

Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
November 7, 2007

COUNCILMEMBERS PRESENT: Larry Bragman
Susan Brandborg`
Lew Tremaine
David Weinsoff

COUNCILMEMBERS ABSENT: Mary Ann Maggiore

STAFF MEMBERS PRESENT: Linda Kelly, Town Manager
Ann Welsh, Planning Director
Jim Karpiak, Town Attorney
Michael Rock, Public Works Director
Mark Lockaby, Building Official
Ian Roth, Finance Director
Roger Meagor, Ross Valley Fire Chief
Judy Anderson, Town Clerk

There was a reception to welcome newly hired Public Works Director Michael Rock from 7:00 to 7:30 p.m.

The regular meeting was preceded by a Special Meeting Closed Session of the Town Council at 7:10 p.m. at the Youth Center, 16 Park Rd. for conference with legal counsel pursuant to Government Code Section 54956.9(b), anticipated litigation, two potential cases and; pending litigation, Marin Superior Court No. CV 074051, North Bay Coalition to Support Plastic Bag Recycling v. Town of Fairfax.

Mayor Bragman called the regular meeting to order at 7:35 p.m.

Closed Session Announcement

Mayor Bragman reported that the Town Council had met in Closed Session and had given direction to the Town Attorney regarding North Bay Coalition to Support Plastic Bag Recycling v. Fairfax and that there was an item on the agenda where the matter would be discussed.

Approval of Agenda and Affidavit of Posting

M/S Tremaine/Weinsoff, Motion to approve the agenda and the affidavit of posting.

AYES: Bragman, Brandborg, Tremaine, Weinsoff
NOES: None
ABSENT: Maggiore

Announcements

Mayor Bragman introduced Michael Rock, newly hired Public Works Director.

Mayor Bragman made the following announcements: that there would be a presentation of the Fairfax Creeks Study by Matt Smeltzer on November 10th, 10:00 a.m. to Noon, at the Women's Club; that a Flood Mitigation Planning Workshop Meeting was scheduled for Thursday, November 29, at 7 p.m. at the Women's Club; that new members were welcome on the General Plan

Advisory Committee and on the Fairfax Youth Commission; and that there was a vacancy on the Parks and Recreation Commission for an unexpired term to March 31, 2010. He also announced that emergency preparation backpacks had been provided for all Town employees and that the same backpacks were available to the public for purchase at the Earthquake Store in San Rafael with a 10% discount for Fairfax residents.

Open Time

Mimi Newton, Chair of the Open Space Committee (OSC), along with several other members of the OSC, presented a check to the Town for \$1,575.23 as the final payment on the loan made by the Town for the purchase of the Melvin Property as open space.

Chris Lang, Canyon Rd., Chamber of Commerce President, stated that the Chamber was interested in planning upgrades for Bolinas Road including new trees and sidewalk repair and/or replacement; that rehabilitation efforts were critically needed for the first two blocks of Bolinas Road; requested that the Town use 100% recycled paper and cut down on the use of fossil fuels for Town vehicles to show green leadership; and asked that a kitchen be added to the Pavilion so that it could be used to feed people in a disaster and so that it would be more usable for the public.

Town Manager Kelly responded that the newly hired Public Works Director was already aware of the needs on Bolinas Road; that Town Hall did use recycled content paper; that the Town was looking at the adoption of green purchasing ordinances and reducing the use of gas; and that the Town had tried using biodiesel fuel on public works vehicles; that cities needed to put pressure on car makers to produce a patrol car that would perform well on alternative fuel; that the Pavilion was already listed as a Red Cross shelter in case of emergency and the building was currently being painted; and that the possible use of biodiesel for the emergency generator was being explored.

Stan Schriebman, Hickory Rd., stated that "Open Time" was just for bringing things up, not to be treated as an agenda item and that he had backed Bill Madsen in the last Council election because Councilmember Tremaine had not taken a stand and had not voted on the recent appeal of a proposed house on Frustuck.

Mike Sweazy, Meernaa Ave., MMWD employee, referred to a letter from the President of the MMWD Board sent to inform the Town Council that the vegetation management plan for the Tamalpais Watershed was being updated; that the eradication of non-native species was part of the plan; asked the Town for partnership with the water district to remove non-native species; announced upcoming events that were scheduled for volunteers to help; and submitted a poster and flyers to the Town Clerk for distribution.

Patrick Troupe, Fairfax resident, extended congratulations to Councilmembers Bragman and Tremaine on their recent election; described projects around town that were peaceful and sustainable; thanked all the citizens for their help with such projects; stated that working together it would be possible to make Fairfax sustainable and a well-rounded place that would be an inspiration to other communities; that creativity led to solutions; and urged all to work together side by side in peace and harmony to create a town that we could all be proud of.

Councilmember Brandborg described receiving a call from a resident who had received a last minute flyer in her mailbox about the election. Councilmember Brandborg stated that last minute "hit pieces" were prohibited by the election rules and were defined as mailers sent out without being signed shortly before the election with no time to check facts or allegations made. She read the flyer aloud and stated that she objected strongly to that type of politics.

Mayor Bragman stated that he had run into someone distributing the flyer when he was out campaigning and that he believed it to be a freedom of speech issue; that it was just an opinion and was stated as such; and that opinions could be emotional during an election but that people had a right to express those opinions. He further stated that nobody in his campaign was responsible for the flyer.

Councilmember Brandborg stated that you could express your opinion as part of the political process, but not with unsigned flyers distributed on the morning of the election in people's mailboxes.

Councilmember Tremaine stated that he had not even seen the flyer.

Sheila Smith, 89 Wood Lane, stated that the whole business was morally bankrupt and that the two recently elected council members benefited from it.

Dave Johansen, Fairfax resident, stated that he didn't think last minute unsigned hit pieces were okay; that candidate Madsen was no more pro-development than Councilmember Tremaine and that to portray him as such was unfair; that he had voted for Mayor Bragman but was disappointed in his opinion that the flyer was part of an expression of free-speech.

Jane Richardson-Mack, Open Space Committee member, stated that she was shocked and dismayed, but stated that she didn't understand why it was being discussed since there were no guilty parties present. She suggested that the Council work together and be positive as suggested by the earlier open time speaker.

CONSENT CALENDAR

Approval of cash disbursements for October, 2007

Approval of Town Council Minutes of September 19 and October 3, 2007

Accept and file financial report: expenditures and revenues from July 1, 2007 through October 31, 2007

Approval of plans and specifications and authorization to advertise for bids for Hill Avenue and Park Road overlay Measure K project

Adoption of Resolution No. 2518, A Resolution of the Town Council of the Town of Fairfax Urging Divestiture by CalPERS of Its Shares of Chevron Corporation Which Continues to do Business With the Military Junta In Myanmar (Burma), Bragman

Receive and file update regarding excess Educational Revenue Augmentation Fund (ERAF) distribution to the Town, and authorization for Mayor to sign letter of appreciation to Senator Carole Migden for her efforts to secure this funding through SB 418

M/S, Tremaine/Bragman, Motion to adopt the Consent Calendar.

AYES: Bragman, Tremaine

NOES: None

ABSTAINED: Brandborg, Weinsoff (for the item regarding Resolution No. 2518)

ABSENT: Maggiore

Request for waiver of use permit application fee from Sustainable Fairfax for 141 Bolinas Road

Planning and Building Services Director presented the staff report.

Mayor Bragman opened the discussion to the public.

Pam Hartwell-Herrero, Sustainable Fairfax, stated that they promoted sustainability for the community and encouraged walking and biking; that they were barely able to meet the mortgage on the property; that it would be a financial hardship to pay the fee to apply for a parking variance; and that they wanted to continue to be a viable organization promoting sustainability in town.

Dave Johansen, Fairfax resident, asked the Council if fee waivers had been granted to other non-profit organizations and whether or not such a waiver would set a precedent.

M/S, Bragman/Weinsoff, Motion to approve the fee waiver as requested.

AYES: Bragman, Tremaine, Weinsoff

ABSTAINED: Brandborg

ABSENT: Maggiore

Second Reading and Adoption of Ordinance No. 725, A Social Host Liability Ordinance for Underage Drinking, Maggiore

M/S, Tremaine/Weinsoff, Motion to waive further reading of Ordinance No. 725, A Social Host Liability Ordinance for Underage Drinking.

AYES: Bragman, Brandborg, Tremaine, Weinsoff

ABSENT: Maggiore

M/S, Tremaine/Weinsoff, Motion to adopt Ordinance No. 725, A Social Host Liability Ordinance for Underage Drinking.

AYES: Bragman, Brandborg, Tremaine, Weinsoff

ABSENT: Maggiore

Introduction and First Reading of Ordinance No. 726, An Ordinance of the Town of Fairfax Amending Chapter 8.18, Sections 8.18.010 through 8.18.100 of the Fairfax Town Code Regarding the Use of Compostable Plastic, Recyclable Paper and/or Reusable Checkout Bags by Shops, Stores, Eating Places and Retail Food Vendors Located in the Town of Fairfax

Town Attorney Karpiak introduced the topic; explained that the Town did not anticipate that the plastic industry would sue the Town as a result of the original ordinance; that the legal issues involved could take a long time to resolve and could be expensive for the Town; that the ordinance before them had been made voluntary rather than mandatory with the understanding that the lawsuit would be dismissed with prejudice when the voluntary version of the ordinance went into effect; that the penalties had been eliminated from the ordinance; that the ordinance was recommended to avoid litigation and the resulting delay and expense; that the categorical exemption filed had been challenged; and that it could have taken a long time to prevail in the case.

Mayor Bragman opened the discussion to the public.

Mark Bell, Dominga Avenue, stated that the citizens should place the matter on the ballot and that the plastic industry was lying when they claimed that the plastic bags could be recycled.

Town Manager Kelly reported that the two grocery stores in town had stopped using plastic bags and that our retailers had moved to voluntary compliance with the ban.

M/S, Bragman/Tremaine, Motion to waive further reading of Ordinance No. 726, An Ordinance of the Town of Fairfax Amending Chapter 8.18, Sections 8.18.010 through 8.18.100 of the Fairfax Town Code Regarding the Use of Compostable Plastic, Recyclable Paper and/or Reusable Checkout Bags by Shops, Stores, Eating Places and Retail Food Vendors Located in the Town of Fairfax.

AYES: Bragman, Brandborg, Tremaine, Weinssoff
ABSENT: Maggiore

M/S, Bragman/Tremaine, Motion to adopt Ordinance No. 726, An Ordinance of the Town of Fairfax Amending Chapter 8.18, Sections 8.18.010 through 8.18.100 of the Fairfax Town Code Regarding the Use of Compostable Plastic, Recyclable Paper and/or Reusable Checkout Bags by Shops, Stores, Eating Places and Retail Food Vendors Located in the Town of Fairfax.

AYES: Bragman, Brandborg, Tremaine, Weinssoff
ABSENT: Maggiore

Introduction and First reading of Ordinance No. 727, an ordinance of the Town of Fairfax deleting in its entirety the current Title 15 of the Town Code and adopting a new Title 15 in its place, adopting and amending the California Building Code

Mark Lockaby, Building Official, presented the staff report and highlighted the proposed changes.

In response to questions from Mayor Bragman, Mr. Lockaby explained that the codes were supposed to be updated every three years; clarified that the corrections of prior violations required in the code were just for work done without permits, not for things that did not comply with the current code; and that it was recommended that residents post the building permit on the property, but that it wasn't required.

There was a consensus of the Council to add a requirement to post building permits on the subject property to the building code and Town Attorney Karpiak recommended that such a provision be added later because of the approaching January first deadline for the adoption of the revised building code.

Mayor Bragman opened the discussion to the public and no speakers came forward.

M/S, Brandborg/Weinssoff, Motion to waive further reading of Ordinance No. 727, an ordinance of the Town of Fairfax deleting in its entirety the current Title 15 of the Town Code and adopting a new Title 15 in its place, adopting and amending the California Building Code.

AYES: Bragman, Brandborg, Tremaine, Weinssoff
ABSENT: Maggiore

M/S, Weinssoff/Bragman, Motion to introduce Ordinance No. 727, an ordinance of the Town of Fairfax deleting in its entirety the current Title 15 of the Town Code and adopting a new Title 15 in its place, adopting and amending the California Building Code.

AYES: Bragman, Brandborg, Tremaine, Weinssoff
ABSENT: Maggiore

Mayor Bragman adjourned the meeting for a break from 8:55 to 9:05 p.m.

Introduction and First reading of Ordinance No. 728, An ordinance adopting the California Fire Code, International Fire Code, and Uniform Fire Code prescribing regulations governing conditions hazardous to life and property from fire or explosion; providing for the issuance of permits for hazardous uses or operations; and establishing a Fire Prevention Bureau and providing officers therefore and defining their powers and duties

Fire Chief Meagor presented the staff report and explained that there was a minor change in the sprinkler requirements but that it was otherwise very much the same as the last code and clarified that the adoption of Ordinance No. 728 applied to all of Fairfax whereas Ordinance No. 729 would apply to fire danger areas only.

Mayor Bragman opened the discussion to the public. No speakers came forward.

M/S, Tremaine/Brandborg, Motion to waive further reading of Ordinance No. 728, An ordinance adopting the California Fire Code, International Fire Code, and Uniform Fire Code prescribing regulations governing conditions hazardous to life and property from fire or explosion; providing for the issuance of permits for hazardous uses or operations; and establishing a Fire Prevention Bureau and providing officers therefore and defining their powers and duties.

AYES: Bragman, Brandborg, Tremaine, Weinsoff
ABSENT: Maggiore

M/S, Brandborg/Tremaine, Motion to introduce Ordinance No. 728, An ordinance adopting the California Fire Code, International Fire Code, and Uniform Fire Code prescribing regulations governing conditions hazardous to life and property from fire or explosion; providing for the issuance of permits for hazardous uses or operations; and establishing a Fire Prevention Bureau and providing officers therefore and defining their powers and duties and incorporating the corrections presented.

AYES: Bragman, Brandborg, Tremaine, Weinsoff
ABSENT: Maggiore

Introduction and First reading of Ordinance No. 729, An Ordinance of the Town Council of the Town of Fairfax Creating Chapter 8.06 of the Town of Fairfax Municipal Code, Adopting the 2006 Edition of the International Wildland Urban Interface Code, Regulating and Governing the Mitigation of Hazard to Life and Property from the Intrusion of Fire from Wildland Exposures, from Adjacent Structures and Prevention of Structure Fires from Spreading to Wildland Fuels in the Town Of Fairfax; and Further Providing for the Issuance of Permits and Collection of Fees

Fire Chief Meagor presented the staff report and reviewed the summary of the ordinance because it was a new code; explained that the various fire agencies were considering adopting it on a countywide basis; referred to the map to be adopted that identified high risk areas and explained how the map had been developed. He stated that the ordinance adopted the map identifying the high risk areas and adopted the codes that would be used in the identified areas.

Mayor Bragman noted that most properties did not have a 30-foot clearance around the house.

Chief Meagor explained that the ordinance only applied to new construction or substantial remodels and that it didn't call for the removal of all vegetation or of trees.

Mayor Bragman ascertained from Chief Meagor that "Fire Safe Marin" was trying to raise funds to distribute the film entitled "Marin on Fire" to all residents in the high risk areas.

Mayor Bragman opened the discussion to the public.

Mark Bell, Dominga Ave., recalled a public hearing on a home on Ridgeway and the fire department's requirement for a fire road of a width that would allow for further development in the area.

Chief Meagor confirmed that the code would increase the minimum size required for a driveway from fourteen to sixteen feet and that there was a minimum roadway width of twenty feet if the driveway served more than two homes to provide for fire apparatus and vehicle access for evacuation.

M/S, Brandborg/Weinsoff, Motion to waive further reading of Ordinance No. 729, An Ordinance of the Town Council of the Town of Fairfax Creating Chapter 8.06 of the Town of Fairfax Municipal Code, Adopting the 2006 Edition of the International Wildland Urban Interface Code, Regulating and Governing the Mitigation of Hazard to Life and Property from the Intrusion of Fire from Wildland Exposures, from Adjacent Structures and Prevention of Structure Fires from Spreading to Wildland Fuels in the Town Of Fairfax; and Further Providing for the Issuance of Permits and Collection of Fees.

AYES: Bragman, Brandborg, Tremaine, Weinsoff
ABSENT: Maggiore

M/S, Bragman/Tremaine, Motion to introduce Ordinance No. 729, An Ordinance of the Town Council of the Town of Fairfax Creating Chapter 8.06 of the Town of Fairfax Municipal Code, Adopting the 2006 Edition of the International Wildland Urban Interface Code, Regulating and Governing the Mitigation of Hazard to Life and Property from the Intrusion of Fire from Wildland Exposures, from Adjacent Structures and Prevention of Structure Fires from Spreading to Wildland Fuels in the Town Of Fairfax; and Further Providing for the Issuance of Permits and Collection of Fees.

AYES: Bragman, Brandborg, Tremaine, Weinsoff
ABSENT: Maggiore

Discussion and consideration of an Ordinance regulating Surface Mounted Utility Facilities in the Public Right-of-Way, Bragman

Mayor Bragman introduced the topic and stated that larger structures would be needed to accommodate new technology and that the issue should be addressed in the next few months to protect the Town and the residents. He asked that the Town Attorney be authorized to review the matter to see if the Town could address the noise issue or if the Town was precluded from doing so by the provisions of the State Public Utilities Code. He explained that the model ordinance was provided by the Marin Telecommunications Agency in anticipation of AT&T's "Project Lightspeed" that would require much larger utility boxes and could be intrusive. He stated that installations would create the use of right-of-way issues, sound issues, nuisance and aesthetic issues. He noted that he had added language to address noise in the model ordinance. He also asked if it would be possible to require that the utilities be asked to use PVC pipe when they opened the streets for installation so that fiber optic could be pulled through without re-opening the streets. He stated that his goal was to protect the community and the Town's rights-of-way and to maximize the Town's broadband capacity.

There was a consensus of the Town Council to have the Town Attorney research the subject as requested.

Discussion and consideration of Council direction regarding expansion of the Ross Valley Fire Joint Powers Authority (JPA) to include the Sleepy Hollow Fire Protection District as a voting

member, Tremaine

Councilmember Tremaine reported that he and Peter Breen of San Anselmo had been appointed to meet to develop a new Joint Powers Agreement with a new formula for the inclusion of Sleepy Hollow in the District and that they had discussed some of the governance issues at the meeting. He described the discussion about the funding formula to be used for the expanded JPA.

Mayor Bragman stated that the existing JPA agreement provided a formula for adjusting costs going forward; that he would like to see a cost study before deciding on the funding formula; that such a formula should separate operating costs from capital costs; noted that Sleepy Hollow had only been paying operating costs as a non-voting member; and that Fairfax and San Anselmo deserved to be acknowledged for their capital contributions.

Councilmember Brandborg stated that Sleepy Hollow had contributed to capital costs in the past.

Mayor Bragman requested that the capital investments be equalized if that was warranted by the information received from a study.

Councilmember Weinsoff suggested that future discussions include what Sleepy Hollow was going to do with their substantial reserves.

Mayor Bragman opened the discussion to the audience.

Mark Bell, Dominga Ave., stated that claims had been made that having Sleepy Hollow join the Fire Board would save Fairfax about \$100,000 per year and that he wasn't hearing that.

The meeting was adjourned at 9:55 p.m.