

Fairfax Town Council Minutes  
Regular Meeting  
Fairfax Women's Club  
Wednesday, November 5, 2008

Call to Order/Roll Call:

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

**STAFF MEMBERS PRESENT:** Michael Rock, Town Manager  
Jim Karpiak, Town Attorney  
Kathy Wilkie, Public Works Director  
Mark Lockaby, Building Official  
Judy Anderson, Town Clerk  
Joanne O'Hehir, Minutes Clerk

Mayor Maggiore called the meeting to order at 7.40pm.

Approval of Agenda and Affidavit of Posting

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

AYES: All

Announcements

Mayor Maggiore announced that the Town Attorney had provided direction on three issues of litigation which the Council discussed during the Closed Session.

The Mayor stated that the Plastic Bag Ordinance (Measure C) had passed, and that the appointment of the Town Clerk (Measure D) was too close to call and that all of the absentee ballots had not yet been counted.

Mayor Maggiore made the announcements as listed on the Agenda.

Open Time For Public Expression

Valeri Hood, Dominga, said that she participated in polling the previous day, when she found the lighting inadequate. Furthermore, in addition to other neighbors, she did not receive notice of tonight's meeting.

Michael Rock, Town Manager, said that technical difficulties had prevented an e-mail being sent to residents, which is usually undertaken as a courtesy. However, he noted that the Agenda is posted on the Town's Web Site.

Richard Pedemonte, Baywood Court, requested that the item regarding adding the Parks and Recreation Commission to the Town's Conflict of Interest Code. be postponed to a future date in order to give the Commission an opportunity to discuss the matter among themselves.

Mallory Geitheim, Willow Avenue, expressed agreement with Mr. Pedemonte's request.

In response, Mayor Maggiore said that discussion would proceed.

In response to Councilmember Bragman, the Council agreed that the item regarding requesting that Ross Valley Sanitary repave a portion of Cascade Drive and restore Doc Edgar park would be moved forward on the Agenda.

Mr. Rock requested that Item 14 be removed from the Agenda because it is not ready for discussion.

Interviews and Appointments Continued.

Presentations

Report on Youth Commission Activities by Maya Meissner, and acknowledgment of service to departing Councilmember Ginny Aballo

Maya Meissner discussed successful events organized by the Youth Commission Activities, and announced that Ginny Aballo will be departing from the Youth Commission Activities, for which Mayor Maggiore made a presentation.

Presentation by Mayor Maggiore regarding Women's Work, Key Women in Commerce in the Community

The Mayor honored the following business women for their commitment to the Community:

Valerie Teijero, Yeah Baby  
Polly Knox, Fairfax Variety  
Shannon Staple, Fat Angel Bakery  
Lorie Kulberg, Culture Shock  
Alisha Peterson & Susan Delurgio, Owners of Beach House Style.

Presentation by Henry Gardner, Executive Director of ABAG, Affordable Housing Calculations.

Following a short introduction by Councilmember Weinsoff, Mr. Gardner of the Association of Bay Area Governments (ABAG) discussed housing and the problems of obtaining funding. He

noted that funds have been put aside for restoring creeks in Marin County, and he briefly discussed ABAG's various service programs.

In response to Councilmember Weinsoff, Mr. Gardener noted that the number of housing units assigned to the County has been reduced with ABAG's influence.

Valerie Hood, Dominga, does not believe that ABAG offers protection from the State.

In response, Mr. Gardener discussed the ways in which ABAG is offering assistance to the County.

Lynn, Cascade Drive, would like to know if the State is requiring more low income units.

In response to Mark Bell, Dominga Avenue, Mr. Gardener said that the State assigns each region a certain number of low-income units, and he noted that housing is needed at all income levels.

Niccolo Caldararo, Frustruck Avenue, believes that market-rated housing is being built in place of low-cost housing.

Mr. Gardner said that low income projects require huge subsidies and funding is often not available.

In response to Jennifer, Mountain View Road, Mr. Gardener suggested she visit ABAG's Web Site for data on affordable housing.

Diane Hoffman, realtor, said that there are residential units available in Marin county in the low \$200,000 price range, and she does not see the need to produce more affordable units.

Mr. Gardner noted that the definition of low income is based on household income, and that a household income of \$40,000 would find a \$200,000 home unaffordable.

In response to a resident, Mr. Gardener said that he would need to research the number of rental units that are available in Fairfax. ABAG's Website shows how many units are assigned for each region and how many were developed.

In response to Ryan O'Neil, Mr. Gardner directed him to a housing report on ABAG's Website. Mr. Gardener said that Fairfax is not required to build further housing, but to insure that the Housing Element is adopted, which he discussed.

In response to Council Member Tremaine, Mr. Gardener said that the reliability and sustainability of the water supply cannot be addressed until the State establishes a Water Policy. He said that the Marin County Water District showed no interest in joint planning with ABAG.

Councilmember Tremaine noted that the State rejected the Housing Element.

General discussion followed on the Mixed Overlay Ordinance, and the problems the Town has encountered with HCD regarding density, building height and usage. Mr. Gardener said he would see if ABAG could be of assistance.

#### Presentation of the Mixed Use Overlay, An Overview and Next Steps

Planning Consultant Larry Kennings provided an overview of the Housing Element document and Mixed Use Overlay. Mr. Kennings noted that Sausalito did not have a certified Housing Element. Mr. Kennings said that the General Plan Advisory Committee had discussed height limits in the Housing Element, and he discussed the reasons the document had not been accepted by Sacramento, which include height limitations, parking and conditional use permits.

Mr. Kennings discussed the problems of the Mixed Use Overlay Zone, and the reasons it does not meet the requirements for certification. He suggested a site in the Town which might overcome these difficulties.

Mayor Maggiore suggested that the Housing Element could be amended, rather than discarded, and Mr. Kennings discussed the changes that could be made that he believes would lead to certification.

Councilmember Tremaine said that Fairfax needs to create affordable housing, although he noted that they do not have a project in front of them.

Nicolo Caldararo, Frustruck, believes that this process has been too expensive and that the Town should be able to make its own decisions on low-cost housing.

Jay Cimo, Sir Francis Drake Blvd, is concerned that the character of Fairfax will be changed with more buildings.

John Reed, Scenic, said that Fairfax appears to have relatively cheap rental apartments, and he discussed his concerns about the Housing Element. He does not believe the Town should be mandated by the State.

Jane Richardson Mack, Madrone, favors affordable housing but expressed her concern that the aesthetics of the Town will be affected, in addition to views being obstructed.

Lynn Corwin, Cascade, said that zoning does not need to be changed in order to provide affordable housing.

Mallory Geitheim, Willow, questioned the reasons for needing a mixed use overlay zone.

Peter Lacques, Live Oak, said that the Planning Commission spent a lot of time on the Housing Element, and that HCD keeps moving the goal posts. To pass the Mixed Use Overlay Zone, maximum affordable housing must be obtained, for which subsidized funding is needed.

Mark Bell, Dominga, questioned the necessity of a Mixed Use Overlay District and if an Environmental Impact Report (EIR) would be required.

Pam Meigs, Cypress Drive, stated that the community needed to be served and that they needed to remember the purpose of the exercise was to produce affordable housing and that it wasn't just about numbers.

Michael Macintosh suggested that the burden should lie with the State. The amount of affordable housing should be less and the Town needs to know how many affordable units it already has.

Frank Egger, Meadow Way, said that downtown Fairfax already has more than enough traffic, and that the water supply is insufficient to sustain more housing. He believes we should stand up to the State.

Valeri Hood, Dominga, discussed the lack of water conservation and the absence of an emergency plan to evacuate the hills.

The Mayor spoke about the need to continue discussions on this subject; that she is open to more discussion and understanding.

In response to Councilmember Brandborg, Mr. Kennings said that an initial study is usually undertaken to determine if an EIR is necessary, which he discussed.

Councilmember Bragman reiterated his concern that the goal of the Mixed Use Overlay Zone is to have the Housing Element certified, and that the current document will not achieve that goal. Furthermore, he believes that gentrification of the town is not connected to the Housing Element.

The meeting was adjourned for a short break from 9.40pm. to 9.57pm.

Discussion/Consideration of letter to Ross Valley Sanitary District requesting resurfacing of Cascade Drive and rehabilitation of Doc Edgar Park

Councilmember Bragman said that concern has been expressed regarding the condition of Cascade, Marine and Creek Roads, to which end he has received a petition from Cascade residents. Furthermore, the staging of heavy equipment is affecting the area.

Kathy Wilkie, Public Works Director, provided background information on the requirements for an encroachment permit. She introduced Brett Richards, General Manager for Ross Valley Sanitary District.

Mr. Richards confirmed that the work had not been completed, but they will address the concerns and work with the community to resolve the issues. He noted that underground work is expensive and he discussed paving and the costs involved.

Mr. Richards said that Doc Edgar Park appears to be the only convenient area for staging, and that they will fix any damage incurred.

Ms. Wilkie said that Creek Road forms part of the final paving plan, in response to Councilmember Weinsoff.

Councilmember Weinsoff suggested that there might be an opportunity to work with the Sanitary District to fix some of the roads that have not been affected by the work.

Councilmember Brandborg discussed problems with a previous contractor, and Councilmember Bragman noted that the paving standard is not of a sufficient standard to ensure continued usage.

Frank Egger discussed the Town's policy on paved streets. He believes that the utilities should fix the roads to a higher standard than is currently enforced. Cascade Drive has been destroyed and should be repaved curb to curb.

Micahel Macintosh believes that Case Law dictates what should be accomplished. Furthermore, Doc Egger Park needs to be raked after the work has been completed.

Jane Richardson Mack said that roads should be fixed if they are damaged.

Town Manager Michael Rock said that Cascade was overlaid in 2001, which negates the need for it to be resurfaced curb-to-curb. A one year warranty is standard in the country, although he does not believe it is a good standard.

Councilmember Bragman suggested that the cost of overlaying Cascade curb-to-curb should be explored because it is a high use road.

Mr. Richards discussed the requirements of paving curb-to-curb, and he noted that it was not included in their bid.

Councilmember Brandborg discussed staging, and Ms. Wilkie said they will discuss alternative staging areas with residents.

In response to Councilmember Bragman, the District Engineer from Ross Valley Sanitary District, discussed work change orders with regard to curb-to-curb paving on part of Cascade.

Councilmember Weinsoff commented on the policy of a one year-warranty and curb-to curb cover.

Approval of Town Council minutes of June 4, July 2, and July 16, 2008 - Town Clerk

Approval of the Underground Utility Fund Project List – Public Works

Authorization for Town Manager to execute a contract with a Records Management Consultant – Town Clerk

**Adoption of Resolution No. 2584, A Resolution of the Town Council of the Town of Fairfax Adopting the Police Department Plan to Allocate Funds for the Citizens Option for Public Safety (COPS) Program for 2008-2009 - Police**

**Adoption of Resolution No. 2585, A Resolution of the Town Council of the Town of Fairfax Expressing our Appreciation for the Thirty Years of Public Service by Michael O'Reilly**

**Adoption of Resolution No. 2586, A Resolution of the Town Council of the Town of Fairfax Awarding Contract for the San Rafael – Fairfax Bicycle Feasibility Study to Alta Planning and Design for \$140,000 – Public Works**

**Adoption of Resolution No. 2587, A Resolution of the Town Council of the Town of Fairfax Authorizing Submittal of a Pre-disaster Mitigation Grant Application for a Seismic Retrofit of the Pavilion and Designating the Town Manager to represent the Town – Public Works**

Mr. Egger discussed his concerns regarding the item regarding the Underground Utility Fund in relation to selling funds from Rule 20. In response, Town Manager Rock said that the Town was loaning underground utility credits to San Anselmo, since this was for an underground storm drain replacement project on Sir Francis Drake Blvd, which he discussed.

Mr. Egger believes that the money is not being used correctly, which Ms. Wilkie addressed.

Mr. Macintosh discussed trade-offs in relation to a previous project.

It was agreed that the item regarding the Undergrounding Fund would be removed from the Consent Calendar for further discussion.

M/S, Tremaine/Brandborg, Motion to approve the Consent Calendar with the removal for discussion of the Notices of Completion for the Creek Road Bridge Project, the Center Blvd. Project and the Park and Hill Overlay Project.

AYES: All

Introduction and First Reading of Ordinance No. 738 An Ordinance of the Town Council of the Town of Fairfax Repealing Ordinance No. 736 (Approving the Marin Energy Authority Joint Powers Agreement and Authorizing the Implementation of a Community Choice Aggregation Program)

Mayor Maggiore provided an overview of the Ordinance.

Town Attorney Karpiak discussed the changes to the JPA and its objectives and the reasons for implementing the new Ordinance.

Mayor Maggiore opened the public hearing and closed the public hearing when no speakers came forward.

M/S, Brandborg/Tremaine, Motion to waive further reading of Ordinance No. 738, repealing Ordinance No. 736 (Approving the Marin Energy Authority Joint Powers Agreement and Authorizing the Implementation of a Community Choice Aggregation Program).

AYES: All

M/S, Brandborg/Tremaine, Motion to adopt Ordinance No. 738 repealing Ordinance No. 736 (Approving the Marin Energy Authority Joint Powers Agreement and Authorizing the Implementation of a Community Choice Aggregation Program).

AYES: All

M/S, Tremaine/Bragman, Motion to waive further reading of Ordinance No. 739 Approving the revised Marin Energy Authority Joint Powers Agreement and Authorizing the implementation of a Community Choice Aggregation Program.

AYES: All

M/S, Tremaine/Bragman, Motion to adopt Ordinance No. 739 Approving the revised Marin Energy Authority Joint Powers Agreement and Authorizing the implementation of a Community Choice Aggregation Program.

AYES: All

Introduction and first reading of Ordinance No. 740, An Ordinance of the Town of Fairfax amending Sections 8.36.050 and 8.36.110 of the Town Code to require Town-initiated tree removals to obtain permits and adding a noticing requirement for emergency removals

Town Attorney Karpiak presented the staff report and discussed the reasons that the Town must apply for a tree permit when it wishes to remove a tree.

In response to Councilmember Brandborg, Councilmember Bragman noted that the existing Ordinance required all public entities to obtain a permit, which the proposed amendments clarify. The purpose of the change is to ensure communication and it does not burden the Town.

In response to Councilmember Weinsoff, Councilmember Bragman said that the Town must make an effort to contact Members of the Tree Committee in an emergency situation, but he suggested that 'reasonable' be added to the wording of the Ordinance.

Discussion on wording between staff and Councilmembers followed.

Mayor Maggiore opened the public hearing.

Mr. Michael Macintosh stated that he supported the amendment to the wording of the Ordinance.

Mayor Maggiore closed the public hearing.

M/S, Bragman/Weinsoff, Motion to waive further reading of Ordinance No. 740 to amend Sections 8.36.050 and 8.36.110 of the Town Code to require Town-initiated tree removals to obtain permits and adding a noticing requirement for emergency removals, with the following amendment: “As soon as reasonably possible.....” replacing “Prior to taking any action on the request....”.

M/S, Bragman/Weinsoff, Motion to Introduce Ordinance No. 740 to amend Sections 8.36.050 and 8.36.110 of the Town Code to require Town-initiated tree removals to obtain permits and adding a noticing requirement for emergency removals, with the following amendment: “As soon as reasonably possible.....” replacing “Prior to taking any action on the request....”.

AYES: All

Update on code compliance issues and possible abatement concerning vacant commercial building (formerly the New Albion Bookstore)

Mark Lockaby, Building Official, discussed the situation, which he said is moving forward for reasons he explained.

There were no questions from the Councilmembers and the hearing was opened to the public.

In response to Mr. Mackintosh, Mr. Lockaby said that he did not know the property’s assessment value.

Mr. Lockaby said he would report back in two weeks time.

Adoption of Resolution No. 2588, A Resolution of the Town Council of the Town of Fairfax Accepting Notice of Completion for the Creek Road Bridge Project

Councilmember Brandborg said she does not believe this Notice of Completion by Councilmembers is acceptable; that it should be should be a function of staff.

Public Works Director Wilkie said that this formal Notice of Completion allows Ghilotti, the Contractor, to complete their retainer for the project, and she confirmed that they have completed all work in the contract.

In response to Councilmember Weinsoff, Ms. Wilkie discussed the reasons this had to come before Council.

M/S, Bragman/Tremaine, Motion to adopt Resolution No. 2588, A Resolution of the Town Council of the Town of Fairfax Accepting Notice of Completion for the Creek Road Bridge Project.

AYES: Bragman, Tremaine, Weinsoff, Maggiore

NOES: Brandborg

Adoption of Resolution No. 2590, A Resolution of the Town Council of the Town of Fairfax Accepting Notice of Completion for the Park and Hill Overlay Project

Kathy Wilkie, Public Works Director, discussed the Notice of Completion, noting that the contractors have completed the project and are seeking their retainer.

In response to Councilmember Bragman, Ms. Wilkie confirmed that the work has been inspected and the contract fulfilled.

M/S, Bragman/Brandborg, Motion to adopt Resolution 2590, A Resolution of the Town Council of the Town of Fairfax Accepting Notice of Completion for the Park and Hill Overlay Project.

AYES: Bragman, Tremaine, Weinsoff, Maggiore

NOES: Brandborg

Discussion of Ross Valley Fire Service tree removal procedures and coordination with the Tree Committee

Councilmember Bragman explained that all public entities need to apply to the Tree Committee in order to remove trees, and that that these procedures and rules should ensure a smooth process for the Fire Service.

Adoption of Resolution No. 2591, A Resolution of the Town Council of the Town of Fairfax authorizing membership in the Franchisers Group to allow for a rate review of solid waste and recycling services charged to the rate payers in Fairfax.

Michael Rock, Town Manager, explained that Marin cities are joining together to perform a rates study of Marin Sanitary Service every other year to ascertain how they set their rates, with a lesser review in the off-year. This would provide a benchmark in the Bay Area and he believes that Fairfax should participate.

Councilmember Bragman said that a rates review has not been performed for 8 years, and might result in an increase. General discussion followed.

M/S, Brandborg/Tremaine, Motion to adopt Resolution No. 2591, A Resolution of the Town Council of the Town of Fairfax authorizing membership in the Franchisers Group to allow for a rate review of solid waste and recycling services charged to the rate payers in Fairfax.

AYES: All

Adoption of Resolution No. 2592, A Resolution of the Town Council of the Town of Fairfax Adopting a Revised Exhibit "A" to the Conflict of Interest Code for the Town of Fairfax.

Town Clerk Anderson presented the staff report, explained that the Town's Conflict of Interest Code needs to be reviewed every two years, and recommended that the Parks and Recreation Councilmembers be added as designated officials with responsibility to file annual "Statements of Economic Interest."

M/S, Tremained/Brandborg, Motion to Adopt Resolution No. 2592, A Resolution of the Town Council of the Town of Fairfax Adopting a Revised Exhibit "A" to the Conflict of Interest Code for the Town of Fairfax.

AYES: All

#### Council Reports and Comments

Mayor Maggiore reported on a meeting she had attended, noting that the cost to the Town was less than \$100. In response to Councilmember Brandborg, the Mayor said she would obtain a list of attendees.

Councilmember Brandborg reported on the Marin County Council of Mayors and Councilmembers (MCMCC) dinner she attended, which was paid for by MCMCC.

Mayor Maggiore adjourned the meeting at 11.15pm.

Respectfully submitted by Joanne O'Hehir, Minutes Clerk