

Fairfax Town Council  
Adjourned Meeting  
Fairfax Women's Club  
Wednesday, June 18, 2008

Closed Session

The Council met in closed session prior to the meeting at the Youth Center to discuss pending labor negotiations with the Miscellaneous Unit of employees; regarding the possible initiation of litigation in two potential cases and a request for leave of absence from a Public Works employee.

Roll Call:

COUNCIL MEMBERS PRESENT:           Larry Bragman  
  Susan Brandborg  
  Mary Ann Maggiore  
  Lew Tremaine  
  David Weinsoff

STAFF MEMBERS PRESENT:           Michael Rock, Town Manager  
  Jim Karpiak, Town Attorney  
  Ann Welsh, Planning Director  
  Kathy Wilkie, Public Works Director  
  Mark Lockaby, Building Official  
  Judy Anderson, Town Clerk

Closed Session Report

Mayor Maggiore announced that direction was given to staff regarding the labor negotiations; that the Council received reports on two potential litigation cases and extended a leave granted to a Public Works employee.

Announcements

Mayor Maggiore made the announcements as listed on the agenda.

Open Time

Mayor Maggiore announced that the Fairfax Festival was the best ever and presented Richard Pedemonte, Chair of the Festival Committee, with a certificate of appreciation. She also acknowledged the teens for their Saturday night performance during the Festival.

Richard Pedemonte thanked the Mayor for the recognition; stated that the Committee had put in many hours and lots of work to make the Festival happen; that one of their goals had been to expand the Ecofest; that another goal had been to expand the children's area; and that more advertising and promotion had been done to increase attendance at the Festival.

Cindy Ross, Lansdale Ave., asked for clarity about a notice she had received about the Pastori Drain Replacement Project and also asked for assurance from the Town that

potholes and bumps on the road would be fixed as part of the paving after the project was completed. She further stated that she was thrilled that the work was being done and noted that she had access issues because of her elderly mother.

Public Works Director Wilkie reported that she had received a number of calls from neighbors about the project; that Ghilotti Brothers would pave the roadway after the pipe replacement project was completed; that she would be developing a plan and a schedule to address any access issues and would provide emergency access at all times; that traffic delays and some inconvenience were to be expected during the project; that parking options for the tenants at Marin Town and Country Club (MTCC) were being explored; that there wouldn't be a day without access to MTCC; that 24-hour notice would be given if the water or sewer were to be turned off; that the project would start from the bridge end of Pastori; and that the project would probably last until the end of September.

Beth Taylor, MTCC resident, stated that she was sorry that there was no representative from Police or Fire at the meeting; that during the slide on Upper Scenic in the winter of 2000, the neighbors had been promised continuous public safety access but that one neighbor there was unable to take her husband to a medical appointment; and asked for proof of the continuous access to be provided during the Pastori project.

John Richardson, Pine Drive, urged the Council to become independent of PG&E; stated that he wanted to "morph" Fairfax into a solar-powered town; that he and his partner were solar installers; and he offered to provide costs and specifications to install solar on the town buildings.

Steve Woodward, MTCC resident, expressed appreciation to the Public Works Director for working with the contractor to provide access to MTCC during the project and suggested a ramp directly into the parking lot of the shopping center for the tenants.

Michael Mackintosh, MTCC owner, stated that the 48-inch pipe installation would block entry to MTCC; offered to allow the Town to provide a ramp at the corner of the parking lot onto a piece of property that he owned; asked to be included in discussions with the contractor about the logistics of the project; and requested assurance from the Town about the availability of fire and ambulance service for his tenants during the project.

#### Presentation and acknowledgment of ten top sales tax revenue producing Fairfax businesses

Mayor Maggiore presented certificates of acknowledgment to the top ten revenue producing businesses in Fairfax. Representatives from the businesses were present to accept the certificates and acknowledgment.

Mayor Maggiore pointed out that the Town's sales tax revenue had been maintained even with the loss of the Albertson's and thanked the Town businesses for their efforts.

#### Presentation on Immigration and Customs enforcement raids in San Rafael and what they mean to Fairfax, Tom Wilson

Tom Wilson, Canal Community Alliance, addressed the Council and described recent Immigration and Customs enforcement raids in San Rafael that included parents being

taken away in handcuffs in front of their children to be arrested if they were unable to prove their citizenship, and other questionable tactics used by the immigration enforcement people. He asked the Town Council to consider making Fairfax a sanctuary city for immigrants.

In response to a question from Councilmember Bragman, Mr. Wilson stated that the police stayed out of the community when they were given notice of raids leaving the people without police protection. He further stated that it was good that the San Rafael police did not cooperate, but that there wasn't anybody to provide public safety during the raids; that the tactics used were reprehensible; and that the immigrants were no longer safe in their homes.

Councilmember Tremaine offered to sit down with Mr. Wilson and review sample ordinances from other towns to work toward bringing a sanctuary ordinance forward for consideration by the Fairfax Town Council.

Vice Mayor Weinsoff ascertained that Fairfax was the first city to be asked to consider such an ordinance.

Interview and appointment of candidate(s) to the Fairfax Youth Commission (Continued from 6-4-08)

No candidates were present and the matter was continued.

Consent Calendar

**Financial Report/Check Register**

**Acceptance of Town of Fairfax Fiscal Year 2006/07 Financial Audit Report**

**Adoption of Resolution No. 2547, A Resolution of the Town Council of the Town of Fairfax Approving the Ross Valley Paramedic Authority Tax Levy for the 2008-2009 Fiscal Year**

**Adoption of Resolution No. 2548, A Resolution of the Town Council of the Town of Fairfax continuing expenditures and revenues in accordance with the 2007-2008 Town budget and in lieu of a timely 2008-2009 budget adoption**

**Adoption of Resolution No. 2549, A Resolution of the Town Council of the Town of Fairfax Setting the Amount of The Municipal Services Tax for The 2008-2009 Fiscal Year**

**Adoption of Resolution No. 2550, A Resolution of the Town Council of the Town of Fairfax Setting the Amount of the Special Municipal Services Tax for the 2008-2009 Fiscal Year**

**Adoption of Resolution No. 2551, A Resolution of the Town Council of the Town of Fairfax Setting the Amount of the Utility Users Tax for the 2008-2009 Fiscal Year**

**Adoption of Resolution No. 2552, A Resolution of the Town Council of the Town of Fairfax Setting the Amount of the Pension Override Tax for the 2008-2009 Fiscal Year**

**Adoption of Resolution No. 2553, A Resolution of the Town Council of the Town of Fairfax Setting A Fee For The Purpose Of Funding Local Stormwater Pollution Prevention Activities For Fiscal Year 2008-2009**

Discussion of the Consent Calendar:

Michael Mackintosh asked to be able to talk about the audit report, the late budget and the Pension Override Tax.

Town Manager Rock stated that the audit report was on the agenda for acceptance of the final report; that it described the Town's responses to the auditor's comments; that the entire audit had already been discussed by the Council; and that all the concerns addressed about the operation of the finance department would be addressed within the coming year. He stated that nothing was changing about the Pension Override Tax and that the Town budget was not unusually late.

Councilmember Brandborg noted that there was no check register included in the packet.

M/S, Tremaine/Maggiore, Motion to adopt the Consent Calendar with the removal of the Financial report.

AYES: All

Michael Mackintosh stated that it was reasonable to ask what deficiencies were found in the audit and what would be done to address those deficiencies as well as what the underfunded pension liabilities of the Town were anticipated to be.

It was suggested that Mr. Mackintosh participate in the upcoming budget discussions to get complete answers to his questions.

Town Manager Rock noted that the budget was not on the agenda for adoption and that three budget hearings would be held before the budget was adopted providing ample opportunity for discussion of specific items.

Mayor Maggiore adjourned the meeting for a break from 8:43 p.m. to 8:55 p.m.

Adoption of Resolution No. 2554, A Resolution of the Town Council of the Town of Fairfax adopting a Mitigated Negative Declaration pursuant to the California Environmental Quality Act (CEQA) for the adoption of a Mixed Use Overlay Zone in the Highway Commercial District (CH)

Planning and Building Services Director Welsh presented the staff report.

Town Attorney Karpiak clarified that the title of the item was incorrect and that it was actually meant to be just a discussion and consideration of the mitigated negative declaration and that the following item was not a first reading of the ordinance.

Director Welsh introduced Carolyn Cole of Crane Transportation Group who had worked on the traffic impact section of the Mitigated Negative Declaration.

Ms. Cole led a discussion on the potential traffic impact of a development at the former Albertson's portion of the Fair-Anselm Shopping Center. She stated that the maximum of 150 units was used for traffic impact purposes; that any proposed project would have to be reviewed for traffic impact; that more study would be required once a proposal was submitted; and that her report used the worst case scenario.

Councilmember Bragman expressed concern about the difficulty of mitigating the traffic impact of projects at the Albertson site as well as the School Street site and about the attendant deterioration of air quality produced by the increased traffic. He expressed concern that the project at its maximum would require three stories and would only create about 13 units of affordable housing; stated that subsidizing rents was a better way to provide affordable housing as with Section 8; that the Mixed Use Overlay represented an upzoning of the property and created a vested right to the property owner; and that 35 feet stacked on Center would block the creek and the ridge and would only provide a view of the mass of the project.

Councilmember Tremaine stated that the Council had an opportunity to address the traffic issues in a creative way by providing incentives for people to not have cars but to use bikes and public transportation; to use whatever means available to limit the number of vehicles at the sites including live and work sites and increased bike paths; that the Town needed to create affordable housing without creating a traffic mess; and that affordable housing was necessary to maintain economic diversity in the town.

Councilmember Brandborg reiterated that the numbers used were for the maximum number of units possible based on a formula; that Section 8 subsidies were not the way to provide affordable housing; that the Mixed Use Overlay Zone was proposed just for the provision of affordable housing, not for other development; and that she didn't think it required building a three-story project in mass along Center Blvd.

Mayor Maggiore stated that the visual impact of the number of units proposed was astounding; that the report was for the maximum numbers that could be on the properties, that the Town would mitigate the impacts on a project by project basis; and with so much of the weight of the affordable housing on two locations in town, she had received a lot of calls about the alarming numbers involved.

Director Welsh stated that the Planning Commission had gone through a lot of hard work preparing the mixed use overlay zone; that they had trouble with the same issues as the Council; that State Housing and Community Development was not asking for 24 units per acre, that it could be 20 units per acre; that the idea of the tunnel effect along Center Blvd. could be addressed by changing the Mixed Use Overlay; that revisions could address some of the Council's concerns; that there was a 20 unit per acre limit in the downtown; that the Planning Commission knew that it wasn't perfect when they sent it forward to the Council; stated that some of the issues could be addressed with revisions for the next meeting; that it was a work in progress; and that revisions could make it more acceptable.

Councilmember Tremaine stated that the Town needed to get the Housing Element certified by the State but that we didn't have to sell out to the State; that it was still the goal to create nothing but affordable housing in the downtown; that the Council hadn't decided to go to three stories or to accept the proposed densities; that it wasn't the intention of the Council to change the character of the Town or to encourage massive development; but that they had to find a creative way to create the required affordable housing.

Mayor Maggiore opened the public hearing.

Patti Breitman Rosenfeld, Live Oak, resident of Fairfax since 1963, stated that the properties subject to the Mixed Use Overlay were all very different properties and should have different zoning; that development at School Street Plaza would mean a loss of some of the small businesses located there; that providing 20% affordable housing would not make it worthwhile; that she was strongly opposed to any building over two stories; and that she didn't want to see new buildings replacing old buildings.

Sierra Salin, Cascade Drive, stated that he was opposed to three story buildings anywhere in Town; that the character of the Town was from the different styles built at different times; that he didn't want ugly development; that all the different properties should be treated differently; and urged the Council to keep it small.

Michael Mackintosh, owner, 60 Pastori Ave., stated that the discussion had been valuable; that affordable housing got a bad rap; that our children needed to be able to purchase homes in the community; that three-story buildings would not work on Center Blvd. but that density was needed in certain places; that he didn't think it warranted a negative declaration; and that a guideline was needed for the development of the community.

Mimi Newton, Mono Ave., Chair of the Fairfax Open Space Committee (FOSC), stated that the FOSC hadn't reviewed the proposed negative declaration carefully; expressed concern about how it would affect other elements of the General Plan; stated that the materials were not particularly user friendly for the public; that much of the information seemed vague because the guidelines weren't defined; and expressed concern about the traffic impact of the zone.

Darrell Grossman, 15 Scenic Rd., stated that he didn't see how they could look beyond the traffic impact and asked how the State could not consider the special circumstances of a town with limited arteries and access.

Colin, Live Oak Ave., stated that he would like to see better maps; that he agreed with Councilmember Bragman that approval of the overlay zone and the negative declaration would be saying that the property owner had the right to over-develop the property; that citizens were raising questions about traffic that could not be mitigated by a negative declaration; that the site was at the entry to the Town and was in a congested area; described the difficulty of making a turn from Willow Avenue; and suggested hiring a housing consultant to help address our unique issues.

Frank Egger, Meadow Way, reported that the North Coast County Water District had adopted a "no spray" policy that evening. He stated that the overlay zone was the biggest upzoning in Fairfax in 40 years; that staff had predetermined that a negative

declaration was appropriate when no public comments had yet been made; that the zoning would place from 200 to 300 units in downtown Fairfax; that it would cause a loss of sales tax revenue; that ABAG and the State were bullying small municipalities into development; that of the 478 cities in California, he believed that a number of them didn't have approved housing elements; that Exhibit 3 totally underestimated the potential; that the upzoning created an entitlement for the owner; and that he didn't want to see Fairfax turn into a Walnut Creek.

Carolyn McFadden, Ridgeway Ave, stated that she was new to the issue; that she was encouraged that the Council was debating it; suggested that the public comment period be extended to longer than 3 weeks; that she couldn't imagine how a negative declaration would be sufficient for a property in the watershed; that more public forums were needed; that a map of all the affected properties would be helpful; that commute times were already terrible; that it would be a good time to insist that whatever is added be 100% green; that she was confused about the numbers that she had heard ranging from 20 to 60 to 242 units; that low income in Marin for a family of four was \$96,000; that there wasn't a rush and we should be more creative about how to go forward; and stated that she didn't think the Town could legally mandate that people not have cars.

Joseph Odom, Porteous Ave., stated that it was not possible to adopt a negative declaration on something that was amorphous; asked if the sites identified were appropriate for housing; and stated that there was not enough opportunity for green space for children who would live at the site.

Sarah Mulling, Pastori Ave., stated that more time was needed for community input and deliberation; that the mitigations proposed didn't seem realistic to her; and that the Town had the ability to be very creative .

Mayor Maggiore closed the public hearing.

The Council began a discussion of the issues raised and Mayor Maggiore re-opened the public hearing to take comments from Planning Commissioner Lacques.

Peter Lacques, Planning Commissioner, acknowledged the hard work that everyone had put into the project and stated that there had been disagreement along the way. He asked what level of affordable housing was going to be allowed to let the development happen and suggested that it be 40% and advised others not to buy into the philosophy that 20% affordable housing was the level necessary to make it financially feasible. He further stated that the Town would not be able to get enough affordable housing by requiring only 20% from a private contractor and that it was a myth that the Town could only mandate 20%.

Mayor Maggiore closed the public hearing.

Councilmember Bragman stated that it was clear that the comment period needed to be extended; that the required noticing done was to residents within 300 feet, while the project would have a town-wide effect; suggested that the comment period be extended thirty days; that perhaps a Saturday morning workshop to discuss the issue to get more input from the community would be worthwhile; that the State had put the Town in a difficult position by enforcing a stereotype of development on the Town; that a certified housing element was needed but that we shouldn't have to sell our souls to do it; that

foreclosed homes were potential affordable housing sites; recommended a Saturday charrette to get more input; and stated that hiring an affordable housing consultant was a good idea.

Vice Mayor Weinsoff agreed to the extension of the comment period for an additional 30 days; stated that he had drafted a resolution that would have provided for the appointment of an affordable housing expert to assist staff, the planning commission, and the council, but that the Council had opted for an expansion of the Affordable Housing Committee; expressed his support for the charrette idea; and stated that the Town had to build consensus in the community about how to create affordable housing in Fairfax.

Mayor Maggiore noted that the material received from the Planning Commission represented a lot of work on the Commission's part and expressed concern about dragging it on and on by extending the comment period.

Councilmember Tremaine stated that the charrette would be useful to find out what the community would like to see downtown; that there were ways to have a say about what happened downtown; that we needed to look at some type of Redevelopment Agency (RDA) downtown to create a revenue source to help solve the problem; and that once we had an RDA, the Town could partner with the property owner and put forward ideas about what should happen.

M/S, Bragman/Tremaine, Motion to extend the comment period for thirty days to August 20<sup>th</sup>.

AYES: All

Introduction and First Reading of Ordinance No. 736, adopting revisions to Chapter 17 of the Fairfax Town Code to create a Mixed Use Overlay Zone in the Highway Commercial District and to amend the General Plan designation for and rezone parcel # 002-112-13 (6 School Street Plaza) from Limited Commercial to Highway Commercial District

Town Attorney Karpiak advised that the Council continue the consideration of the ordinance until after the comments had been received and the negative declaration addressed.

There was a consensus of the Council to set the date of Saturday, September 27<sup>th</sup> for a discussion of the Mixed Use Overlay with the public.

Public Hearing and Adoption of Resolution No. 2555, A Resolution of The Town Council of The Town of Fairfax Adopting the "Town of Fairfax Flood Mitigation Plan" as an Official Plan, as an Addendum to The Town of Fairfax Local Hazard Mitigation Plan, and as an Appendix to the Update of The Town of Fairfax General Plan Environmental Safety Element

Consultant Paula Schulz presented the staff report and noted that this was the third public hearing on the plan; that previous comments received had been taken back to the Disaster Council; that the written comment period ended with this meeting; and referred to the matrix on page 45 in response to a question from Vice Mayor Weinsoff about the kind of projects planned.

Mayor Maggiore opened the public hearing.

No speakers came forward.

Mayor Maggiore closed the public hearing.

M/S, Weinsoff/Tremaine, Motion to adopt Resolution No. 2555, A Resolution of The Town Council of The Town of Fairfax Adopting the "Town of Fairfax Flood Mitigation Plan" as an Official Plan, as an Addendum to The Town of Fairfax Local Hazard Mitigation Plan, and as an Appendix to the Update of The Town of Fairfax General Plan Environmental Safety Element.

AYES: All

Second Reading and Adoption of Ordinance No. 734, An Ordinance of the Town of Fairfax Amending Chapter 1.12 of the Fairfax Municipal Code to Codify a Nuisance Abatement Procedure

Town Attorney Karpiak presented the staff report.

Mayor Maggiore opened the discussion to the audience.

No speakers came forward.

M/S, Brandborg/Weinsoff, Motion to waive further reading and to read the title only of Ordinance No. 734, An Ordinance of the Town of Fairfax Amending Chapter 1.12 of the Fairfax Municipal Code to Codify a Nuisance Abatement Procedure.

AYES: All

M/S, Tremaine/Weinsoff, Motion to adopt Ordinance No. 734, An Ordinance of the Town of Fairfax Amending Chapter 1.12 of the Fairfax Municipal Code to Codify a Nuisance Abatement Procedure.

AYES: All

Second Reading and Adoption of Ordinance No. 735, an Ordinance of the Town of Fairfax amending Section 2.28.120 of the Fairfax Town Code limiting the term of the Chairperson of the Planning Commission to one year and to create the position of Vice Chairperson and amending Section 2.28.110 to allow for action minutes as a record of meetings

Town Manager Rock presented the staff report.

Mayor Maggiore opened the discussion to the audience.

No speakers came forward.

M/S, Tremaine/Brandborg, Motion to waive further reading of Ordinance No. 735, an Ordinance of the Town of Fairfax amending Section 2.28.120 of the Fairfax Town Code limiting the term of the Chairperson of the Planning Commission to one year and to create the position of Vice Chairperson and amending Section 2.28.110 to allow for action minutes as a record of meetings.

AYES: All

M/S, Tremaine/Weinsoff, Motion to adopt Ordinance No. 735, an Ordinance of the Town of Fairfax amending Section 2.28.120 of the Fairfax Town Code limiting the term of the Chairperson of the Planning Commission to one year and to create the position of Vice Chairperson and amending Section 2.28.110 to allow for action minutes as a record of meetings.

AYES: All

Adoption of Resolution No. 2556, A Resolution of the Town Council of the Town of Fairfax accepting Upper Scenic Road as a Town-maintained road

Public Works Director Wilkie presented the staff report.

Councilmember Brandborg asked that the resolution include language to refer to the financial contributions of the residents.

There was a consensus of the Council to continue the item to amend the language of the resolution.

Mayor Maggiore opened the discussion to the audience.

Frank Egger, Meadow Way, stated that the Town had never accepted a dirt road for maintenance; that it was fine to accept the portion of the road that had been improved, but not the unimproved portion; stated that the Council needed to address the impact of the acceptance of the road; and that the road should be accepted when it met the minimum standards.

Town Manager Rock stated that the Town had committed funds to bring the road up to minimum standards and had already committed the Proposition 1B monies.

Tennis Courts in Fairfax, Report on Status of Creek Rehabilitation

Public Works Director Wilkie presented the staff report. She stated that the Town had received permission from the Ross Valley School District to put in a wall or to extend the bank; that a decision hadn't yet been made to remove a tennis court; that staff would be meeting with the State Office of Emergency Services (OES) the following week to discuss the sites that still needed repair; and that the Town needed to determine whether or not OES would pay for either option.

Town Manager Rock stated that they needed to work with the scope of work that OES would approve and that the project would be brought back to the Town Council for final approval.

Mayor Maggiore opened the discussion to the audience.

Frank Egger, Meadow Way, expressed dismay that the Town would even consider giving up one of the tennis courts and that FEMA should be told that the Town wasn't willing to give up half of a recreational facility.

James Riley, Spruce Rd., encouraged the Town Council to keep the tennis court; stated that a previous plan had been to move the creek bed in the other direction and that he was a civil engineer who had worked on the creek master plan.

#### Discussion of a small Town Mayor's meeting, Maggiore

Mayor Maggiore described a Mayors' conference that she was planning to host in October at the Women's Club to provide an opportunity for mayors of other small towns to meet to discuss topics of mutual interest.

Councilmember Brandborg asked what funds would be used to pay for the conference.

Town Manager Rock explained that there was already Measure K money to use for the upgrade of the Women's Club floor and that there was money in the budget for new chairs.

There was a consensus of the Council to have the Mayor go forward with the conference.

#### Discussion and Consideration of the formation of an Affordable Housing Committee

Mayor Maggiore described the concept of an Affordable Housing Committee to encourage people with expertise in the field to participate in the decisions to be made by the Town and to work with the Affordable Housing Task Force.

There was a consensus of the Council to request that staff draft a resolution to establish an Affordable Housing Advisory Committee.

#### Reports from Town Officials:

Planning and Building Services Director Welsh reported that the Circulation Element of the General Plan was going forward to the Planning Commission.

#### Council reports and comments

Mayor Maggiore reported on a discussion she had with the owners and a potential developer of the Albertsons site.

On motion duly made and carried, the meeting was adjourned at 11:22 p.m.

Respectfully submitted,

Judy Anderson, Town Clerk