

Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
April 4, 2007

COUNCILMEMBERS PRESENT: Susan Brandborg
Mary Ann Maggiore
Lew Tremaine
David Weinsoff

COUNCILMEMBER ABSENT: Larry Bragman

STAFF MEMBERS PRESENT: Linda Kelly, Town Manager
Ann Welsh, Planning Director
Ken Hughes, Chief of Police
Debra S. Johnson, Public Works Director
Jim Karpiak, Town Attorney
Mark Lockaby, Building Official
Ian Roth, Finance Director
Judy Anderson, Town Clerk

Vice Mayor Maggiore called the regular meeting to order at 7:30 p.m. at the Women's Club.

Approval of Agenda and Affidavit of Posting

M/S, Weinsoff/Brandborg, Motion to approve the agenda and the affidavit of posting with changes to the order of the items to be heard on the regular agenda to accommodate members of the audience.

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

Announcements

Vice Mayor Maggiore made the following announcements: that the Town's new emergency siren would be tested at 11:45 a.m. on Friday, April 13th, and the first Friday of the month thereafter at that time; that new members were welcome on the General Plan Advisory Committee and on the Fairfax Youth Commission; that the next Strategic Planning Workshop of the Town Council, held in conjunction with the Economic Development Advisory Committee, would be held on Saturday, April 28th, 9 a.m. to Noon; that the Fairfax Festival poster art submissions were due April 9th; that the annual Easter Egg Hunt sponsored by the Parks and Recreation Commission would be held at 10:00 a.m. on April 7th in Bolinas Park; that the Open Space Committee was hosting a benefit party with lasagna dinner and live music on Saturday, April 21st from 5 to 10:00 p.m., \$20 admission; that the first draft of the Town's Strategic Financial Plan was available on the Town's website; that a "Fairfax Confronts Global Warming Day" rally was scheduled for 10:00 a.m. on April 14th at Bolinas Park to be followed by a march to San Anselmo; and that the Fairfax Historical Society was showing two films on Friday evening, April 6th, at 7:30 p.m. at the Women's Club.

Open Time for Public Expression

Gary Kleiman, owner, Book Beat, 28 Bolinas Rd., presented a proposal for a "pocket park" at Mono and Bolinas, next to his business, with two rolling flower boxes to block Mono Alley with

tables and chairs that he would set up and break down every day.

Stan Schriebman, 51 Hickory, stated that he had talked to Supervisor Brown and the Board of Supervisors about the lawlessness of bike riders in Fairfax and San Anselmo; described a negative experience he had with a bike rider; urged the Town to enforce the laws for bike riders and to ticket riders who didn't stop at stop signs; urged the Town Council to consider raising the fines for violations; and offered, with his wife, to contribute \$100 to the pocket park if it was created.

Michael Aaronson, 89 Laurel Ave., ascertained that he could ask questions about the proposed assessment for flood solutions when the matter was heard on the agenda.

Rose Taber, 94 Hillside Ave., expressed agreement with Mr. Schriebman about the bad behavior of bicyclists, especially dangerous at twilight; suggested that the Town could license bike riders to help identify them; and suggested that the Town ban all transfats at the Fairfax Festival and to consider extending the ban to restaurants in town.

Ross Valley Watershed Flood Protection and Watershed Program

Presentation by County Supervisor Hal Brown, Jr. and Flood Control Engineer Jack Curley regarding proposed storm drain user fee and mail ballot process

Supervisor Brown presented a broad overview of the efforts to provide flood protection since the 60's and noted that all the issues from previous efforts had been addressed in the current plan.

Flood Control Engineer Curley presented an overview of the program that was designed to provide comprehensive flood damage reduction as well as conservation and enhancement of the natural creek network and aquatic habitat with a watershed-wide regional approach. Mr. Curley described the proposed storm drain user fee and the mail ballot process to be used for approval of the fee. He explained the evolution of the project that started with the Technical Workgroup of experts that was convened to examine all the data and to chart a course; a Financial Workgroup and a committee of elected officials to make informed decisions on the process and on programs; and the community outreach that had been done to inform the public and to garner support for the program. Through the use of experts and with input from the public, an affordable local financing plan was agreed upon with the local dollars to be used to leverage additional state and federal funding for flood mitigation and watershed restoration projects and programs. He noted that many funding agencies viewed regional plans favorably. He described some of the specific projects being considered including replacing culverts and bridges that created "choke" points; natural stream channel widening and river parkways to increase creek capacity; retention/detention basins to reduce peak flood flows; elevation of major at-risk residences and commercial buildings; flood proofing measures to protect critical utilities, public buildings and private property; as well as regular maintenance programs including annual creek clearing, dredging in the lower reaches of the creek, and bank stabilization projects.

Vice Mayor Maggiore opened the discussion to the public.

Michael Aaronson, 89 Laurel Drive, stated that he was unable to find the criteria used to establish the fee schedule; that the fees were based on lot size and permeability; that the permeability determination was arbitrary; asked how many properties were owned by other public agencies like the Marin Municipal Water District; stated that the California constitution provided that the proportional value of property had to be used to determine the assessment; that his current tax bill already included a runoff fee; that the assessment would not be tax deductible, and that the assessment schedule was not equitable.

Pam Meigs, 310 Cypress, asked for clarification of the “majority protest” for the assessment.

Engineer Curley explained that the group had a choice to use either an electoral ballot for all registered voters or a mail ballot just to affected property owners; that they had chosen to use the mail ballot because it required a simple majority and an electoral vote required a 2/3 approval; and that the receipt of protests submitted by more than 50% of the owners of parcels would halt the process.

Terry Goyan, 275 Bolinas Road, stated that there should be special consideration of the impervious surfaces to be used and suggested that cisterns on private properties would help the situation.

Supervisor Brown noted that there was an item later on the Council agenda to address impervious surface limitations on development; that there was a plan at the County of Marin to address the impervious surface issue for runoff; and that if 2,000 to 3,000 voters objected to the assessment, they would look at it again, even though the law mandated a 50% protest number.

Helen Fauss, 120 Scenic Road, stated that she would like to see more local control; that the member towns only had an advisory role; that she would prefer a vote of the electorate; that raising buildings seemed like it would be unreasonably expensive; and that she was concerned about the increase in taxes that had already doubled in the last ten years.

Louise Matthews, Foothill, San Anselmo, stated that the deadline for the protest vote was listed incorrectly; that Proposition 218 was very specific regarding including public property affected along with private property and that public property was not included on the list provided; that 50 million dollars was designated for capital projects and questioned how the remaining 30 million dollars would be used; noted that only small culverts were included in the list of projects; that land use determined the fees to be assessed; and that all the affected parcels should be assessed equally, both public and private.

Conrad Oho, 141 Lansdale Ave., stated that only property owners would get to vote on the assessment, not tenants; that flood damage happened to both owners and tenants; that tenants ought to be able to vote; and that the cost of the assessment would be passed on to tenants.

Resident, 128 Cascade Drive, stated that she was unhappy about the fee to be assessed; noted that Marin Municipal Water District just raised their rates; and that it was getting too expensive to live in Fairfax.

Sheila Smith, 89 Wood Lane, asked about the oversight of the funds once they were collected and asked whose vote would count with one vote per parcel when more than one person owned the property.

Nancy Okada, San Anselmo, stated that she was a Ross Valley property owner and that she hadn't decided whether or not she would protest the assessment; that an apartment building in her neighborhood wasn't assessed any amount; and that it wasn't fair not to assess public properties as well.

Stan Schriebman, 51 Hickory, noted that the Town Council had already voted on the issue; that it was a “pie in the sky” plan; that, according to Proposition 218, it was an assessment, not a fee; and that it was being done by mail ballot because it would be easier to pass.

Julie Aaronson, 89 Laurel Ave., asked about the fairness of the fees to be charged; stated that the assessment was based on pervious and impervious surfaces and the size of parcels; that the larger the parcel, the more permeable surface it had; that the assessment was all about the size of

of the parcels since there was no way to determine the amount of pervious surface; that surveys had been sent out but that she hadn't received one; that the public hearings were only advertised in the Marin Independent Journal and that enough notice wasn't provided; and that all the affected property owners should have received notice of the public hearings.

Vice Mayor Maggiore closed the discussion to the public.

Supervisor Brown introduced his aide, Katie Rice, and acknowledged all of her work on the project; acknowledged the work done by Councilmember Tremaine; stated that there were answers to all the questions raised; that the plan wasn't perfect nor was it fair to everyone, but was the best plan they could come up with to address the issue.

Town Manager Kelly described some of the discussion that led to the current plan; noted that Fairfax assessed a \$15 runoff fee that raised \$66,000/year to maintain the storm drains; that different types of elections were discussed and debated; that the planning group had decided to use the successful Napa model; that the citizens would know where the money was spent because there would be an annual audit; that the Fairfax Town Council had tried to get as much local control as possible; and that Councilmember Weinsoff worked on the project along with Councilmember Tremaine and that Councilmember Weinsoff was the Fairfax representative on the Board.

Discussion and consideration of adoption of Resolution No. 2482, a Resolution of the Town Council of the Town of Fairfax Supporting the Ross Valley Flood Protection and Watershed Program and the Proposed Drainage System Fee for the Ross Valley Flood Zone, Tremaine

M/S, Brandborg/Tremaine, Motion to adopt Resolution No. 2482, a Resolution of the Town Council of the Town of Fairfax Supporting the Ross Valley Flood Protection and Watershed Program and the Proposed Drainage System Fee for the Ross Valley Flood Zone.

Vice Mayor Maggiore opened the discussion to the public.

Dave Johansen, 26 Ridge Road, stated that he didn't want more taxes, but that the problem needed to be addressed so he supported it.

Conrad Oho, 141 Lansdale Ave., asked for the Town Attorney's opinion on the exclusion of tenants from the voting.

Town Attorney Karpiak stated that an expert had been consulted and that they were following the provisions of Proposition 218 that allowed for the mail ballot instead of the broader vote of the electorate.

Michael Aaronson, 89 Laurel Drive, asked how the voting method reconciled with the provisions of the Constitution and Engineer Curley offered to provide him with the name of their counsel on the issue.

Louise Mathews, San Anselmo, stated that the same bond counsel used by both San Anselmo and Fairfax for other bonds was being used for the current program and questioned the eligibility requirements and the noticing used for the public hearings. She further stated that she would work against the passage of the fee assessment.

Town Manager Kelly related how she had not received notice at her residence because she had recently purchased a home and that she had contacted the County to include her property in the voting.

Mark Bell, Dominga Ave., asked what the five conditions in Proposition 218 were that made it a fee and not an assessment and was directed by Engineer Curley to “google” Proposition 218 to answer related questions about the provisions of the legislation.

Roll Call Vote:

Brandborg: AYE; Maggiore: AYE; Tremaine: AYE; Weinsoff: AYE; Bragman: Absent

Vice Mayor Maggiore adjourned the meeting for a break from 9:10 to 9:20 p.m.

Request for Council Member participation in Fairfax Open Space Committee fundraiser dinner and auction on April 21st

Mimi Newton, Open Space Committee Member, stated that tickets for the fund raising event could be purchased at Book Beat and asked for contributions from the Town Council or Town staff for the auction and stated that Mayor Bragman had donated a one-hour dog walk.

Town Manager Kelly stated that she had donated a lunch with the Town Manager at the restaurant of the bidder’s choice.

Public Works Director Johnson offered to make her famous cheesecake for the auction.

Vice Mayor Maggiore stated that she was given a quote of \$1,000 to repair the interior of her car and would donate that amount to the Open Space Committee instead.

Fairfax Open Space Committee request for Council approval of the designation of the Wall property as a priority for acquisition as open space

Councilmember Weinsoff recused himself because of the proximity of the Wall property to his residence.

Finance Director Roth presented the staff report.

M/S, Tremaine/Brandborg, Motion to approve of the designation of the Wall property as a priority for acquisition as open space.

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

Request for Council approval of Fairfax Volunteer Board proposal to further develop the trail and walkway project for pedestrian Rights of Way between streets in Fairfax, aka “Fairfax Trails”

John Reed, Volunteer Board Chair, presented the request. He stated that the project would get people out of their cars, would help build community, would encourage people to walk to downtown to patronize the local businesses, and would provide emergency exits from neighborhoods.

Councilmember Brandborg stated that the people who lived by the trails/pathways slated for improvements should be notified about the plans for the project and expressed concern about potential liability exposure for the Town.

Town Attorney Karpiak stated that if the improvements were made without making the areas less safe, there shouldn't be any liability exposure for the Town and recommended that there could be some exposure depending on how the projects were structured and that the potential legal issues should be investigated.

Councilmember Tremaine stated that he was supportive of the project but wanted the Volunteer Board to identify the proposed projects and to bring them back to the Council with more information and to give the public a chance to address any concerns.

M/S, Tremaine/Brandborg, Motion to approve the project concept with direction to the Volunteer Board to return to the Town Council with a list of the trails/pathways to be improved, an assessment of those trails and what needed to be done and how the affected neighbors would be notified.

Discussion:

John Reed stated that the Board was looking at the pathways as public trails that people used at their own risk.

Bill Madsen, 109 Porteous Ave., asked if people were aware of the easements adjacent to their properties.

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

CONSENT CALENDAR

Approval of cash disbursements for March, 2007

Approval of Town Council Minutes of March 7 and 24, 2007

Proclamation declaring April 15 through 21, 2007, as National Library Week in Fairfax

Approval of Memorandum of Understanding with the County of Marin Office of Emergency Services for Marin Operational Area Emergency Services Management assistance, for the term of July 1, 2006 through June 30, 2009, at an annual fee of \$4,323, which was approved in the Town's Fiscal Year 2006-07 budget

Approval of Lease Agreement with Ford Motor Credit for the replacement of five Town vehicles as approved in the Town's Fiscal Year 2006-07 budget

Adoption of Resolution No. 2484, A Resolution of the Town Council of the Town of Fairfax for street closure of School Street (next to the Women's Club) for Saturday, May 12th from 9 a.m. to 5 p.m. for the Fat Tire Festival

Report on Fairfax's Sister Community San Jose de Apartado's nomination for a Nobel Peace Prize, Bragman (continued from the meeting of March 7, 2007)

In response to a question about the Fat Tire Festival, Town Manager Kelly explained that she was still negotiating the details of the Festival with the promoter, Chris Lang.

M/S, Tremaine/Weinsoff, Motion to adopt the Consent Calendar as presented.

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

75 Rocca Drive, Appeal of administrative decision by staff which determined that the valuation of the remodel exceeded 50% of the original assessed valuation of the house; Kenneth Mayer, appellant, RS-6 Zone

This item was continued to the Council meeting of May 2, 2007, at the request of the attorney for the appellant.

Introduction and First Reading of Ordinance No. 720, An Ordinance of the Town of Fairfax Adding Chapter 8.33 to the Fairfax Town Code Pertaining to the Reduction of Air Pollution by Regulating the Installation of Wood Burning Appliances and the Removal and Operation of Non-Certified Wood Burning Appliances

Town Manager Kelly presented the staff report.

Councilmember Brandborg stated that the ordinance had changed and that some of the original provisions she had requested had been eliminated; that there was no deadline included in the ordinance; and that she would like to put the 50% remodel trigger back into the ordinance language. She noted that the resale trigger had also been removed from the ordinance.

Vice Mayor Maggiore opened the discussion to the audience.

Alec Hoffman, Marin County Community Development employee, stated that he had oversight of the County's wood burning ordinance; that the County offered a \$250 rebate to residents who upgraded to EPA certified appliances; that the rebate was available to Fairfax residents even though the Fairfax draft ordinance did not include a deadline for compliance; that the hardship provision had been deleted and he recommended that it be included to allow the building official some discretion; and recommended that the Council consider adding a sunset date. He also explained how using the 500 square foot remodel as a trigger might affect more projects than the 50% remodel, but that they weren't mutually exclusive.

Rose Taber, Hillside Ave., urged the Council to add a cutoff date like other jurisdictions.

In response to questions, Alec Hoffman stated that it wasn't possible to upgrade a non-compliant wood stove; that after 1991 all wood stoves manufactured were compliant but weren't compliant before that date; that the cost to upgrade a fireplace ranged from \$500 to \$5,000; that an open hearth fireplace was actually an energy loser; and that open hearth fireplaces were exempted from the provisions of the County ordinance.

M/S, Brandborg/Tremaine, Motion to waive further reading and to read the title only of Ordinance No. 720 An Ordinance of the Town of Fairfax Adding Chapter 8.33 to the Fairfax Town Code Pertaining to the Reduction of Air Pollution by Regulating the Installation of Wood Burning Appliances and the Removal and Operation of Non-Certified Wood Burning Appliances.

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

M/S, Brandborg/Tremaine, Motion to introduce Ordinance No. 720, An Ordinance of the Town of Fairfax Adding Chapter 8.33 to the Fairfax Town Code Pertaining to the Reduction of Air Pollution by Regulating the Installation of Wood Burning Appliances and the Removal and Operation of

Non-Certified Wood Burning Appliances, with language added to restore the reference to a 50% remodel as a trigger and with a sunset date of July 1, 2010.

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

Discussion and approval of agreements for Emergency Watershed Project at 82 and 88 Creek Road, with 75% Federal funding through the USDA Natural Resources Conservation Service

Town Manager Kelly presented the staff report. She stated that the property owners would pick up the entire 25% match for the Federal funding available to make emergency stream bank repairs. The project cost estimate was for \$300,000, and involved the installation of stream bank protection measures, a reinforced retaining wall and rip rap. She further stated that Town staff time would be donated in the spirit of waiving fees for storm damage for residents, except for the hourly rates charged by contract employees like the Town Engineer and the Town Attorney. Manager Kelly requested that the following language be added to paragraph three of the agreement with the two property owners: "The Town shall record a release upon the written request of the property owner upon completion of the project." She noted that there were three agreements that needed the Town Council's approval, one between the Town and the U.S. Dept. of Agriculture, and two agreements with the property owners for the two properties.

Vice Mayor Maggiore opened the discussion to the public.

Bill Madsen, 109 Porteous Ave., suggested that the Town Engineer's fees be waived.

Hannah Doress, 28 Porteous Ave., stated that the entire neighborhood would benefit from the work to be done and expressed her support for the project.

John Schulz, 88 Creek Rd., stated that they had suffered devastating damage, described the extent of the damage, and stated that it would improve the entire area.

Michelle Sullivan, 82 Creek Rd., stated that she had grown up in Fairfax, that the flood happened a year after they had purchased their home; that they were delighted that they met the criteria for the Federal assistance because so many hadn't qualified; presented photos of the storm damage to the Town Council; offered her time to help in any way she could; and stated that they were trying to regain what they had lost and to prevent further damage.

M/S, Brandborg/Tremaine, Motion to approve all three agreements with the amendment to the agreements with the property owners as requested by the Town Manager.

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

Discussion and consideration of Marin Farmers Market request for 2007 Fairfax Farmers Market

Town Manager Kelly presented the staff report and recommended that the Town Council discuss holding the Market in Bolinas Park while mitigating the damage to the turf by possibly locating the booths away from the grass; that the Market respond to the issue of a public restroom at the event; and that portable stand-alone signage be used in place of the light banners requested by the Market. The Public Works Director requested that the Market start a month after the Fairfax Festival scheduled for June 9 and 10, 2007; that the booths be placed in the redwood grove and other non-turf areas with the closure of Winnie Lane to facilitate the relocation of the vendors; that

the Market clean up the trash after each event; that the Market pay something to the Town for the use of the park; that the proposal to use street light banners be denied; that the Chamber attempt to find volunteer landscape members to volunteer their time to help restore the park; and that the parking issues be referred to the Traffic Safety Committee.

Alpha Lewis, Marin Farmers Market representative, presented the proposal for the Market and recommended the use of plywood for vendors to walk on behind the booths and to move some booths completely off the grass to prevent damage to the turf; stated that the Fairfax Market had been operating in the red for years; that he was not sure the Market would be viable if the vendors were all moved to the area in the redwoods; that he didn't see any way around having some vendors on the lawn; and that they wanted to maximize the use of the park.

Leah Smith, 14 Deuce Court, Economic Development Advisory Committee member, stated that she had recently started working for the Farmers Market; that the Market provided a service to the community; that the Market manager worked hard to provide the best market possible; and asked the Council to consider all the positive benefits of the Market to Fairfax.

Rose Taber, Hillside Ave., stated that the park was a lovely place for the market but that she didn't like the yellow fence and the limited use of the park after the Market because of the damage to the turf. She suggested using the Parkade or the Albertson's parking lot as the site for the market.

Christina de Cossio, 85 Bolinas #6, owner of a new wellness business, stated that there were six new businesses on Bolinas Road; that foot traffic was needed to support the downtown businesses; that the Market supported the community; and that she didn't support moving the location of the Market to a place on concrete.

Bill Madsen, 109 Porteous Ave., stated that the Market brought people downtown; suggested that different configurations be tried including the use of plywood behind the vendor booths to protect the turf; and asked that the Council show that the Town was committed to the park as a location for the Market.

Hannah Doress, 28 Porteous Ave., stated that, from a parent's perspective, the park was much more child-friendly than the concrete parking lot; that the purpose of the park was to be used; that the Farmer's Market was the best possible use of the Bolinas park space; that the foot traffic was important to downtown businesses; suggested that the location of the vendors be rotated and that perhaps the park could be landscaped differently. She asked that the police access not be blocked.

Candace Gold, 42 Pine Drive, asked that the Council be flexible and stated that the Farmers Market was what Fairfax was all about.

There was a consensus of the Council to have Town staff work with the Farmers Market staff to address the issues raised.

The Town Council reviewed the agenda at 11:10 p.m. and decided to hear the item awarding the bid for the town buildings; the item regarding the Grand Jury report and the report on the Canyon Road Sewer project; that the General Plan Update and the Storm Damage Recovery Update would both be on the next agenda as ongoing items and could be heard then; and, at the request of Councilmember Tremaine, the Financial Report was continued to be heard at the Strategic Planning meeting on April 28th; and the item regarding impervious surface limitations as well as the item regarding the possible conversion of a portion of Mono Avenue into a pedestrian right-of-way would be placed earlier on the agenda for the May Council meeting.

Award of bid for Flood Mitigation and Access Barrier Removal Project No. 06-009 (Town Hall/Police)/06-010 (Fire), flood repairs to Town buildings, to Knight Construction for \$195,000, with 20% contingency, and approval of budget adjustment to Storm Damage accounts

Town Manager Kelly presented the staff report.

M/S, Brandborg/Weinsoff, Motion to award the bid for Flood Mitigation and Access Barrier Removal Project No. 06-009 (Town Hall/Police)/06-010 (Fire), flood repairs to Town buildings, to Knight Construction for \$195,000, with 20% contingency, and approval of a budget adjustment to Storm Damage accounts.

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

Discussion and consideration of approval of Town response to Grand Jury report entitled, "Hogtieing: A Lethal Restraint?"

Chief of Police Hughes presented the staff report.

M/S, Weinsoff/Tremaine, Motion to approve the Town response to the Grand Jury report entitled, "Hogtieing: A Lethal Restraint?"

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

Receive and file status report on Council attention to problems with Canyon Road Sewer Extension, Bragman/Weinsoff (continued from the meeting of March 7, 2007)

Councilmember Weinsoff reported on a meeting he and Mayor Bragman attended with Ross Valley Sanitary; stated that Mayor Bragman had written a letter to the Sanitary District and that a response was expected that would be reported on at the May meeting.

The meeting was adjourned at 11:25 p.m.

Respectfully submitted,

Judy Anderson, Town Clerk