

Fairfax Town Council Minutes  
Regular Meeting  
Fairfax Women's Club  
September 19, 2007

**COUNCILMEMBERS PRESENT:** Larry Bragman  
Susan Brandborg`  
Mary Ann Maggiore  
Lew Tremaine  
David Weinsoff

**STAFF MEMBERS PRESENT:** Linda Kelly, Town Manager  
Ann Welsh, Planning Director  
Jim Karpiak, Town Attorney  
Ken Hughes, Police Chief  
Mark Lockaby, Building Official  
Ian Roth, Finance Director  
Judy Anderson, Town Clerk

The regular meeting was preceded by a Special Meeting Closed Session at 6:30 p.m. at the Youth Center, 16 Park Rd. for conference with legal counsel pursuant to Government Code Section 54956.9(b), anticipated litigation, one potential case and; pending litigation, Marin Superior Court No. CV 074051, North Bay Coalition to Support Plastic Bag Recycling v. Town of Fairfax; and conference with Labor Negotiator Linda Kelly, Town Manager, pursuant to Government Code Section 54957.6 regarding Fairfax Police Officers' Association.

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 staff direction regarding pending litigation, North Bay Coalition to Support Plastic Bag Recycling v. Fairfax; and regarding one case of anticipated litigation and had given direction to the Town Manager regarding ongoing negotiations with the Fairfax Police Officers' Association.

**Approval of Agenda and Affidavit of Posting**

Councilmember Brandborg requested that the item regarding residential car washing be continued to the next meeting since she had to leave the meeting early. Vice Mayor Maggiore asked that the item regarding a social host ordinance be moved up on the agenda due to the presence of young students at the meeting to address the issue. Town Manager Kelly requested that the award of the bid for the pedestrian crossing be continued to the next meeting because of the continuance of the bid opening date.

M/S Bragman/Weinsoff, Motion to move the award of bid to the October 3<sup>rd</sup> meeting.

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

M/S, Bragman/Weinsoff, Motion to move the car washing item to the October 3<sup>rd</sup> meeting.

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

M/S, Bragman/Weinsoff, Motion to move the social host item up on the agenda to be heard as the first item on the regular agenda.

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

M/S, Brandborg/Weinsoff, Motion to adopt the agenda as amended and to approve of the affidavit of posting.

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

Announcements

Mayor Bragman announced that new members were welcome on the General Plan Advisory Committee and on the Fairfax Youth Commission. He congratulated and thanked the Fairfax Volunteers for another great Town picnic and expressed his hope that it would become an annual event.

Open Time for Public Expression

Ken Mayer, 75 Rocca, spoke regarding his appeal that had been heard at the previous Town Council meeting and asked that the Council reconsider their decision and remove the occupancy permit restriction on his project. He explained that withholding the occupancy permit was a financial hardship preventing him from even renting the property, that he planned to get approval for the installation of the required parking in October, and asked for compassion.

Elisabeth Bell, 63 Dominga Ave., spoke about the inappropriate use of high school bond money approved by the voters, and stated that it wasn't supposed to be for sports fields and that the fields were being built; that single pane windows were installed instead of double-paned; that the second bond election campaign promised the installation of solar at Drake and the public was being told that solar couldn't be installed. She asked the Council to get involved in the issue.

Councilmember Tremaine stated that the Council could express its opinion, but had no standing to tell the School District what to do. He offered to talk to Ms. Bell about the issue after the meeting.

Stan Schriebman, Hickory Road, apologized to anyone he might have offended during the discussion of the Creek Road Bridge and thanked Councilmember Tremaine for explaining clearly that the bridge would be fixed and opened to traffic.

**PUBLIC HEARING**

183 Frustuck Avenue: Appeal # 07-28 - Appeal of the Planning Commission's approval of a Hill Area Residential Development Permit, Excavation Permit and Encroachment Permit to construct a 3,050sf single-family residence, a 610sf garage and a 134sf utility room for a total square footage of 3,794sf single-family residence (includes a 610sf garage); Assessor's Parcel No. 003-193-13; Residential Single-family RS 6 Zone; Shane Deal, owner; Niccolo Caldararo, appellant; CEQA categorically exempt, § 15303(a); Adoption of Resolution No. 2513, A Resolution of the Town Council of the Town of Fairfax regarding the Decision on Appeal No. 07-28

Mayor Bragman recused himself from the hearing on the appeal due to the proximity of his residence to the project.

Vice Mayor Maggiore assumed the chair.

Planning and Building Services Director Welsh presented the staff report and noted the conditions that the Planning Commission had added to be addressed by the applicant when the project was reviewed by the Design Review Board. These conditions include direction to revise the plan to reduce the overall height and impact of the garage roofline on the surrounding view shed and to evaluate the impact on views from adjacent properties and to minimize any identified impacts. She presented the staff recommendation to deny the appeal and to uphold the decision of the Planning Commission because the appellant's concerns were either addressed and resolved by the Planning Commission or were items yet to be addressed by the Design Review Board at a public hearing that would be open to comments from the appellant.

Vice Mayor Maggiore opened the public hearing.

Appellant Caldararo, 165 Frustuck; stated that the Town was under stress and was losing open space and affordable housing; that the proposed structure would be almost 4,000 square feet and would be very prominent in the neighborhood; that it would be built next door to the largest house in the area; that it would block views; that the house size was unprecedented and much too big, almost twice the size of the median-sized house in the area; that the idea that it was a green project was hard to understand; that lots of earth would have to be removed for construction; that it would look like Daly City, not Fairfax; that the applicant would profit from the project, but that the neighbors' properties would depreciate in value; that it would increase traffic; that the house should have been placed further down the lot; that the size should be reduced; that when such a large house was built, the builder should be required to contribute to the creation of affordable housing; that he would welcome a plan that included affordable housing; and that the project should be denied.

Pam Meigs, Planning Commission Chair, stated that she had voted against the project when it was before the Planning Commission because of privacy issues, and because it was way too large and the scale was inappropriate for the neighborhood.

Cary and Rachel Loeb, 20 Hickory Rd., spoke in opposition to the project because of the potential loss of privacy with the proposed house designed to look down on their pool and windows and asked that the size of the deck be reduced and that the trees be retained that faced their yard.

Ryan O'Neil, 148 Madrone, stated that he was not opposed to something being built on the property that was right across from his home; that people had a right to build on their property; that size was not negotiable once a structure was built; that he had lived in his home for five years; that decisions made would change the look of Fairfax in the future; and that he thought that the plan called for an oversized home in a dominant location that was out of scale for the area.

Bruce Bunnell, 170 Frustuck, stated that he would look down on the project; that he already looked down on the other recently built large home; that the design included a garage and that a carport wouldn't eliminate their view of Mt. Tam; that the structure would eliminate the green belt below them; and that the house was too large.

Max Crome, Architect for the project, noted that the speakers had voiced the same concerns at the Planning Commission hearing; that the size was in the middle range of the required Floor Area Ratio (FAR) requirements and conformed to the neighborhood by virtue of the FAR. He stated that there was no mechanism to turn the project into an affordable housing project; that the project had received a platinum rating using the County's green building certification process; that the owner wanted to build the project with integrity; that the owner had a reputation as a responsible builder of quality projects; and that the mass of the project was below the road.

Shane Deal, 44 Belle Ave., stated that he purchased the lot two years previous; that he was trying

to build a custom home for between \$110,000 and \$120,000; that an arborist had been consulted about the large trees in the lower part of the lot; that the roofline of the garage was the only part of the project visible from the road; that the green components of the project were all voluntary and would create a virtually non-energy user; that the project met all the Town's requirements; that the neighbors who supported the project weren't present at the meeting; that the Design Review Board would address some of the issues raised at the meeting; and that the Planning Commission approved the project.

Frank Egger, 13 Meadow Way, stated that the project would be highly visible from Cascade Drive; provided a set of photos to show the property before and after the project; that the bulk height of the project was at 55 feet and that it was 50-plus feet wide; that it was difficult to tell where the corners of the property were and that the corners needed to be determined; that the slope hadn't been determined; that the applicant was a member of the Design Review Board and had a conflict; that the project received only three votes of approval from the Planning Commission; stated that the garage should be removed from the project; that the size should be reduced; and that the house should be re-designed for the steep lot.

Bill Wyles, 189 Frustuck, stated that the Town had money problems and should be supporting big houses to provide more revenue to the Town and that not many more houses would be built in Fairfax.

Beth, 186 B Meernaa, stated that what made a town was working together, that the Town had enough money to give the staff raises, and that decisions shouldn't be dollar driven.

Vice Mayor Maggiore closed the public hearing.

The Town Council discussed the appeal. Town Attorney Karpiak clarified the Town Council's options regarding the appeal. He stated that the Council was hearing the project "de novo" and could ask the applicant to reconsider modifications or could impose new conditions; that any decision made would have to be supported by findings; that the Council could grant the appeal and direct staff to return with findings to support their decision; or the Council could deny the appeal and uphold the Planning Commission's approval of the project.

Vice Mayor Maggiore re-opened the public hearing for the applicant and the appellant.

Applicant Shane Deal stated that it had taken two years and \$120,000 to get to the current hearing before the Town Council; that to go back and redesign the house would cost him another \$120,000; that he had followed all the Town ordinances; that he had voluntarily made it a "green" project; that all the issues raised would go to the Design Review Board; that the Town was moving the goal posts for the project; that going to court might be cheaper for him; and suggested that, if the Council wanted to redefine a "monster home," that they needed to change the rules.

Max Crome, project architect, stated that it was difficult for the Council to make a decision without all the information; that the Town had a rigorous process for applicants that included hydrology and engineering reports as well as arborists' reports; that the applicant had been through a lot; that Fairfax required that a project be complete before submittal; that the project had been approved by the Planning Commission; and that he understood that it was a discretionary permit but that he believed the Planning Commission didn't make a mistake approving the project.

Niccolo Caldararo, Frustuck Ave., stated that it was capitalist society; that it was not the Town's responsibility to make money for the applicant; that the proposed project would negatively impact the neighbors' property values; recommended that the project be sent back without prejudice to the Planning Commission; and that the applicant had known what the problems with the project were all along, the problems being the size of the house and its footprint.

M/S, Tremaine/Weinsoff, Motion to continue the public hearing to the second meeting in October scheduled for the 17<sup>th</sup> in order to allow the applicant to address the concerns expressed at the meeting.

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

Mayor Bragman adjourned the meeting for a break from 8:55 to 9:10 p.m.

Councilmember Brandborg left the meeting at 8:55 p.m.

**CONSENT CALENDAR**

**Receive and file information regarding Town Manager salary and benefits**

**Authorize the Town Manager and Councilmember Weinsoff to enter into discussion with the University of California Berkeley’s Goldman School of Public Policy to undertake a project relating to the Town’s current economic challenges and providing recommendations on revenue enhancement, Weinsoff**

**Approval of Proclamation of Commendation for the newly formed Northern California Girl Scouts, Maggiore**

**Receive and file financial reports for July and August, 2007**

**Adoption of Resolution No. 2514, A Resolution of the Town Council of the Town of Fairfax urging the Transportation Authority of Marin (TAM) to persuade employers to implement telecommuting and flex time in order to lessen traffic, Maggiore**

Stan Schriebman, Hickory Rd., spoke to the item about the Town Manager’s salary and benefits and stated that he believed the information should be more readily available to the public and should be posted in a public place.

Mayor Bragman ascertained that the information was posted on the Web site and was included in the public packet.

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

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

**REGULAR AGENDA**

**Discussion and consideration of a Social Host Liability Ordinance for underage drinking, Maggiore**

Vice Mayor Maggiore introduced the topic and stated that she and Councilmember Tremaine had been working on the issue. She stated that the Youth Commission had been established to help provide alternatives to drinking like the coffee nights held the previous year, to welcome young people as citizens; and to add legislation to make it more difficult to have parties where alcohol was made available to teens.

Town Attorney Karpiak described the three draft ordinances in the packet, one making violations criminal, one with civil penalties and fines, and the San Rafael ordinance with a combination of both.

Mayor Bragman opened the discussion to the audience.

Juliano Martinez, Senior at Drake, Youth Leadership Institute (YLI), stated that the civil ordinance was the best option for Fairfax; that it would make teens think twice about having a house party; that the parents should be informed about the ordinance; and that it could reduce the alcohol consumed by teens.

Maureen Teneva, YLI, stated that she was involved with a teen alcohol prevention group; that the civil version of the ordinance is the one they had advocated for the County of Marin; that assessing fines would be a deterrent; that parents of children 17 or under would be made responsible; that fees could be assessed; and that it was a good prevention tool.

Scott Spicer, YLI, stated that communities were mobilizing for change on teen alcohol use; that there would be a stigma with a criminal ordinance; that the punishment wouldn't fit the crime; that many times the parents were away when parties happened; that the criminal ordinance couldn't be enforced when the parents were away; that a code enforcement officer would only have to hear it when the citation was appealed; that the County was concerned about the process and who would hear the appeals; that it was not definite that the appeals would use staff time; and that the adoption of an ordinance would show the community that teen alcohol consumption was not acceptable.

Don Carney, Mountain View, stated that he supervised the County Youth Court as part of his job at the YMCA; reported on research that he had done the previous year that had revealed that over 1,000 kids had been cited for drug or alcohol abuse in Marin during the year; stated that he supported the civil ordinance; and that he would like to have access to the youth who were cited to get them into the Youth Court program.

The Council discussed which version of the ordinance would be appropriate for Fairfax and who would serve as the hearing officer for appeals.

Chief of Police Hughes recommended that the Council adopt as broad an ordinance as possible to deal with the variety of circumstances that could be involved and suggested that the San Rafael ordinance that combined criminal and civil was a good model.

M/S, Bragman/Tremaine, Motion to direct staff to draft a civil statute ordinance with direction to the Town Attorney to research the possible use of the Town Council members of the Teen Alcohol Task Force or staff as hearing officers, or the use of the Small Claims Court process for appeals.

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

Adoption of Resolution No. 2499, A Resolution of the Town Council of the \_\_\_\_\_ Town of Fairfax outlining the policy for the selection of the Mayor and Vice Mayor by the Town Council, Weinsoff (continued from 9-5-07)

Councilmember Weinsoff introduced the topic and urged the Council to adopt the resolution to set a policy for the annual selection of the Mayor and Vice Mayor.

The Council discussed the proposed resolution.

M/S, Bragman/Weinsoff, Motion to continue the discussion to the second October meeting.

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

There was a consensus of the Council to allow a substitute motion for the December meeting.

M/S, Bragman/Tremaine, Motion to continue the discussion to the December Council meeting.

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

Introduction and First Reading of Ordinance No. 723 amending Ordinance No. 721 to permit the use of tandem parking for the second unit amnesty period only, Brandborg (continued from 9-5-07)

This item was continued to the October meeting.

The Council reviewed the agenda and continued the item regarding a report from the Joint Fairfax-San Anselmo Shared Services Subcommittee and the item regarding leaf blowers to the October third meeting.

Update on Ross Valley Fire Board discussions with neighboring agencies, Maggiore (continued from 9-5-07)

Vice Mayor Maggiore presented a report regarding ongoing discussions with the Sleepy Hollow Fire District about becoming a voting member of the Ross Valley Fire Board.

Mayor Bragman stated that a partnership agreement would be needed to ensure that no major decisions would be made without a unanimous vote of the Board.

Frank Berto, Sleepy Hollow Fire District, stated that three of the Fairfax Town Council members were at the last Fire Board meeting; that he was anxious to have the discussions proceed; that he hoped they would proceed expeditiously; that a consolidation was tried previously but hadn't happened; that Sleepy Hollow wouldn't agree to a 2-2-1 vote when the Ross Valley Fire Service was first formed in the 1980's; that there should be a fair division of the costs, an equitable voting standard and that the merger should proceed; that Ross might be interested when they realized that Sleepy Hollow and Ross Valley Fire were working together; offered to have Sleepy Hollow contribute an additional \$30,000/year for three years in addition to their fair share of costs to help offset the cost of a new fire marshal; and stated that he wouldn't support a unanimity agreement as requested by Mayor Bragman.

Discussion and consideration of a resolution directing that the Town Hall flag be flown at half-staff every Friday until the end of the wars in Iraq and Afghanistan, Weinsoff

Councilmember Weinsoff introduced the topic and stated that he was requesting that the Town Hall flag be flown at half-staff every Friday to honor service members who had given their lives in the wars in Iraq and Afghanistan.

Mayor Bragman stated that he would like to do something within the law and suggested that the flag be lowered only when there was a California casualty. Vice Mayor Maggiore stated that she would like to do something to stop the war, that it was our flag, and suggested that a time limit be put on the period that the flag would be flown at half-staff. Councilmember Tremaine stated that it would be done as a political statement.

Mayor Bragman opened the discussion to the public.

Mark Bell, Dominga Ave., stated that the U.S. was building huge military bases in Iraq and that it would be difficult to define the end of the war. He further stated that there was no military draft, that people had a choice about serving in the military, and that he thought the lowering of the flag wouldn't help end the war.

M/S, Weinssoff/Tremaine, Motion to direct staff to fly the flag in front of Town Hall at half staff each Friday until otherwise directed by Council.

AYES: Maggiore, Tremaine, Weinssoff  
NOES: None  
ABSENT: Brandborg  
ABSTAIN: Bragman

Discussion and consideration of request to the Fairfax–San Anselmo Shared Services Subcommittee to expand its examination of collaboration between the two towns to include potential taxpayer savings from consolidation of Public Works management positions, Weinssoff

Councilmember Weinssoff presented his request to have the subcommittee consider consolidation or sharing of public works management positions prompted by the recent resignation of the Fairfax Public Works Director.

Councilmember Tremaine, a member of the subcommittee, stated that it would be worthwhile under normal circumstances, but that the Town needed a Public Works Director to complete the projects already in the works; that it was too expensive to do projects with consultants; that the right personnel weren't in place to make it possible; and that the timing just wasn't right.

Town Manager Kelly pointed out that with such a small staff in Public Works, it would be very difficult for the Town to operate without a full-time on-site Public Works Director, and that two part-time contract positions could end up costing the same as a full-time director.

Councilmember Weinssoff stated that he believed too many potentially cost savings measures had been taken off the table.

Discussion and consideration of a requirement that the 2008-2009 Operating and Capital Improvement Budget's "Budget Message" include draft recommendations from the Manager on budget reductions and other efficiencies to be implemented in the event insufficient revenue sources are identified and implemented to replace Measure F funding upon its expiration, Weinssoff

Councilmember Weinssoff suggested that the Council and staff start telling the public where the Town stood financially along with the perils and opportunities before the expiration of the Measure "F" funding.

Mayor Bragman stated that it was unnecessary to direct staff to do the obvious and that it was too early since Measure "F" wasn't due to expire until 2010.

Councilmember Tremaine stated that the information Councilmember Weinsoff was requesting would be included in the Strategic Financial Plan that was to be completed soon and which would be a very public document.

Vice Mayor Maggiore left the meeting at 11:15 p.m.

The meeting was adjourned at 11:20 p.m.

Respectfully submitted,

Judy Anderson, Town Clerk