

TOWN OF SAN ANSELMO
Minutes of the Special Town Council Meeting of January 15, 2002

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

8:00 p.m.

- Call to order.

Mayor Hodgens announced that no action was taken in closed session.

1. CONTINUATION OF 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 respondent has submitted a response to the Town's brief. Their comments are basically on the evidence presented. Regarding the question on cooking facilities, it is a red herring. Ms Johnstone has refused permission to inspect the premises, so we don't know if there are cooking facilities at all. Regardless of which definition you use, she and her companion have been living there for 16 years and taking their meals there.

Kilkus asked about the comment on reliance on Town officials. Roth said misrepresentation by a public official is not binding. The only representation that was made was that they could sleep there. All meals were to be taken in one location. Former Town Administrator Garvey said they could use it for sleeping. Regarding the definition of second units, the new law took effect shortly after this event, and we gave them time to comply.

Chignell confirmed that Roth's position is that it doesn't matter if we use the old rule or the new rule. Roth said he would say that there should be a determination that there is a public nuisance. Inspection should be permitted and the property should be brought up to code. The zoning violation is the illegal modification of a structure to create three separate living units without a use permit for a second unit.

Kroot confirmed that the basic issue is whether they've been using this as a single housekeeping unit, including taking their meals there. Roth said if they are living there but not taking any meals, there is no violation. If the Town is satisfied that cooking facilities have been removed, they are no longer in violation. She is still in violation of dishonoring the inspection warrant.

Breen asked why we would dance around the zoning issue? He quoted Garvey's statement about using the unit as an extended bedroom. Doesn't it change things since Rae Johnstone is deceased? Roth said you could argue that, but if you take the legal definition of R-1, it doesn't mean you all have to live under the same roof. If they were all eating in the same main kitchen, it wouldn't be a violation.

Chignell said this still gets back to the cooking facilities issue. He asked about the inspection warrant. Roth said an inspection warrant is a civil matter, not criminal. You can't just break in. If the person refuses, you can go back to the judge and ask to have the door broken down. Ms Johnstone broke several appointments with Mr. Angerman. Roth said he could have gone back to the judge to authorize breaking down the door, which he didn't want to do. He could have filed a civil suit, but it didn't seem to be the proper course. Entry was refused.

Leonard Rifkind, Attorney for Pat Johnstone, said he hasn't completed presenting his evidence yet. What is different about the latest response is that it is a response to Hadden Roth's latest brief. This brief sets forth that the 1986 definition of second unit applies and summarizes documents that support that statement. Johnstone and her neighbors did not receive notice of this hearing and it is a special rather than regular meeting. They are

concerned that there may not be proper notice.

Town Attorney Roth said this date was set at the December 11, 2001, hearing.

Rifkind noted for the record that he sat patiently while Town Attorney Roth spoke; it's not fair if Roth is allowed to interrupt.

Leonard Rifkind, Attorney for Pat Johnstone, said he has two witnesses that he'd like to call. The first is Mr. Gabe Parque.

Gabriel Parque, 80 Rocca Drive, Fairfax, said he has known Johnstone and Smith for 15 years. He has been to their property 15-20 times in the last 15 years. He has been in the accessory structure 10 - 15 times, the most recent being last Saturday. It has one floor that he has been on. It has furniture and improvements, bedroom, bath, sitting area, but he did not see any cooking facilities, like an oven or stove. There were kitchen cabinets and a sink. There was no area where an appliance had been removed.

In response to questions from Town Attorney Roth, Parque said he is a carpenter, working for John Boitavich. He visits Ralph Smith, who he met at Center Market many years ago when he worked. He saw one floor and one entrance in the structure.

Mr. Parque said he observed a dispute between Ms. Johnstone and Jacqueline Ryan during a visit. He said he and a friend were helping them move furniture and Ms Ryan came running down shouting. Johnstone didn't do anything back. She just walked up the steps.

Rifkind called Allen Michaels. Allen Michaels, 2280 Green St., San Francisco, said he has known Smith and Johnstone since 1987 when they owned Center Market during his high school years. He has been to their property 20-40 times over the past 10 -11 years. He was there last Saturday afternoon. He has been in the accessory structure 20-40 times. He thinks it has two floors - he has been on both floors. He saw a bedroom, living room, bathroom, but no cooking facilities, like an oven, stove, or appliances for the heating of food, but there are kitchen cabinets and a sink. They ate a meal that was either brought in from the deli or cooked in the main house. In the lower story he didn't see cooking facilities. He believes it's mainly storage. He observed the same incident with Jacqueline Ryan. He didn't know if the police were called. He was surprised at what Ms Ryan said that day. She seemed erratic and unstable.

At Town Attorney Roth's questioning, Mr. Michaels said he does property management for independent property owners. He does maintenance, management, grounds and landscaping work, and collecting rents. On Saturday he was visiting Smith and Johnstone. A friend was here from out of town and they all came to visit Ralph. They phoned that morning from the city and stayed about an hour and a half. They talked to Ralph during the visit, in the upper floor of the accessory structure. When he went inside, he saw a living room, and a sink area. The living room has a couch, chair, another couch, and a window. There's a coffee table. The room was about 12' x 12'. But first you see an area with a window with a linoleum or ceramic type floor and wood cabinets. It has plates and water; if you were going to have a kitchen it would be there. But there's no heating facilities. There are cabinets, solid wood, about 6 of them, 3 to 4 feet in length, all right next to each other. Below them there is a sort of counter area with some stools, sink, with a window over. There's some art work, but no chairs or tables. Below the counter are some drawers. He doesn't know about electrical outlets, but probably yes. There's a water faucet. To the left there is a bathroom with a toilet, sink, and shower. There's a light in the bathroom. There's also an adjoining room which is a bedroom, partitioned off. There's a bed, bureau, and a closet for clothing. There's a display case with pictures, a lot of which are antique type. He can't recall if there are any family photos. When shown exhibit 5, he said the photo looks familiar to him; he thinks it's the bathroom. He stayed in that particular area for the whole visit. He had orange juice when he was there; he thinks he brought it with him. There may be a refrigerator. He didn't go anywhere else that day. He was on the lower floor other years when he was helping out Pat and Ralph move furniture. He moved couches and a bed into the accessory structure. He met Pat and Ralph in 1986 or 1987 when they had Center Market and he was a customer. He became more than a customer no later than 1995, no earlier

than 1993. They became friends because they are good-natured people. They were friends before a work relationship took place, then he helped them move antiques. He was in the lower floor for the first time in approximately 1995. He saw a storage area; he was putting furniture in there for storage. It's not paved like some basements; it could serve as either function. He was only in the lower area about 5 times. The last time he was in there was September a year ago. It was the same as the earlier time. He didn't study it to see if it was a living area. He looked at Exhibit 2, a picture. He has seen it before. He doesn't recall if there was a time that that a door wasn't there. He ate there probably 5 times. They ate deli sandwiches, cold liquids. He doesn't recall anything else.

Leonard Rifkind said all the property owner has to go on is the notice of this hearing. All the notice says is about using the two units in violation of the San Anselmo Municipal Code. A lot of evidence has come up on a lot of topics that are away from the focus of the second unit question. Until Mr. Michaels testimony, the Council hadn't heard what was in the unit. The tenants of the main house say there are no cooking facilities in the accessory structure, an express provision of their lease. How do we determine what is a second unit? Look at the Municipal Code. In 1986 there was one definition, where the operative words were "separate cooking facilities." It doesn't define cooking facilities. That's probably why the definition was refined in 1996. There is substantial evidence that there are no appliances to heat food in the accessory structure. The Town is trying to have the 1996 definition apply, but there's a lot of documentation from Town officials saying that the 1986 definition applies. It is clear from tonight's testimony that there is no means to heat food in the structure. On March 16, 1987, the Building Inspector wrote Rae Johnstone about a final inspection not being done. He'd been in and out of the structure, noticed a sink, etc. and still asked about a final inspection. Plans approved by Rabi Elias show various things about the accessory structure, but no cooking facilities. He would like to add to the administrative record all the records; the Planning and Building files should be made part of it.

Town Attorney Roth said as far as the hearing is concerned, what has been presented is in the administrative record.

Rifkind said he has had access to review the records, but he hasn't had access to all of them in his office. He'd like those files to be part of the administrative record, including the plans dated June 6, 1985, approved by Rabi Elias, and the plans dated October 17, 1985, showing amended plans with changes to lower story. Those plus energy calculations should be part of the record. The Johnstones made every effort to put in a legal structure and they have followed the definition of cooking facilities. The bottom line is that Ms. Johnstone has lived here since 1985. It would be egregious for them to be evicted from their own space where they've lived for 16 years. The Council should focus on whether or not there is a legal second unit, not nuisance abatement. Mr. Michaels described the inside of the unit. They would be open to a further inspection, but only on the proviso that if other code violations are found, Ms Johnstone would be given time to fix the violations. What we don't have is a major health and safety issue. It makes sense to give her a reasonable amount of time to fix any code violations. Regarding the inspection warrant he notes for the record that no one gave Ms Johnstone notice that Mr. Roth was going to court to get an inspection warrant. They don't feel the warrant was ever actually served. Why didn't the Town Council know about the inspection warrant? There is a reasonable solution: use the 1986 code and the evidence shows that there are no cooking facilities.

Town Attorney Roth said Council approved the inspection warrant and Johnstone was warned about it. Regarding the administrative record the Council can officially notice those files in making their decision and they can be made part of the record. Briefs should be part of the record and the drawings too. It appears they are willing to allow an inspection of the property, not a cramped inspection, with reasonable time to correct code violations, and provide an opportunity for monitoring. Definition changed because it is so easy to get a hot plate which can be removed easily for inspection. If they would agree to a monitoring program, then that would be a solution. It is an insult to the Town Council to not allow staff into the house. Ms Johnstone refuses to testify, in court that would never be allowed.

Hodgens said we'll allow the plans and briefs to be part of the record.

Rifkind said he wants to add the San Anselmo police records to the administrative record.

M/s, Kilkus/Breen, to invoke the three-minute limit per speaker. Ayes: All

Hodgens asked that speakers speak about the facts, not personalities. She asked that there be no inappropriate behavior from the audience.

Kathryn Donnery, Savannah, said she cares most that whatever action the Council takes that it should apply to the next owners of the property at 125 Redwood.

Suzanne Lindelli, Tunstead Avenue, asked how much would it cost for the Town Attorney to take this to court, when we have a reasonable attorney who is willing to settle it tonight? Town Attorney Roth said the cost depends on how much resistance there is.

Alan Mooers, Savannah, read a letter into the record. The major issue in the neighbor's minds is that the building is illegal; it is a two-story duplex. They want it to be a single-family neighborhood. The structure was to be a storage unit. Leaving the building as is is a detriment to the neighborhood. If sold it would become a two-unit rental. This is a zoning issue and nothing else. This illegal structure has been occupied from the beginning. The applicant won't allow a final inspection; the burden of proof lies with the owner. The inspection warrant process should be used. To legitimize the structure tells people that lawlessness pays. Don't be afraid of going to court. The property is listed on the assessor's record as a two-unit property. A deed restriction should be invoked. Other agreements are now void. Letting the structure remain as it is would amount to defacto spot zoning. If she can't afford to live here, she should sell and move to a less expensive area, like anyone else. It is a stretch to have meal preparation in the main house. Where they cook is irrelevant, it's an illegal structure. The neighborhood is unhappy, but that's not the issue. This is about zoning and precedent. The most important issue is that those who choose to disregard the law should not be allowed to unjustly benefit. Enforce the zoning regulations and vote to bring the structure into compliance with original approvals.

Louise Mathews, Foothill Road, at what meeting did Roth get the authority to do an inspection warrant? The public was assured the Council would hold public hearing. It was not agendized at a public meeting. What proof was given to Judge Taylor as to the need for an inspection warrant. There are seven criteria for a nuisance; are they part of Roth's reasons? Is this a public hearing or an administrative legal process? It is difficult to know.

Town Attorney Roth said the inspection warrant was authorized by the Council in a closed session. Johnstone was repeatedly warned and did not comply. The procedure was carefully followed. The seven criteria she's referring to are for administrative penalties. The law in the first page of his response is the law to be applied.

Hodgens advised Rifkind that he wouldn't be allowed to speak again to Mooers letter.

Town Attorney Roth said the Council should make a determination of whether there is a public nuisance. It has been proposed that an inspection be allowed, with an opportunity to correct code violations. What is tricky is how the accessory structure should end up. The law is that a single housekeeping unit is where they take their meals in a single kitchen. Family doesn't have to be biological or friends. If the house were simply brought up to code, two floors allowed to exist, and they live there, you would still have two units there. The question of how to deal with that is tough.

Rifkind said the issue is if and when an inspection occurs, how do you determine which law to apply. No one is objecting to Ms. Johnstone living in the building. The sole issue is whether there are cooking facilities.

Roth said he believes the neighbors want this to go back to a storage facility. Assuming you find a public nuisance, what are you going to insist that the structure be? Let them live there, or make it go back to a storage facility. This just doesn't look like a single

housekeeping structure.

Rifkind said that there are probably many homes where someone rents out a bedroom, or cottages on the grounds that are rented out.

Roth said if there are different structures, but they are all part of the same unit, the whole complex is used as one. This is two separate units.

Rifkind said the utilities are shared between the main house and the accessory structure, which goes to the concept of single housekeeping unit.

Kroot said the critical thing is that Johnstone is going to allow an inspection. Before we try to figure out other things, we need to have the inspection and have staff get back to us. Gross illegal things would have to be brought up to code. He would support allowing time for that to happen. A second unit is defined by Town code. There is enough evidence of a public nuisance

Kilkus said he would vote to declare this a public nuisance. Clearly the second unit situation is manipulative.

Chignell said based on the facts there is a preponderance of evidence that this is a public nuisance and we should declare it so. The motion should include suggestions for the attorney for inspection in due course, with code violations pursued. This will be an evolutionary process. Today it is a nuisance, it needs to be abated, we should do the inspection, bring forward code violations, and determine how it relates to subsequent issues.

Breen said this has been ongoing for five years, working hard just to achieve the inspection that we're going to now do. He is concerned that the process not go on for another five years. The accessory structure agreement between Rae Johnstone and the Town has significantly changed. He believes this is a public nuisance and the Town needs to apply the energy to this that the family has put forth to get around the Town in the last many years. He agrees with his colleagues, to bring issue back in looking at our whole zoning issue.

Hodgens concurs with colleagues about the public nuisance. She is concerned about being specific after the inspection as to how the accessory structure would need to be modified to make it through the permitting process. There are a lot of red tags in the file. Specifically, she would like clarity on the steps the applicant will have to go through to make this a legal structure. She is concerned that this issue was dealt with in 1997 and at the time the accessory structure was being used by Johnstone and her mother was in the primary residence. The primary residence now is rented out to a number of unrelated parties. It feels as if there has been a history of some level of misrepresentation. They would like a report back after the inspection is completed.

Roth recommends that the Council move to declare a public nuisance, and direct the Town Attorney to prepare a resolution with the effective date today, that the Council order the premises inspected, with a report back to be made on the 12th of February. This would be an interim order with further orders after the inspection.

Rifkind said they would be amenable if they were not going to abate right away and throw her out of the place. They want a reasonable amount of time to resolve any issues. They'll consent to an inspection but with an opportunity to resolve.

Town Attorney Roth said he would recommend the Council not make that accommodation.

M/s, Chignell/Breen, to declare a public nuisance, directing that inspection of the premises take place, with code violations reported to Council at the meeting of February 12 and if there were a lack of compliance the Council would proceed. The Town Attorney would bring a resolution back to the Council covering these points at the meeting of January 22, 2002. The resolution would be effective as of January 15, 2002.

Rifkind said he would be unable to attend the February 12 meeting. It was the consensus

of Council to have the hearing on February 26, 2002, but to have the inspection happen as soon as possible.

It was the consensus of Council to amend the motion to have the hearing on February 26, 2002. Vote on amended motion: Ayes: All.

Town Attorney Roth suggested the report could be sent to them before the meeting and heard on February 26th.

Hodgens said what is not legally permitted is a code violation.

Breen the issue is what code are you using. We should declare publicly on the record what code the inspection will take place under.

2. APPEAL OF PLANNING COMMISSION'S APPROVAL OF USE PERMIT AND PARKING VARIANCE FOR A RESTAURANT TO SERVE BEER AND WINE WITH TWO ON-SITE PARKING SPACES; 647 SAN ANSELMO AVENUE, A/P 7-212-22. APPLICANT: PRONPIMOL SUWONSUPAR. APPELLANT: PEGGY THONGNOPNEUA. (Continued from the meeting of January 8, 2002)

Mayor Hodgins announced that the appellant has withdrawn her appeal. There are a number of people here, however, who wish to speak to the Council relative to the downtown community. Perhaps we will have to invite them to come to the next regularly scheduled meeting to speak at open time.

Peggy Thongnopneua said she withdrew her appeal because she was told there was nothing she could do. But they want to talk to the Council.

Town Attorney Roth said you can only hear at a special meeting what is agendaized. It could be on a regular agenda as open time or as a special item.

Hodgens invited the people who want to speak on this issue to come back to open time at the meeting of January 22, 2002.

3. APPEAL OF PLANNING COMMISSION APPROVAL OF DESIGN REVIEW OF A NEW 2,777 SQUARE FOOT TWO-STORY SINGLE FAMILY DWELLING AND A SETBACK VARIANCE FOR A PEDESTRIAN BRIDGE TO BE WITHIN 0 FEET OF THE FRONT PROPERTY LINE, ON PROPERTY LOCATED WITHIN THE R-1 ZONING DISTRICT ABOVE 150 FOOT MSL. 24 KNOLL ROAD, A/P 6-115-05. APPLICANT: STEVEN ATWATER. APPELLANTS: HERMAN AND LUJZA MEHLING. CONTINUED TO THE MEETING OF FEBRUARY 12, 2002.

Debra Stutsman

TOWN OF SAN ANSELMO
Minutes of the Town Council Meeting of January 22, 2002

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

8:00 p.m.

- CALL TO ORDER.
- PLEDGE OF ALLEGIANCE, led by Brownie Troop 1340
- RECOGNIZE BROWNIE TROOP 1340 for adopting a San Anselmo median
- PRESENTATION OF CHAMBER OF COMMERCE CONTRIBUTION FOR HOLIDAY LIGHTS. A check for \$25,000 was presented to the Town for the downtown revitalization project from the Chamber of Commerce, represented by Joyce Brown, Mary Montgomery, Danielle Dinnerman and Roberta Robinson.
- ANNOUNCE ACTION TAKEN, IF ANY, IN CLOSED SESSION

Mayor Hodgens announced that no decisions were made in the closed session.

- OPEN TIME FOR PUBLIC EXPRESSION.

Ernie Carpenter, Sebastopol, thanked the Council for going out to bid for garbage services.

Louise Mathews, Foothill Road, noted that when she was turning left off Drake Blvd. to go into the Red Hill Shopping Center at the gas station she met another car head on who was also using the lane. The Traffic Safety Committee should look at this situation. Is it best that parking concerns be brought up to the Planning Commission or the Traffic Safety Committee?

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

Chignell said a long-time Police Officer retired recently and we didn't recognize him. He has prepared a resolution and would like it on the next agenda.

Chignell said the Measure G Monitoring Committee needs to meet and the Public Works Director has set a tentative date in late February. They will be discussing paving and drainage projects.

Chignell said there was a situation on an easement between Bennitt and Hillcrest Ct that was supposed to be fixed but wasn't. He will provide copies of the letter to the Public Works Director.

Breen noted that he will be absent on February 12 and March 12.

Hodgens said they've received a number of letters from citizens asking us to look at later hours for morning collection. It seems like collection is happening earlier. Kilkus said the RFP is addressing this issue.

1. CONSENT AGENDA: ITEMS ON THE CONSENT AGENDA MAY BE REMOVED AND DISCUSSED SEPARATELY. DISCUSSION MAY TAKE PLACE AT THE END OF THE AGENDA. OTHERWISE, ALL THE ITEMS MAY BE APPROVED WITH ONE ACTION.

- (a) Approve minutes: January 8, 2002.
- (b) Acknowledge and file financial report and the Quarterly Treasurer's Report for the period ending December 31, 2001.
- (c) Acknowledge and file warrants Nos. 40592 - 40783 in the amount of \$944,668.21 for the period ending December 31, 2001.
- (d) Approve request for banner fee waiver from the YES Foundation.
- (e) Approval of Request for Proposal (RFP) and contract documents for the solicitation of bids to provide refuse, recycling and green waste collection services.

1(a)

- (f) Authorize interfund budget transfer of \$2,000 from the Capital Reconstruction Fund and \$10,000 from the General Fund for a replacement vehicle for the Ross Valley Fire Battalion Chiefs.
- (g) Authorize staff to conduct a Request for Proposal (RFP) process to solicit contract proposals for auditing services for fiscal years 2001-02 through 2003-04.
- (h) Approve Resolution No. 3583 establishing Underground District No. 8 located along Greenfield Avenue from Lincoln Park to 70 feet west of Greenfield Court and along Lincoln Park from Greenfield Avenue to 200 feet south and along Spring Grove Avenue from Greenfield to 150 feet south.
- (i) Award contract for drainage improvement projects, Bolinas Avenue at Richmond Road and Redwood Road at No. 36 to Ghilotti Construction of Santa Rosa in the amount of \$42,946.

Item (e) was removed for discussion.

M/s, Chignell/Kroot, to approve consent agenda items (a), (b), (c), (d), (f), (g), (h) and (I).
Ayes: All.

Regarding item (e), Chignell noted that the hours of collection in the proposal are 6 a.m. to 6 p.m. If this is approved this evening, would it be the last time changes that changes could be made? The hours are a major concern. Would the Town have the authority to amend the hours throughout the life of the contract?

Peter Deibler, Brown Vence & Associates, said the bidder's conference is on February 7, and any changes could be made the following week. After that it starts eating into the bidder's preparation time.

M/s, Kilkus/Chignell, to approve the contract documents for the solicitation of bids to provide refuse, recycling and green waste collection services. Ayes: All.

2. APPOINT MEMBERS TO THE PLANNING COMMISSION (2 SEATS) AND HISTORICAL COMMISSION (1 SEAT).

M/s, Kroot/Kilkus, to appoint Thomas Hendricks to the Historical Commission. Ayes: All.

Hodgens said there are two vacancies on the Planning Commission, set to expire in August, 2005 and August, 2004.

M/s, Chignell/Breen, to appoint Nancy Morita to the Planning Commission. Ayes: Chignell, Breen. Noes: Kilkus, Hodgens, Kroot. The motion failed.

Sophia Spencer, Jordan Avenue, said she believes Nancy Morita would be an excellent candidate on the Planning Commission.

Beverly MacIntosh, Tamalpais Avenue, said she highly respects Ms Morita and San Anselmo deserves her professionalism.

M/s, Kilkus/ to appoint Christa Colardo to the Planning Commission. Motion failed for lack of a second.

M/s, Kroot/Chignell, to appoint Richard Fernandez to the Planning Commission to a term set to expire in August 2005. Ayes: All

M/s, Kroot/Kilkus, to appoint Pascal Sisich to the Planning Commission to the term expiring August, 2004. Vote after discussion: Ayes: All. Noes. Chignell.

Discussion of Motion:

Chignell said the Planning Commission is probably the most important Town group and it takes a lot of community knowledge. This individual has only lived in this community four months. He has limited experience in Town, doesn't know the neighborhoods, and his only reference is his next door neighbor. He would ask that Mr. Sisich not be

appointed because of his short time in the community.

Kroot said he understands the criticism. However, Mr. Sisich has an enormous amount of experience in Planning areas and he feels he would make an excellent candidate. There are others he would support as well. If not appointed now, perhaps another time. He doesn't want to remove the motion.

3. RECEIVE REPORT AND REVISIT RECOMMENDATIONS OF THE PUBLIC WORKS DIRECTOR AND CHIEF OF POLICE REGARDING ALTERNATIVES FOR SAFE SOLUTIONS TO TRAFFIC HAZARDS IN THE EASTBOUND LANE OF SIR FRANCIS DRAKE BLVD. FROM BUTTERFIELD ROAD TO BELLA VISTA AVENUE, AND APPROVE ADDITIONAL RECOMMENDATIONS AND FUNDING FOR SAFETY ENHANCEMENTS ALONG SIR FRANCIS DRAKE BLVD., INCLUDING EXPENDITURE OF \$38,000 FROM THE TRAFFIC CONGESTION RELIEF FUND TO PERFORM TRAFFIC STUDIES.

Town Administrator Miles presented the staff report. A video will be shown that was made at the area in question. Staff has asked the Council to authorize the expenditure of \$38,000 from Traffic Congestion Relief Fund to get additional data.

Police Chief Maynard said the Traffic Safety Committee came up with these recommendations, which are the same as made before.

Breen said it might be helpful to the community if we go through the nine items on the staff report. Council had asked that the Traffic Safety Committee come back with recommendations to enhance safety, signage, etc. on Sir Francis Drake Blvd.

Hodgens concurred that for the benefit of those who are here tonight, staff should summarize the previous report.

Town Administrator Miles said the initial report recommended removal of the parking, due to high traffic volume and narrowness of lanes. The Madrone crosswalk has been resigned with the new optic green signs and the crosswalks have been repainted. Staff will pursue grants to install crosswalk warning systems at Madrone and Saunders. They recommend traffic counts, speed studies, and study of signal timing be performed to deal with the problem.

Chignell thanked staff for this comprehensive report that addresses a whole series of issues on Drake. His question relates to the crosswalks that might be eliminated. Has any preliminary analysis been done on the impact of removing crosswalks?

Town Administrator Miles said he believes that all of these crosswalks are connected at intersections and they have to be maintained. It would be just one leg at an intersection.

Police Chief Maynard said it would be the intersections at Broadmoor and San Francisco Blvd. where just one of the crosswalks would be removed due to traffic turning patterns.

Chignell asked if money is available for the crosswalk warning systems proposed? Police Chief Maynard said we've applied for a grant for this type of engineering for the intersections at Saunders and Madrone at Drake. The fatalities that we've experienced do support the application for the grant.

Police Chief Maynard reports that since August to the present, 502 moving violations have been issued on Drake between the hub and Butterfield. There were 260 citations for speed only on Drake during that period. During a radar survey, the average speed on Drake is 30 - 35 miles an hour. There have been two accidents, non-injury, since the last report, but both were due to the parking.

Lew Tremaine, Fairfax Mayor, addressing the Council as an individual, said he was glad the Council was looking into this issue. A study will probably find that parking is inappropriate on Drake. It creates a situation that just isn't safe. Appropriate traffic calming solutions should be looked at instead of spending \$38,000. The area in front of

the high school is a particular problem.

John Wright, Tamalpais Union High School District, said the school board is very concerned about the safety of students and staff at the school. The District is looking into forming a committee on parking issues to minimize impact. Perhaps the portables in the parking lot can be moved if another spot can be found.

Hodgens said Council has received a lot of correspondence, both pro and con, on this subject. Kenneth Atterman sent a letter that she would like to have entered into the record. Atterman says Sir Francis Drake Blvd. is certainly a main thoroughfare. He says we should not disregard the opinions of safety experts or risk incurring liability or punitive damages.

Town Attorney Roth said you can't get punitive damages against a public entity, but not following the staff recommendation could be a problem.

Tracy Durnell, San Francisco Blvd., said she has almost been hit crossing Drake at Saunders and a friend was nearly hit too. Every morning she walks to school and uses the west side crosswalk at San Francisco Blvd. If it were removed many high schoolers would miss having that crosswalk.

Bob Schneider, San Anselmo, said regarding the signal timing, that the Bicycle Task Force report addresses signal timing on Drake. On many of these intersections the walk light is on only long enough for a person to step out into the intersection. The walk light should go on when both sides of the traffic have a red. Regarding the roadway warning lights in the pavement, they have them at Las Gallinas School and they work well.

Rohana McLaughlin, San Francisco Blvd., said her concern is pedestrians crossing the street. Would the recommendation be to have all reds while pedestrians cross? Chief Maynard answered affirmatively.

Tom Peacock, San Anselmo, encouraged everyone to think about people other than drivers. He likes the lights proposed for the crosswalks.

Louise Mathews, Foothill Road, noted that a left turn off Drake into Isabel Cook Community Center was in the video shown tonight but was not addressed in the staff report. Previously staff was going to discuss pedestrian riders with Golden Gate Transit. Moving crosswalks would impact bus riders.

Chief Maynard said they are hoping to take an intense look at Drake with this money so they can come back with a report on what really needs to be changed.

Town Administrator Miles said an overlay of the street might be produced so we'd know exactly what physical room is available in the roadway.

Peter Hoch, Sequoia Drive, said Drake Blvd. has become more dangerous and crowded over the last 15 years. Three residents died in the last six months on Drake. He acknowledged those who died. Bold action is needed. From San Anselmo Avenue to Calumet, he would propose that Drake be one lane with designated left turn lanes. The one lane would have to start at San Anselmo Avenue because of the two lanes coming out of Butterfield at Drake.

Don Hodge, Skyline Road, Quality of Life Commission Chair, urged the Council to look beyond the immediate and convene a broader process to look at traffic issues in the whole community, and come up with a comprehensive plan for the area. The solution should include Fairfax, the school districts and other community members.

Stephanie Roth, Woodland Avenue, said traffic on Drake is fast moving. The addition of two lanes years ago caused many problems. At that time residents on Drake were promised that the parking would remain. She understands the concerns of the parking ban proponents. Education and signage would address safety concerns. She is in favor of controlling traffic by slowing it.

Spencer Sias, Carlson Ct., asked for a parking ban on Drake for safety reasons. The lanes added on Butterfield have exacerbated the problem. The parking creates a hazard. There have been two accidents already due to parking. He would ask for a moratorium on parking while this issue is being considered. Regarding the parking at the high school, the portables have made the situation worse and he believes the high school has the responsibility to fix the situation.

Tom Frellman, Sir Francis Drake Blvd., said this is all about choices. He chose to live on Drake. He would like to see drivers afraid to drive too fast on Sir Francis Drake Blvd. It is a residential area. The video showed people merging unsafely. Removing parking would reduce the value of homes on Drake. Three people have already been killed due to the unsafe driving conditions.

Bob Martin, San Geronimo, said valley residents spend tax dollars in San Anselmo. The present situation is very unsafe. The staff report is very well expressed. He would add that the likelihood of head on collisions is increased in the current situation.

Lee Borngren, Sir Francis Drake Blvd., said he doesn't believe Drake High School needs to add just 26 spaces; they need to add more. There are some times when it is vital to park on Sir Francis Drake, such as Homecoming, Back to School Night and other Drake events. To him, this is a neighborhood.

Jerry Cadagan, Stuyvesant Drive, said most issues in San Anselmo are just San Anselmo issues, but in this case it is not. The Sleepy Hollow Homeowner's Association adopted a resolution about removing parking on Drake. Recently San Domenico expanded and there were many heated conversations regarding traffic. He read a letter from Bill Dietrich, a traffic engineer, in which he agreed with the staff report. He is most concerned about Broadmoor. He got minutes from 1986 Council meetings, and there was no commitment expressed about retaining the parking in perpetuity.

Bill Franchini, Agatha Court, said he is in favor of getting rid of parking on Drake, but he is concerned how the ban would affect the parking on his street.

Joyce De Martini, San Rafael, said she raised her family in San Anselmo, and when the four lanes were made on Drake, they knew it would turn into a small freeway. They were assured the neighbors would be taken care of. Sleepy Hollow residents have fought the continuation of Butterfield Road through to Terra Linda. If the parking is removed, you are helping the people who didn't elect you.

Evan Hodgens, Berkeley Avenue, said his way out onto Drake is at Broadmoor. It is very difficult to see there due to the rise in the road. In the evening the traffic is completely backed up. He gave several examples of safety problems caused by people parking on Drake. He is concerned with how dangerous these areas are.

Victor Turkan, Sir Francis Drake Blvd., said he believes a majority of the Council wants to eliminate parking on Drake. Things should be looked at more carefully. It is the speed that kills. He would like to study the issue for a period of time to give the residents a chance. San Domenico generates a lot of traffic. Removing parking isn't the answer.

Carland Strand, Yolanda Drive, said she works at San Domenico, which has a significant bus ridership program. It is difficult for her to turn right at Saunders off Drake because of parked cars. She is concerned because she is driving a car pool with other peoples' children and is considering another route. She presented a petition from fellow San Domenico staffers.

Lars Jensen, Sir Francis Drake Blvd., said he needs to park a car in front of his home in order to do yard work.

Gary Kaplan, Sleepy Hollow, said he feels driver safety is a big issue, as is commute traffic. Driver inattention is also a big issue. The current parking is an annoyance and a safety problem. The parking should be eliminated as it is a traffic jam, eyesore and a danger.

Roy Petri, San Francisco Blvd., said he has had near accidents on Drake at Broadmoor. A sign should be posted warning people of a possible merge. People need adequate warning.

Elizabeth Moore, Bay Tree Lane, said she is concerned with the crosswalk at Madrone. There are no lights there and drivers can't see pedestrians trying to cross. Drivers don't always stop at crosswalks. Flashing lights would be very helpful. She respects residents needs for parking and the effect on property values. She has a particular issue with the parking in front of Drake High School. When driving, you can't immediately tell if they are parked or moving.

Carol Lester, Sir Francis Drake Blvd., said she doesn't believe signage will help because the parked cars are always a surprise for drivers, because they are sporadic. It is very important to enforce the speed limit and red light runners. Parking should be banned.

Pam Scott, Sir Francis Drake Blvd., said the parking is a buffer for the neighbors. Couldn't school children in San Anselmo use buses? She would like to retain the parking in front on their houses.

Russ LaBelle said Drake does not exist in isolation. Council should consider that this is no longer a neighborhood street, but a major thoroughfare. Parking should be banned.

Heidi Jaeger, Sir Francis Drake Blvd., said this issue keeps coming up. It's not just a parking issue; it is a quality of life issue. At the last meeting signage was discussed. There is currently no correct signage to tell people that parking is allowed. She has a difficult time getting into and out of her driveway. Butterfield Road has no sidewalks. Extending Butterfield into Terra Linda would alleviate the problem. Ashby Avenue in Berkeley and Lincoln Avenue in San Rafael have similar configurations. Turn lanes at the high school would help as would better signage. The best solution would be to return the street to one lane.

Ken Shurgan, Skyline Road, said public safety response through the Town is something to think about. One lane could curtail public safety response.

Scott Baker, Butterfield Road, said there are problems with turning movements and stops behind buses. There is a five-foot planting strip on either side of the road that could be used for turnouts. Perhaps with grant money you could do bus or parking turnouts.

Dave Hunter, Oak Knoll Avenue, said that eliminating the parking would exacerbate the problem with cars speeding. The traffic study money is ridiculous.

Ruth Hicks, Camino de Herrera, said she would be in favor of a study in that the parking is part of a larger problem. She would like to see a long-range study on what options are available to fix the situation.

Judy Baldassari, Sir Francis Drake Blvd., said it is very difficult to get into her driveway. It is a concern that four lanes have been squeezed into a two-lane highway. If we remove parking, it encourages the mindset that Drake in San Anselmo is a freeway. From Olema to Greenbrae, only in San Anselmo is Drake four lanes. She would encourage additional signage. Perhaps the eastbound right hand lane should be used only for the commute period, extended perhaps to 10 a.m.

Laura Adler, San Anselmo, said she is against having parking on Drake because of safety issues. The high school should get serious about incentives for carpooling for students.

Brian Hennessey, Fairfax, said the issue tonight is safety. Council should not disregard their staff's recommendation.

Chris Baldassari, Sir Francis Drake Blvd., said banning parking would have the opposite effect, rather than making the road safer.

The public hearing was closed.

Kroot thanked the audience for the respectful and informative testimony. There has not been a history of accidents on eastbound Drake historically. Tragically there have been three fatalities on Drake in the last six months. All occurred in crosswalks. The situation on Drake needs to be studied comprehensively by an expert, taking into account all facets of the situation. Sleepy Hollow residents are interested in removing parking to get through San Anselmo faster. Removing parking would only increase speed on Drake until drivers reach the hub. Extending Butterfield to Terra Linda would solve the problem, but he's not proposing that. He hopes people will be patient while we try to work together on a solution.

Kilkus said there are many San Anselmo residents who live on the other side of Butterfield. He asked last time if there is a way to make parking safe. He is now convinced that there is no way to make it safe due to the surprise factor. People who want to ban parking are asking for more speed. He is concerned about pedestrian safety on Drake. We aren't talking about increasing speed, but evening out flow. He agrees about a study but doesn't believe it will help with the parking issue. Parking in front of Drake High School should be banned as it is a consistent area for problems. Parking should be removed, but in an organized fashion that will make the road safe.

Breen said there are incentive programs in the County to get people out of their cars. Some high schools are putting limits on students driving to school. There are many plans underway on a countywide basis. This is a regional community; we aren't isolated from the rest of Marin. Paving of Drake and Butterfield was done with federal money. There is a human liability issue here, and a financial liability in that we have been advised by staff. We need increased enforcement of traffic violations. Drake High School needs to pay serious attention to this issue. He doesn't believe randomly parked cars are a traffic calmer. We need signs, but we also have sign pollution. Lack of attention is one of the biggest problems. This is a major thoroughfare. He is strongly in favor of a study; he would advocate for the Police Chief, Public Works Director, residents, school representatives and others to work together with the Traffic Safety Committee to look for solutions. He would vote to ban parking on Drake now until the results of the study are received.

Chignell acknowledged the presence earlier of Bill Levinson, Superintendent of the Tamalpais Union High School District and said he appreciates their interest in this issue. The process is very important and should be respected. This matter was heard several months ago and Council voted to retain the parking on Drake. They asked staff to come back with safety measures. Rather than doing that, it was put back on the agenda out of order. On issues of such import to the community, the best process is one of consensus. Regarding the 1986 commitment to residents, the minutes Mr. Cadagan refer to were action minutes and didn't encompass everything that was said at the meeting. Sleepy Hollow residents are certainly a part of this community. This is not a black and white issue. He recognizes that the blind spot near Broadmoor is a safety hazard. Eliminating the parking in front of Drake would be a bad move. If that parking is banned, those cars will disburse into the neighborhoods, moving the problem elsewhere. The main problem on Drake is the crosswalk problem and it needs to be dealt with. The staff report indicates a study should be done because we need to have a comprehensive approach. Banning parking would be wrong.

Hodgens said she sat out on Drake with a patrolman today. To her surprise, the average speed of the cars going by was about 30 miles an hour. The fastest speeds were when people were dodging the last car parked on Drake in front of the school. Regarding enforcement, it is difficult to find places to park in order to get accurate readings. She is convinced that the parking is a safety issue that can benefit from more study. She strongly believes that now there should be a moratorium on parking on Drake until a study is completed. She is in great sympathy with people who live on Drake and have to deal with the traffic. She hopes there would be solutions to those problems from the study. She would support going forward with the staff recommendations and having a most comprehensive study regarding the traffic situation.

Kroot said the westbound side of the street is actually more dangerous. It is an imposition on the people who live there to do away with the parking. Other main thoroughfares manage with just one lane. We need to do the study.

Kilkus said San Anselmo is a funnel for traffic at both ends.

Breen said the hub has five choices for where you can go. That's where the traffic dissipates, and it joins together at Butterfield Road. He would still be interested in keeping the process open during the study phase.

Chignell said he believes the professional thing to do is to do the study, as recommended by the Police Chief and the Public Works Director. The study should be done first and expedited.

Kilkus said he doesn't believe a study will affect parking. But it may recommend cutouts along the high school. It makes sense to put a moratorium on right now.

Chignell said a study might well deal with parking.

Kroot said they aren't parking professionals and he wouldn't presume to make that determination.

M/s, Breen, that Town Council authorize the expenditure of \$38,000 from the Traffic Congestion Relief Fund or more if needed to perform expedited traffic studies and direct the Town Engineer to prohibit parking on eastbound Sir Francis Drake Blvd. from Butterfield Road to Sais Avenue, with a report to come back in 6 months.

Discussion of Motion:

Chignell said residents feel this will reduce their property values. He asked if the removal of parking would have any environmental review issue. Town Attorney Roth suggested that the matter be brought back at the next meeting and he would give an opinion on that.

Kilkus said he has some concern with banning the parking immediately. If a study focused on the next thirty days, would that be a feasible idea?

Public Works Director Elias said they could try to come back with something in 30 days. Perhaps pullouts would help, but they couldn't be built immediately.

Town Administrator Miles said the procurement of consultant's services might take 30 days anyway.

Chignell said he would like to amend the motion to direct the Town Attorney to research whether removal of on-street parking in front of residences requires an environmental review under applicable California law. Kroot seconded the amendment to the motion.

Vote on amendment to motion: Ayes: All. Noes: Hodgins

Breen said we cannot override the planning laws of the state.

Kilkus confirmed that if Council passes the present motion parking would continue on Sir Francis Drake Blvd. until the meeting of February 26.

Hodgens said when the Town changed the parking regulations 16 years ago an environmental review was done.

Vote on motion by roll call: Ayes: Hodgins, Kilkus, Breen. Noes: Kroot, Chignell.

4. 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 applicant has met with the two neighbors and several changes were proposed, including relocating the third parking space and stairs, reducing the car deck two feet in width and doing landscaping. The appellant is not present this evening. If the Council upholds the Planning Commission, staff would recommend that the Undulatum be replaced with another kind of pittosporum.

M/s, Chignell/Kilkus, to uphold the Planning Commission approval and deny the appeal of V0142/DR-0141f, 132 Humboldt Avenue, A/P 7-024-21, with the proviso that the changes made by the applicant be included. Ayes: All.

5. WAIVE READING AND APPROVE URGENCY ORDINANCE AMENDING THE SAN ANSELMO MUNICIPAL CODE SECTIONS 1-3.13(T), 3-5.1004 AND 3-5.1201 REGARDING REGULATING PARKING OF VEHICLES.

Town Attorney Roth said this urgency ordinance would require four yes votes. It is required because of the situation on Sequoia Avenue. He doesn't see any environmental issue. He would like to make a change to Section 1-3.13(t), changing the last sentence to read ... so designated by the Traffic Engineer or any local resolution or ordinance or law of the State. This change is necessary because we don't have enough rules about governing parking on private property. This ordinance makes that authority clear. Upper Sequoia is not an accepted street. If adopted, it would be effective immediately.

Louise Mathews, Foothill Road, said laws really shouldn't be written for one specific individual. The California Vehicle Code requires that there be a public hearing with ten days of notice if there is going to be a change in parking definitions. That did not happen. It is also a violation of the Brown Act as residents were not notified. There is an error that she pointed out in the written version.

Town Attorney Roth said it doesn't apply to private roads.

Elizabeth Moore, asked if this doesn't fall into eminent domain? Town Attorney Roth said it is a police power. Roth said the Town has its own power over private property and we don't have to follow the vehicle code.

M/s, Kroot/Breen, to waive reading and approve the urgency ordinance regarding regulating parking of vehicles. Ayes: All.

6. ADJOURN.

The meeting was adjourned at 11:40 p.m.

Debra Stutsman

