

TOWN OF SAN ANSELMO
Minutes of the Town Council Meeting of February 12, 2002

Present: Chignell, Hodgens, Kilkus, Kroot
Absent: Breen

8:00 p.m.

- CALL TO ORDER.
- PLEDGE OF ALLEGIANCE

- ANNOUNCE ACTION TAKEN, IF ANY, IN CLOSED SESSION

Mayor Hodgens announced that no action was taken in closed session with regard to Lombard, Posthuma or the Town Administrator performance evaluation. Action was taken to appoint Debra Stutsman Interim Town Administrator, compensation and other details to be reported at the next meeting.

M/s, Kilkus/Kroot, to appoint Debra Stutsman Acting Interim Town Administrator. Vote after discussion: Ayes: Hodgens, Kilkus, Kroot. Noes: Chignell. Absent: Breen.

Discussion of Motion:

Chignell urged the Council not to take this action because of the uncertainty of the time period that this would be needed. A department head is usually the acting town administrator, not someone below that level. Finally, Council should discuss compensation and benefits before such an action is taken.

Kroot said he believes that even though she is not a department head, Ms Stutsman can handle this very well. Normally we should appoint a department head, but the Public Works Director is working on critical grant proposals, we don't have a Planning Director, the Librarian is not at the center of things. This is a unique situation.

Mayor Hodgens announced that the compensation of the new Planning Director would be discussed at the next meeting.

- PRESENTATION BY THE HISTORICAL COMMISSION.

Lucky Phelps, Historical Commission member, said the Commission is celebrating its 25-year anniversary. They anticipate producing a pictorial publication and redesigning the interior of the Historical Museum to make it more user friendly. The Commission would like to alert the Council that there are some vacancies on the Commission and they'd like to fill them as soon as possible. They will need some help from staff on the museum changes and hope to have a Council liaison appointed as these changes progress. The changes will be costly and there may be financial requests to the Council, although they have several fundraising plans in mind.

- OPEN TIME FOR PUBLIC EXPRESSION.

Louise Matthews, Foothill Road, said an urgency ordinance was adopted at the last meeting with regard to parking on private roads. Town Attorney Roth said there is an Attorney General opinion that Towns have their own power over private property. The Attorney General doesn't know of such an opinion. She would like a specific reference. Town Attorney Roth said it would be made available to her for the next meeting.

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

Chignell said he would like to confirm that there is space reserved on the February 26th agenda for the discussion of the telecommunication ordinance. Hodgens said it is still on the list for February 26th. Chignell would like to be notified if it is not on the agenda.

Chignell said he has received correspondence on an abandoned house at 32 Elm. Neighbors are concerned about the public safety issues and would like the Fire Marshall to make an inspection.

1(a)

Kilkus noted that at the next meeting Council would be discussing the negative declaration regarding eliminating parking on Drake. He would like to make sure there is a program developed for improved signage and painting the streets. Also, we can't eliminate parking without a strong public relations program. He would like to see a person hired to go to the schools, newspapers, etc. to guarantee that drivers understand that we expect a safe flow of traffic on Sir Francis Drake Blvd.

Kilkus noted that a meeting was held last week with all the people who are considering submitting proposals for garbage service. There were seven attendees and we expect five or six respondents to the Request For Proposal (RFP).

Kroot commented that eliminating parking on Drake might well make the situation more dangerous. He believes a study should be done first of the overall situation on Drake. He doesn't see how staff can come back with a concrete plan until a professional reviews the entire situation.

Kilkus said the only question outstanding from the last meeting was the negative declaration. The motion that passed was to eliminate parking on Sir Francis Drake Blvd.

Chignell said the minutes reflect that a 3-2 vote was taken to appropriate \$38,000 to perform a traffic study, and to move forward to eliminate the parking. The amendment to the motion, which was approved on a 4-1 vote, was to do the environmental review prior to any action taken. Staff is preparing the environmental report and the Council still has to receive testimony and agree or not agree with the negative declaration.

Hodgens noted that should the negative declaration be adopted, Council could then direct staff to begin work on signage and public relations program.

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 15 and 22, 2002.
- (b) Approve proclamation commending Police Officer Patrick A. Goss for his twenty years of dedicated service.
- (c) Consider Resolution No. 3584 in support of Proposition 40, California Clean Water, Clean Air, Safe Neighborhood Parks, and Protection Bond Act of 2002.
- (d) Consider Resolution No. 3585 in support of Proposition 42, Constitutional Amendment: Transportation Congestion Improvement Act.
- (e) Approve Resolution No. 3586 approving a use permit as recommended by the Planning Commission for the San Francisco Theological Seminary to amend the Specific Planned Development to convert unconditioned basement space to a family room, add a 27.5 square foot addition to the existing third floor, and minor exterior changes to 47 Seminary Road, A/P 7-292-03.
- (f) Accept the Halperin Park slope protection project in vicinity of 73 Angela Avenue complete and authorize staff to file a Notice of Completion.
- (g) Acknowledge and file report on the Fire Department's Vegetation Management Project.
- (h) Approve Resolution No. 3587 to apply for grant funds for the Roberti-Z'Berg-Harris Urban Open Space and Recreation Program under the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000.
- (i) Authorize the solicitation of bids for the demolition of an unfinished steel frame structure which was constructed without permits; 379 Oak Avenue, A/P 007-241-61, Theodore Posthuma. CONTINUED TO THE MEETING OF FEBRUARY 26, 2002.

Consent agenda items (a) and (b) were removed for discussion.

M/s, Chignell/Kilkus, to approve consent agenda items (c), (d), (e), (f), (g), (h) and (i).
Ayes: All. Absent: Breen.

Regarding Louise Matthews, Foothill Road, referring to the January 22, 2002 minutes, regarding Sequoia Avenue and parking arrangements on town maintained roads. She gave a specific vehicle code reference that was not placed in the minutes. That reference was California Vehicle Code 21107.5. She indicated that Town Attorney Roth said this did not apply, but later Roth said Ms Matthews was correct. It is essential that the minutes be a clear reflection of what happens.

Kroot recognized that Officer Goss would be missed and wanted to recognize what a professional job he did for San Anselmo.

M/s Kroot/Kilkus, to approve consent agenda items (a) and (b). Ayes: All. Absent: Breen.

2. APPOINT MEMBER TO THE ROBSON BOARD OF DIRECTORS (1 SEAT).

M/s, Chignell/Kroot, to appoint Roberta Robinson to the Robson Board of Directors. Ayes: All. Absent: Breen.

3. APPEAL OF PLANNING COMMISSION APPROVAL OF V-0140 AND DR-0136 FOR 24 KNOLL ROAD, A/P 6-115-05, 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.

Planning Director Wight presented the staff report.

Kroot asked if there was any discussion about landscaping along the fence at the Mehlings. Wight said landscaping was approved on the other side, and the applicant will have to submit a plan for landscaping between this property and 32 Knoll, but not on the appellant's side.

Herman Mehling, Knoll Road, said he is concerned with slope stability and drainage and overdevelopment of the site. The house will require extensive excavation; the many roofs and walls will create water and drainage issues. The drainage report did not discuss the impact on his property. His big concern is landslide threat. Condition 10 does not have a hydrological report that should be reviewed by the town engineer. There does not seem to be a report in the file from the hydro engineer. The project should have a heavy culvert, not a plastic pipe. Also, the developer should provide a detailed drainage plan. The town has no financial responsibility for Knoll Road and the property owners will have to maintain it. Several neighbors were forced to spend \$29,000 to repair a drain with no help from the town. Mr. Atwater was not open with the neighbors. If neighbors could have compared 32 Knoll with 24 Knoll, they would have seen the size comparisons. Mr. Atwater did not make any changes based on the comments from the neighbors and does not care about the impact of the house on neighbors. Overdevelopment harms the Town.

Lujza Mehling, 14 Knoll Road, provided an aerial photo of the area. She said the 32' distance is at the front of the house. As the house gets higher, it gets closer to her house. She presented a site plan of three houses – 32 Knoll Road, 24 Knoll and her house, 14 Knoll. She felt encouraged when there was an individual meeting about this appeal; however, they feel pressured by the owner because he hired an attorney. She was shocked that the Planning Commission approved the project when they had only reduced it by 2%. The proposed structure is too big for the neighborhood and does not meet Objective 11 of the General Plan. The floor area ratio (FAR) is the maximum for a flat lot and this is a 39% slope. The neighbors' houses are 800 square feet to 2,100 square feet, and most are 1,300 to 1,600 square feet. The house stretches farther back on the lot than other houses. They do not want any windows looking down onto their lot. This is also against Objective 9 due to a high visual profile. Mr. Atwater said he would give them an easement at the back of their property if they would not object his development. They want a fence in the back that doesn't restrict air movement or sunlight. They want

the house to have a lower visual profile and be substantially reduced in size if this lot is to be developed.

Paul Smith, attorney representing the Mehlings, asked that his letter be included in the record. He discussed the Certificates of Compliance for the two lots that comprised 24 Knoll Road. They are conditional, evidenced by paragraph 2, saying that the development of the property would be subject to local ordinances. The point is that it is permissible for the Council to prevent all residential development on this property. The issue is whether taking of the property would deprive Mr. Atwater of the use of the property. In this case it is an unusual circumstance, because Mr. Atwater could use 24 Knoll with his contiguous property at 75 Jordan. Therefore he would still have an economically viable use of the property. Also, the seller did not think the lot was buildable and paid a nominal fee – therefore, the council can preclude all development. There is a nuisance clause and this development could fall under this. Also, the size of the proposed structure must be within the character of the neighborhood, and this house is substantially larger than other houses in the neighborhood.

Steve Atwater, 75 Jordan Avenue, said he purchased the property in 1998 and then applied for and was granted a certificate of compliance. In 2001 he began design of the residence, and applied to the town in June. Over the next several months he worked with staff. The main concerns of the Mehlings were that the house was too tall. A drainage plan was required. The size of the retaining wall and the required cut and fill was a concern. They also received input from the neighbors and worked with staff. Based on this, they created a new home that met all the concerns. The house is one story on Mehling's side; it meets the 8' setback. They agreed to a drainage plan and changed the slope of the driveway. They hired an arborist to make sure the large tree will be taken care of. The house is 2,300 square feet; cut and fill is now essentially eliminated; house height will be 28'. The view direction is down the valley towards Mt. Tam and no neighbors' views will be impacted. They went to great lengths to step the house so the neighbor's views would not be compromised. They will provide landscaping on the Hirschs' side. The design retains the 4-car parking. There are numerous large houses in the neighborhood; he provided a handout as well as an illustration of the houses that are larger than his proposed house. This is a neighborhood of varying lot sizes. There are more than 80 houses that have a greater FAR than what he is proposing. He has also agreed to sell the neighbors some of his property. He wants the Council to recognize the efforts he has made. The resulting design has resulted in him making sacrifice although he is greatly happy with the results.

Jim MacDonald, architect representing Mr. Atwater, said there were many meetings with staff, and the soils report was reviewed in detail. There were some concerns about the size of the house but with minor encroachments, they thought they had a good design. Following the Planning Commission hearing, they were told they would have a difficult road. At the suggestion of Mr. Atwater, because of the neighborhood opposition, he wanted to give the Mehlings what they wanted. The soils report was submitted to the Town prior to the planning application and this was peer reviewed by the town. The decision by both geotechnical engineers was that it was a sound building site. They then created a new design which was presented to the Planning Commission. The awning that is a source of contention is 32' away from the Mehlings. The town engineer wanted to relocate the drainage structure to collect the water and take it along Knoll Road. The bedroom element cannot be seen from Knoll Road. The architecture is a typical craftsman style structure – of which there are many in San Anselmo, Ross and Kentfield. There is a quote that it is out of character of the Sequoia neighborhood. In the early discussion, he toured the Sequoia Park area. He presented photographs of homes within the area; all the homes exceed 35 and 40 feet in vertical height.

Gary Giacomini, attorney representing Mr. Atwater, said this house is in perfect conformity with all the town's departments and with the neighborhood. The staff report, page 2, point by point indicates that they are within the code. The Mehlings wanted to buy the lot. The applicant did try to sell it for \$300,000, which was refused. The Mehlings really do not want anything built on the lot. The Town Attorney said this is a legal lot and the Planning Commission honored this. He does not agree with the contention from Mr. Paul Smith that this property may not be built if it constitutes a nuisance or if there are drainage problems. He noted that Commissioner Jochum stated

that Mr. Atwater met every concern of the Commission and the public. He wants the Council to sustain the decision by the Planning Commission and staff.

Mr. Perman, 83 Jordan Avenue, said the legal and ethical issues uphold the Mehling's appeal. He bought his house several years ago because of the beautiful view. As time went by trees grew and took away his view; eventually the trees became diseased and they spent money to have them removed, even though they were on the neighbor's lot. He is surprised that the Planning Commission approved this application. He is also surprised that Mr. Atwater wants to go through with this. If he lives in the house he would think he would like to cultivate the good will of the neighborhood.

Herld Tursh, 32 Knoll, said he feels Mr. Atwater and his architect have worked well with him. He was told the lot was not buildable and they moved into their home thinking they would live in a wooded area.

Patricia King said the design has addressed the concerns of the downslope neighbors but it has now created problems for the uphill neighbors. Now they will no longer be able to look over the back yards of others; moving the house farther back will take away her privacy. The information on cut and fill is incomplete and she would like understandable cut and fill information. She wants the Town Council to comply with the 2002 building codes.

Toby Simonton said he lives across the street from the proposed dwelling. It seems the proposed dwelling remains substantially out of character with the immediate neighborhood. Objective 11 of General Plan says it must be in scale, design and character with the immediate neighborhood. He likes the design but is concerned about the intensity. Those houses are approximately 2,100 square feet. The house is almost 40% larger than those in the immediate neighborhood.

Louise Matthews, Foothill Road, noted that there is no deed restriction that would prevent the owner at some point to sell them as one unit. She is taken by the requirement for the color of the trim to be darker than white. She is concerned about the construction hours. There is a reference that a prior owner was denied the right to build at 24 Knoll Road – what happened? The property owners have done an admirable job in opposing this project.

Brenda Usher, 71 Jordan Avenue, said a portion of her rear yard is shared by Mr. Atwater and she has a clear view of his property from many windows of her house. She is supportive of Mr. Atwater's development proposal. His house is bigger than some in the neighborhood, but there is more room around his house than many others. She is concerned about what is being built; the size and quality will be a benefit to her and will impact the value of her home.

Kroot asked if this is a buildable site and the question of slope density.

Town Attorney Roth said restricting development would be a taking of the lot. It is a legal lot.

Public Works Director Elias said the drainage will be an improvement and the driveway will be re-worked. Their conditions have been met.

Mr. Mehling stated that Mr. Atwater said he took input from the neighbors, but he did not receive the consideration to look at sketches before it went to design. If he wants to be a good neighbor, he is not going about it the right way. The architect said they have addressed all issues; however, they have submitted pages and pages of documents to the town with concerns. He would like to say that Ms. Usher has quite a large structure that is very close to his property. The soil report did not make any reference to impact of upslope and downslope neighbors and he felt this should be included. When drilling and boring takes place he is concerned about serious soil instability. He would also like to reinforce the concerns about construction hours and if at all possible, would like there to be no construction on at least one day of the week. Some of the properties referred to by the architect as being in the neighborhood and large, are not in the immediate neighborhood. He also questions the accuracy of statistics cited. There is no reason to

overbuild on a new house.

Mr. Atwater thanked staff for the respect they have given him during this process. He noted that there are several other houses that they did not include in their comparison.

Councilmember Kilkus said the General Plan has to be consistent with the zoning ordinance. Having driven up there, there are many houses that do look bigger but you don't see them much because of the trees. The intent is to keep the neighborhood style but to allow for development. This project is a good design and given the evidence there is no reason he cannot support the project.

Kroot said this is difficult because this is the last undeveloped lot in the area. Unfortunately it is a buildable lot and if the town does not allow that there could be a court case against the town. It is essentially a one-story house and the impact will not be very great. It is broken up into various shapes, it has been screened well with trees; the master bedroom is kept away from the uphill neighbor. He would like to see a hedge to protect the Mehling's property.

Chignell said he would support the appeal and noted that the Planning Commission was split on a 2:3 vote. He recognizes this is an excellent design and the applicant has diminished the square footage. However, this particular structure is way out of character of other structures on Knoll Road. The photos utilize properties that are not in the immediate neighborhood. He rejects the idea that this is not a buildable lot but can request the house to be revised and built within the character of the neighborhood.

Hodgens said she has visited with the neighbors, read the information about the property and met with the Mehling's, and she concurs that this is a buildable lot but shares Chignell's opinion that the size and scope is more than she can support. She would like it to be more in keeping with the character of Knoll Road. She would support the appeal.

Town Attorney Roth said it would take three votes to support any motion. He would recommend continuance to a meeting where five members are present.

Mr. Giacomini asked for a clarification on what would occur at the next meeting. Roth said Breen could read the minutes and staff reports and then vote. There would only be testimony if Mr. Breen wants to open it.

M/s Chignell/Hodgens, to continue this item to the meeting of February 26, 2002. Ayes: All. Absent: Breen.

Town Attorney Roth said the Council is not prohibited from taking more testimony but is not required to.

Kroot said he would hope for some discussion between the parties because he would like a creative solution prior to a final decision being taken.

4. REVIEW OF NEGATIVE DECLARATION AND INTRODUCTION AND FIRST READING OF AN ORDINANCE TO AMEND CHAPTER 1 OF TITLE 10 OF THE ZONING ORDINANCE: ADDING SECTION 10-1.04.1 REGARDING CONTINUANCES OF APPLICATIONS REQUIRING PLANNING COMMISSION REVIEW NOT TO EXCEED 90 DAYS AFTER SUBMISSION.

Ms. Wight presented the staff report. A question came up at the Planning Commission whether the 90 days was to begin at submittal or when deemed completed. Submittal is the right one.

Kroot asked why we need this ordinance because people have numerous reasons for wanting to delay projects and wouldn't this make people move ahead if they aren't ready to. Ms. Wight said this was based on an applicant that wanted their project continued on several occasions.

Chignell said unless there is some finalization of the process neighbors keep having to

gear up to respond. There is still an out if good cause is shown.

Kroot asked if the wording could be changed to be "after agendized." Town Attorney Roth said it could.

Hodgens said she would be concerned about 90 days from the date of submittal because it may be difficult to enforce.

Town Attorney Roth said "after agendized before the Planning Commission" might work. Wight said there is also the wording that the Planning Director can extend if there is a good cause.

Louise Matthews, Foothill Road, asked if staff has the right make a change without going back to the Planning Commission. How does this language affect an existing project that has not been completed? The language is not very clear. Ms. Wight stated that this was the way it was written and noticed. Town Attorney Roth said he agrees that staff should have brought forward what the Commission agreed upon but that does not preclude the Council from changing the wording.

Kroot said he believes we have to be careful on how this is done, and understands why it is necessary, but feels it should be from the date when the project is agendized – that would be when the clock starts.

Town Attorney Roth suggested that perhaps this should be sent back to the Planning Commission with the suggested wording change "when agendized."

M/s Kilkus/Kroot, to send this item back to the Planning Commission, with the suggested wording change of 90 days from the date the application is agendized. Ayes: All. Absent: Breen.

5. ADJOURN IN MEMORY OF EUGENE ARNTZ and JILL ANDERSON.

The meeting was adjourned at 10:20 p.m. in memory of Eugene Arntz and Jill Anderson.

Debra Stutsman

