 and approve revised job descriptions for Recreation Director, Recreation Supervisor and Recreation Coordinator I/II.
- (f) Approve Resolution No. 3582 extending the Marin County abandoned vehicle service authority vehicle registration fee until April 2012.

Items (a), (b) and (e) were removed for discussion.

M/s, Kilkus/Kroot, to approve consent agenda items(c), (d), and (f). Ayes: All.

Regarding item (a), Chignell said he was absent and would like to abstain from the vote.

Regarding item (b), Chignell wants to vote no on this item as the invoices weren't available to Town Council members.

Regarding item (e), Chignell asked if the new configuration would affect the preschool/daycare incumbents.

Recreation Director Wheeler said the Preschool Director is now a regular part time position. All others are still part time personnel. This reorganization doesn't affect any of the incumbents.

M/s, Kilkus/Kroot, to approve consent agenda item (a). Ayes: All. Abstain. Chignell.

M/s, Kroot/Kilkus to approve consent agenda item (b). Ayes: All. Noes: Chignell.
M/s, Kilkus /Kroot, to approve item consent agenda item (e). Ayes: All.

2. PUBLIC HEARING REGARDING PUBLIC NUISANCE: MODIFICATION OF AN ACCESSORY STRUCTURE TO SERVE AS A TWO-UNIT RESIDENTIAL UNIT WITHOUT A PERMIT IN VIOLATION OF THE SAN ANSELMO MUNICIPAL CODE; 125 REDWOOD ROAD, A/P 007-083-03.

Town Attorney Roth said the property owner is represented by Leonard Rifkind. Ms. Johnstone has refused the Town entry into the premises, even with the inspection warrant. There is sufficient evidence that there is more than one unit on the premises. The notice of the public hearing was both mailed and posted. Those documents are made a part of the record. He passed out the definition of a second unit. He also introduced a chronology of the activities at the premises since June of 1984. He introduced a copy of the grant deed showing that Pat Johnstone is the owner of the property at 125 Redwood. The first witness is Jacqueline Myers.

Leonard Rifkind, Attorney representing Patricia Johnstone, said they did request a continuance to prepare for the hearing and it was not granted. He also asked for a copy of the information to be presented and it was denied. One of the ordinances cited in the public notice says that if there is a finding of a violation of the Municipal Code it could be a misdemeanor. This isn't the proper forum for a criminal trial. In order to make this a fair hearing the witnesses should be brought into the room one at a time.

Hadden Roth, Town Attorney, said he doesn't want to have the witnesses excluded as there is no provision for it. This is a continued hearing from an earlier date and this is the date they chose. There is no reason for a second continuance. This is a civil action, so there are no criminal sanctions. But there can be administrative penalties. Rifkind had access to the file before tonight and he went through it. Rifkind didn't share with the Town who his witnesses are. The Town is asking to abate a public nuisance.

Chignell said he believes the witnesses should remain as this is a public hearing.

Hodgens asked if the items handed out this evening are a matter of public record. She agrees that witnesses will remain in the room. Roth answered affirmatively about the public record.

Town Attorney Roth swore in Mr. Barnett, a licensed private investigator, who has been working on this case. Mr. Barnett showed photographs of the front door to the upper unit, which is on Savannah Avenue. On the back it says the main house is rented out and the owner lives in the utility room. The photo was marked number 1. Photo 2 is the lower entry door to the lower unit off Savannah Avenue.

Leonard Rifkind said the statements are hearsay. Roth said it is all right in a public hearing.

Barnett showed photo 3, a car with license saying "Aunt Pat." Photo 4 depicts vents and skylights at the top of the utility building.

Mark Barnett responded to Mr. Rifkind's questions about his license and good standing as a private investigator. He said he's been to the Savannah side of the property four times and the Redwood side a number of times. He doesn't see any cooking facilities in those pictures.

Jacqueline Myers was sworn in by Hadden Roth. Ms. Myers said Johnstone's boyfriend, Ralph Smith, is her brother. She is an attorney, but not currently practicing. There is a main house on the property that faces Redwood Road; she hasn't been in that house. She has been in the second, smaller structure. Roth showed her the pictures and asked her if she recognizes them. She recognized picture 1, was not sure about picture 2, she thinks 3 is Johnstone's car, and she isn't sure about 4. She was in the smaller building in 1991. Inside the structure were full living quarters, with full kitchen, bath and bedroom. That is at the street level. She slept overnight in the structure. Her brother and Pat Johnstone were living there. She'd been there twice, but didn't stay overnight the second time. Both of her sons, David and Jonathan Abitioul, have been in the structure. She identified a picture of Jonathan taken in the bathroom in the structure.

Rifkind questioned Ms. Myers and confirmed that she is Ralph Smith's sister. Their relationship isn't good. Myers doesn't know about Smith's health. She slept in the living room when she stayed over. She remembers the cooking facilities and where they ate breakfast. The cooking facilities were burners or a stove in the kitchen. She doesn't recall the number of burners, color, etc. Myers said she and her brother have a dispute over the conservatorship of their mother.

Chignell asked when the children were there. Myers said it was subsequent to 1991. There were last in the structure in 1996 or so.

Town Attorney Roth swore in Keith Angerman. He is the Chief Building Official for the Town of San Anselmo. He visited the premises today and saw the building up on Savannah, numbered 25. There are two entrances into the building, one at deck level and another going to a room down below. The structure is obviously inhabited. Roth showed him Exhibit 1, a picture of the entrance to the upper level. Angerman said he saw a cord of wood stacked, lawn furniture, and trashcans. There was cable TV, telephone cable, motion detector lights, and house numbers. The skylights are operable and there are a number of vent stacks on the roof, which appear to be water heater, furnace or fireplace. He checked the plans for the structure, approved in May 1985, but they do not show plumbing, interior partitions, water heating, a furnace, and the electric service showed only two lights on the plans. He saw some joists sticking out of the building that weren't on the plans. No walkway was shown on the plans. There is a terraced wall 5 to 10 feet away from the pool. The Building Inspector says there are no permits for that wall, and a permit is required when it supports a load.

Rifkind asked Angerman several questions. The wall by the pool can be seen from

Savannah. He has completely reviewed the Planning file for this property. Rifkind asked if there were subsequent correspondence approving some of these items, would Angerman have seen it? Angerman isn't aware of approval to use the structure as a habitable structure. Angerman used the Planning and Building files to prepare for tonight. Rifkind asked if he had seen any letters from Garvey or Davison? He didn't see any cooking facilities on the property; but he wasn't allowed inside. He tried to get permission to go inside one time. Other times he set up appointments and they were all cancelled. One time the door was open and he could see that it was a living space.

Hodgens confirmed that in the building permits there is nothing matching what is there now.

Rifkind asked Angerman if he saw any correspondence from Mr. De Sousa. Angerman answered affirmatively. Did he note a kitchen, with stove and cabinets in 1985? Angerman said the notes were to stop building those because it was not allowed. A design drawing of the building noted that cooking facilities were prohibited. It was a storage facility. One drawing was foundation only. There were numerous stop orders on the project.

Rifkind showed Angerman a letter (contained in Exhibit S in his brief) dated November 27, 1985 from John Kottage. Does it appear that Mr. Kottage thought the improvements made at that time were legal? Keith said it does appear so.

Lu Dandelet was sworn in. She said the structure was supposed to be a storage facility and she saw tubs and other household items going in and knew it wasn't a storage facility.

Rifkind asked Ms Dandelet if she has reviewed the file. Dandelet answered in the negative; she just watched the whole thing go up. She doesn't know if the Town Administrator gave permission for the Johnstone's to live in that structure.

Town Attorney Roth swore in Jacqueline Ryan. She lives at 135 Redwood Road. The main house is at 125 Redwood Road, and a structure was built on Savannah that was to be a pool house. It is a 3-story structure with two living units. She has reviewed the plans. She hopes the Council can help the neighbors with this problem. She has seen people come in and out of the structure, other than Smith and Johnstone. The mother lived in the second unit. The main house was rented to all these single people with a lot of late night activity.

Rifkind asked Ms Ryan questions. This late night activity is happening at the main house. Johnstone and her boyfriend are living in the illegal unit. Rifkind said they would stipulate that the main house is rented out and the Johnstone and boyfriend are living in the accessory structure. Ms Ryan said she has not physically assaulted Ms. Johnstone. She knocked on the downstairs door but there was no answer. She did that because of all the disruptive noise. Her relationship with Ms Johnstone is not friendly. He confirmed that she never touched Ms Johnstone without her permission.

Mark Barnett, Private Investigator, said he spoke to Jacqueline Ryan, Marty Tuffli (owner at 19 Savannah), which is next door to the structure, Alan Mooers, Ted and Bess Niemciwich, Lu Dandelet, Lynn Waller, Beth Malloy, David Maloney and Tebby George, all neighbors. What was told to you by the persons who aren't here? Barnett said Ms. Malloy spoke of noise complaints and late night parties poolside. Lynn Walker, 119 Redwood, also had noise issues, late night parties, and construction work done recently on the property. David Maloney and Tebby George they talked about partying at 125 Redwood Road, one of which yielded a call to the Police last summer after arguing and references to cocaine and violence.

Rifkind questioned Barnett. Barnett said most complaints were noise issues. The issue is the abatement of the second unit. Roth said there wouldn't be this problem if they were living where they're supposed to be living.

Alan Mooers, Savannah Avenue, was sworn in. No matter what the neighborhood thinks, this is a zoning issue and should be dealt with by the Town. It is a single-family zoning district and the second unit shouldn't be allowed. We shouldn't pit neighbor against neighbor. Johnstone is living there and that is a matter of fact.

Rifkind asked Mooers on what does he base the fact that it is an illegal structure? Mooers said he's seen the agreement on the part of Garvey to use the appurtenant structure as a bedroom only in conjunction with the use of the main house, with no cooking facilities. He believes there are cooking facilities but he hasn't been inside.

William Clark, 38 Savannah Avenue, was sworn in. He is reluctantly participating because he too feels it is a violation of zoning and building codes. It was supposed to be a storage facility but it has always been a living unit. Abating the extra structure is fair because it was built illegally in the first place.

Leonard Rifkind, Attorney for Patricia Johnstone, said he submitted a legal brief to Hadden Roth outlining in detail the facts in the case. Four declarations are included saying there are no cooking facilities in the accessory structure and that Ralph and Pat have use of the cooking facilities in the main house. Exhibits A through W are included. W is from the County of Marin and outlines their code enforcement procedures; they have a neutral hearing officer to ensure fundamental due process.

Roth would like to continue the matter to review the brief and copy it to the Town Council. Rifkind agreed but wanted to speak to the items. Ms. Myers is obviously having a family conflict with her brother. Mr. Angerman has not been inside the property. No witness has personally been inside the property. The mid-80's definition of a second unit is what applies. There is a police file on the conflict between Johnstone and Ryan and Council should review that. Barnett is a hired gun with no personal knowledge of anything. If there were an abatement of this property, Johnstone and Smith wouldn't be able to live in Marin County.

Hodgens said the question about cooking facilities could easily be answered with an inspection. Rifkind said the inspection warrants were obtained in April, but the Town isn't satisfied with an inspection just to look for cooking facilities. They want to look all around. It is a violation of Johnstone's constitutional rights.

Town Attorney Roth said you have to look at the whole structure to ensure they aren't manipulating the situation. The other problem is that if you see other violations you can't overlook them. But the purpose wouldn't be to find other violations.

Chignell confirmed with Roth that he believes Johnstone and Smith are living in the premises and using it to cook meals. Our case relates to cooking facilities. Roth said the case relates to the fact of a second unit. Why aren't we going through the inspection warrant process? Roth said that when you deal with civil warrants, when they are refused, you have to charge a misdemeanor, which would then trigger a trial. We don't get in the premises but we get a conviction. Chignell ask if the Town decides to abate, can Mr. Rifkind go to court. Roth said he would recommend imposition of administrative penalties and go into court. Chignell asked why the Town couldn't make an agreement for an inspection with a narrow scope? Roth said the likelihood is that they would move the facilities away until inspection is over. We need to inspect the entire property.

Rifkind said he has spent little time on the case. He is open to trying to resolve the matter cooperatively. There are no cooking facilities in this unit. In order to have cooking facilities, you have to have 220-volt line or a gas line.

Roth said whatever the Building Inspector needs is fine with him to determine if there are cooking facilities. The definition of cooking facility was amended; the old definition should have been used before. Now five years have passed so the new definition should be used. The Town Clerk should make copies of Rifkind's brief for the Councilmembers.

M/s, Chignell/Breen, to continue this item to the special meeting of January 15, to be scheduled first on the agenda. Ayes: All.

3. APPEAL OF PLANNING COMMISSION'S APPROVAL OF DESIGN REVIEW AND SETBACK VARIANCES TO CONSTRUCT A THREE-CAR PARKING DECK AND UNCOVERED STAIRS ENCROACHING OVER THE REAR PROPERTY LINE (FRONTING ON SCENIC AVENUE) (ENCROACHMENT PERMIT WILL BE REQUIRED); AND A HOME OFFICE TO BE WITHIN 0' OF THE REAR PROPERTY LINE. APPLICANT: KAREN MEADOWS. APPELLANT: EDWIN CARIATI. LOCATION: 132 HUMBOLDT AVENUE, A/P 7-024-21.

Acting Planning Director Wight presented the staff report. The appellant is concerned about the car deck, and the construction of a home office. The Planning Commission required a deed restriction to ensure the accessory structure isn't made into a second unit.

Kroot asked about the location of the car deck. Wight showed the location on the plans.

Breen said he thought the right-of-way is a slope, so the deck would be over open air.

Chignell asked about the findings on the home office. Staff didn't see any special circumstance for having the office right on the property line. Staff felt the office would be visually intrusive to the two neighbors but the Planning Commission approved it. She passed out comments from a neighbor at 427 Scenic who doesn't oppose the project.

Hodgens asked the Floor Area Ratio (FAR) of the neighboring houses. Wight said she doesn't have that information.

Kroot asked about the impact of the studio on the neighbor at 312 Humboldt. Did they talk about removing the window facing the neighbor's house? Wight said the windows are not really the problem, just the mass of a house above.

Scott Couture, Architect representing the applicant, said the property owners are artists and they want to maximize their workspace. They looked at other alternatives. In addition they wanted to ameliorate their parking problem. With the location of the parking deck they tried to minimize tree loss. They did look at options, but it would require a larger mass on top of the deck space. Any construction would be visible from most neighbors. They tried to push the office back as far as possible to reduce impact on the neighbors. Other parking decks in the neighborhood are in the right-of-way. There are some bay trees that provide screening.

Kilkus asked why there is a full bath in the studio? Couture said the applicant wanted to take a bath in solitude so a tub was included.

Hodgens noted that the building is right at a 0-foot setback. She asked if it could work with a four-foot setback. Couture said the more you go forward, the more it impacts the other two neighbors.

Karen Meadows, 132 Humboldt Avenue, applicant, said they have outgrown their space and just want to have an art studio and space to create their work. They also want to create more parking spaces.

Edwin Cariati, 312 Scenic Avenue, appellant, read a statement into the record. He values his privacy. He is opposed to this construction because it is out of proportion to the size of the lot. It is overbuilding with a three car parking deck, big staircase and the addition. All the homes are close to the property lines and he feels they will all be crowded. The proposal is contrary to the types of homes in the neighborhood. The addition impinges on the neighbors' privacy. It seems unusual to approve a detached living unit. It is out of character with the neighborhood. He feels a special privilege is being granted for a legal, detached structure for habitation. He suggests the project be denied; but if not, he would like to move the unit downhill and attach it to the building. If used as is, remove the bathroom and other facilities. He'd suggest removing the third parking space, and

moving the steps to the other side. All the supporting wood should be trellised with vines. Plant hedges along the boundaries for screening.

Hodgens asked the appellant if they've had any discussions about the addition. Cariati said they haven't talked, but have exchanged letters. Hodgens said to have any of these suggestions considered the two parties would probably have to discuss things.

Cornelius Keane, owner of property on the downhill side, said the plans do seem a bit excessive. The three and a half car deck seems very big. The applicants did write and invite them to discuss this. The three parties might be able to discuss this and reach a compromise.

Chignell said concerns have emerged from these discussions. If Couture and Meadows would meet with the neighbors to discuss mitigation measures, a compromise might be reached. Some work is being done on Scenic to help with the traffic situation, but parking decks are very necessary. Two Planning Commissioners did agree with staff. He thinks this matter should be continued.

Kilkus said he believes these plans are an imaginative solution to the problem. Getting people together may not make it any better. He would vote to approve the project.

Breen said the FAR doesn't bother him. He doesn't think you would be able to see anything but the deck from Scenic Avenue. The three parking spaces are a blessing to the neighborhood. There doesn't appear to be a granting of special privilege. The design has good possibilities, but all three parties are agreeing to talk. It should come back after those talks.

Kroot said the area desperately needs parking and this would help. The studio is a little more problematic, but the road is wide there so it doesn't feel like a rear yard variance. He would like to see the sides get together to deal with the privacy issues. The stairway may feel like an imposition on the appellant's privacy.

Hodgens said her concerns are the development of an extensive yard of steps and decking removing greenery and open space. This may set a precedent for detached structures. Do the applicants have a business? She'd like clarification from the Planning Department on this issue.

M/s, Chignell/Kroot, to continue this item to a date in January, before which the parties will meet to talk about a possible compromise. The date for the meeting would be set when the talks are done. Staff is directed to provide more explanatory information on the home occupation issue. The plans should include more screening for privacy. Ayes: All. Noes: Kilkus

Breen confirmed that if a substantive change is made, that this item would go back to the Planning Commission. Wight answered affirmatively.

Chignell said he supports the project but would like to see some items tweaked.

4. APPROVE CHANGES TO THE DESIGN AND AUTHORIZE SOLICITATION OF BIDS FOR THE REBUILDING OF THE CORPORATION YARD BUILDING, LOCATED AT THE END OF SAN FRANCISCO BLVD.

Town Administrator Miles presented the staff report. Modifications to the project are suggested because the bids were higher than the amount of funds available.

Hodgens asked about the timing of the bids. Town Administrator Miles would like to have the bids back in by the first of February.

Building Official Angerman said the Planning Commission meeting at which these changes were discussed was not publicly noticed, so this meeting was noticed to authorize the changes authorized by the Planning Commission. The changes made include deleting the trellis outside the Administration Building, deleting redwood fascia and trim on buildings, changing the sliding barn doors from redwood to metal, deleting the light bollards, changing two lights on the Maintenance Building to be motion activated, allowing the contractor to propose an alternate roof system of asphalt composition shingles, and changing the trash enclosure to chain link fence with slats.

Kroot asked if the Planning Commission decided on a color for the asphalt roof. Angerman said they just said to use manufactured standards for the roof and other colors.

Kroot asked if some of the work would be done in house? Angerman said the approach would be to bid the manufacture and construction of the buildings and try to get more competitive prices for the smaller pieces.

Breen asked if we didn't do all the extra stuff, would it still be functional complex? Angerman said the buildings themselves are the functional project and are what would be proposed to bid.

Kilkus said he doesn't see how these changes will save enough money. Weren't we going to change the siding from a single-source?

Angerman said the changes specified are specific changes to the conditions of approval that went to the Planning Commission. Other changes, like getting rid of tile in the bathroom, aren't included because they weren't part of the conditions of approval. Those changes include having a wood retaining wall instead of concrete, board and batten siding, with the color to be selected from manufactured standards. Asphalt has been cut back on to make a more permeable surface. Vinyl coated fencing would be galvanized. The phase-in plan has been eliminated to save money.

Jonathan Braun, Scenic Avenue, asked about the landscaping. Angerman said there is no change to the landscaping. Braun said he would be pleased with a composition roof of a pleasing color, as it will be viewed from Sorich Park. Perhaps this should come back for

public review. The color scheme was approved and if it comes back different it should be looked at in a larger way.

Jerry Draper, Sacramento Avenue, said the ugly building is getting uglier. He can't believe we're saving that much money by changing the trim. Trim and doors would have made it a lot nicer. He's sorry to see the trim go. He likes the composition shingle roof. Regarding screening, there is currently bougainvillea planted, which dies off from frost every year. Deciduous trees aren't good screeners either. He is concerned about compacted Class II material and the dust problem. There was no notice to the public at the Planning Commission level; that is not good process. The Planning Commission did not have the benefit of public comment. He would encourage the Council to put the trim back in.

Breen said the Town is confronting an incredible budget shortfall and we've been putting this project off for a long time. We will still end up with a functional, safe facility for our employees. He's in favor of the changes.

Kroot agreed. He congratulated Mr. Kappe for his diplomacy. It is critical to get the project down to something the town can afford. Regarding the roofing color and texture and the siding color, it would be good to get Planning Commission input at that stage. Regarding the trim, it is a metal building. If the trim can be included as an alternate, it might be nice. He appreciates the work of staff on this and he is optimistic about the project.

Hodgens asked about the composite pavement situation. Will it create more dust? Could it be an alternate? Angerman said his goal would be to pave, but for right now it's an alternate that is included to cut down on cost. Gravel won't work, but Class II compacted material will work as it's a low speed area. The goal would be to get it paved sometime. The material is a good base for paving.

Kappe said January should be a good time to go out to bid.

Draper asked if the Town plans any paving at the end of San Francisco Blvd.? Hodgens said it is county territory. It is not being done as part of this project.

M/s, Breen/Kroot, to approve the changes to the design and authorize staff to solicit bids for the construction of the Corporation Yard Reconstruction. Ayes: All. Absent: Chignell.

5. ADJOURN.

The meeting was adjourned at 11:30 p.m.

Debra Stutsman