

Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, June 4, 2008

The meeting at the Women's Club was preceded by a Closed Session meeting at the Youth Center, 16 Park Road.

Call to Order/Roll Call:

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

STAFF MEMBERS PRESENT: Jim Karpiak, Town Attorney
Ann Welsh, Planning Director
Kathy Wilkie, Public Works Director
Ken Hughes, Chief of Police
Mark Lockaby, Building Official
Judy Anderson, Town Clerk

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

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 made the announcements as listed on the agenda and also announced that the official opening of Center Blvd. would be at 9:00 a.m. before the Festival Parade on Saturday.

Open Time for Public Expression

Jonathan Friedman, representing a non-profit agency, stated that corporations earned an obscene amount of money each year and lied about their profits, that it was distressing and that corporations shouldn't be trusted.

Interview and appointment of candidates for six positions on the Open Space Committee for four-year terms to June 30, 2012

The candidates who were present were interviewed.

M/S, Bragman/Weinsoff, Motion to re-appoint Open Space Committee members Ted Bright, Niccolo Caldararo, Barbara Coler, Ruth Horn and Ryan O'Neil, with direction to the Town Clerk to post a Notice for the vacancy created by the resignation of Pam Meigs.

All: AYES

Interview and appointment of candidate(s) to the Fairfax Youth Commission

No applicants were present and no appointments were made.

Interview and re-appointment of Artist-in-Residence Shoshana Parry for an additional year to June 30, 2008, and request for a co-artist to serve for the same term

Shoshana Parry stated that her husband Sam Parry had helped her with the major projects over the last year and that she wanted him to be her official co-artist. Her husband Sam stated that he was also an artist and that they were excited to work together, that they had great ideas, and announced that the world's largest walk-in kaleidoscope that they had created would be completed soon.

M/S, Brandborg/Weinsoff, Motion to appoint Shoshana and Sam Parry as co-Artists in Residence.

AYES: All

PRESENTATION

Town of Fairfax Fiscal Year 2006/07 Financial Audit Report; Brian Kelly from Caporicci & Larson, Certified Public Accountants

Brian Kelly and Steve Caporicci presented the Audit Report.

Mayor Maggiore clarified that there were two more letters due from the auditors and that the audit would be presented at the next regular meeting for acceptance by the Council.

Mayor Maggiore opened the discussion to the audience and no speakers came forward.

Community Choice Aggregation Presentation by Pacific Gas and Electric; Peter Griffes, Director of Market Design and Analysis

Peter Griffes presented a report on the proposed Community Choice Aggregation (CCA) Plan as a representative of PG&E. He stated that half of the energy provided to customers by PG&E had no carbon content and that his company had determined that the cost of renewable power was more expensive than stated in the Community Choice Aggregation business plan. He further stated that the "opt out" plan proposed wasn't realistic.

Mr. Griffes further stated that he had a lot of experience contracting for renewable energy; showed an illustration indicating that PG&E was on track to meet the State requirement to use 20% renewable energy sources by 2010; and stated that the Marin business plan had a deep green offering that would cost about 20% more than PG&E. He presented an analysis of the CCA business plan and concluded that the cost for wind and solar would be higher than stated; that the cost of renewable power would go up with increased demand; that, over time, Marin Clean Energy would have higher costs than PG&E costs; that a staff would have to be created for CCA that would also increase costs; that the provision that citizens would automatically be in CCA unless they opted out wasn't a workable plan; that all the risks of the CCA hadn't been identified; and that more information was needed.

Josh Townsend, a consultant for PG&E, participated in a discussion with the Town Council on the issues raised. Those issues included: the guaranteed dividend paid to shareholders of PG&E; nuclear power as an unacceptable power source for the community; the opportunities for homegrown power sources; the willingness of the community to pay more for renewable energy; and the reduction of the carbon footprint as only one goal of CCA.

Cameron of Sustainable Fairfax, stated that nuclear and coal power were not options for her and thanked the council for exploring renewable energy.

John Richardson, Pine Drive, stated that he was going to cut the electrical line to PG&E in the

next 12 months; that he could answer technical and financial questions; and asked for permission to do a film that would be distributed on the subject of alternative energy sources.

David Glick, 297 Cascade, expressed his strong support of the CCA; stated that if there had been an underestimate of the cost of renewable energy in the plan, when the 12% dividend paid to stockholders by PG&E was taken into consideration, the cost difference would be a wash; and that it if was difficult to determine the cost of renewables, it was also difficult to determine all power costs. He stated that he didn't want to use nuclear power.

Tony Yudice, Forrest Terrace, applauded the Council for considering alternative sources of power and stated that he would like to start producing power on our own buildings.

Barbara George, Executive Director, Women's Energy Matters, stated that nuclear power was not carbon free and had other issues; that PG&E was embarking on the use of natural gas LMG, which had very high green house emissions, and described the dangers and hazards of transporting and using such energies. She stated that the PG&E presentation was the same one given to the Board of Supervisors the previous day and that PG&E had a playbook telling them how to fight community based efforts to create alternative renewable energies by saying it is too expensive and too risky. She referred to the bankruptcy of PG&E in the past and the dirty kinds of energy they had pursued.

Rebekah Collins, co-founder of Sustainable Fairfax, and founder of Marin CAN (Clean alternative Energy Now) thanked the Council for their support to make the CCA happen; stated that Fairfax was a Town that supported Marin Clean Energy; that we all needed to talk to our friends in other communities in Marin to reach out and make an effort to get support for this important issue, especially in San Rafael and Novato, cities that must join for CCA to succeed; that Sustainable Novato and Sustainable San Rafael would be working on it too; and urged the citizens to stick their necks out and make the CCA happen.

Lou Vaccaro, Olema Rd., stated that he didn't care whether or not there was a CCA; that he had been a senior engineer for PG&E for 30 years; that Fairfax used to get all their power from hydroelectric power; that he was a stockholder with PG&E and received dividends; stated that he took offence to the remark by Mayor Maggiore that she had been ripped off by PG&E for years; that the Council needed to look at all the options; and that there were two sides to every story.

Nathan Johnson, Tamalpais Rd., stated that more and more communities were turning to renewable energy and the cost was going up, but that the rising cost attracted investors and then prices went down. He summarized by saying that, in the shorter term, the price could go up, but it could go down in the long term.

Dawn Weisz, resident of San Anselmo, Marin County Planner working on the CCA project, responded to the presentation by PG&E by explaining how the statistics had been developed, stated that PG&E used a 20 year financing period while CCA used a 30 year financing period which affected the bottom line numbers, and stated that she had information about the other issues raised during the discussion.

Councilmember Bragman questioned the basis for the comparisons made by the PG&E speaker between the PG&E services and the proposed CCA services. He asked for an explanation of the PG&E determination that CCA's cost estimates were too low; whether or not the CCA amortization was based on 30 year financing and the PGE on 20 years which would change the numbers; and noted that PG&E guaranteed a 12% dividend to shareholders while CCA would be a nonprofit without dividends to be paid to shareholders, possibly saving money for ratepayers. Councilmember Bragman stated that the key word was "choice" and that the consumers currently didn't have any choice; that the CCA wasn't going to take away PG&E's business because PG&E's primary business was maintaining the lines; that the time had come to do something; that the people needed to be given a choice; that, if the Council facilitated that choice, people could be

given new options, new directions and new opportunities; and that the choice could involve risks.

Vice Mayor Weinssoff stated that he hoped that the CCA would be successful; that receiving 22% of energy from nuclear power was not acceptable; that even if the cost of energy increased for consumers, that we couldn't continue on the same path; that the focus should be on homegrown opportunities for renewable energy; and that the community was willing to pay more for clean energy. When Vice Mayor Weinssoff questioned the PG&E speaker about the anticipated increase in cost, the speaker responded that a 10 to 15% increase could be expected and that the increased cost could be as much as 40% higher.

Councilmember Tremaine stated that the cost of renewable energy and reducing the carbon footprint were not the only issues, that the community would not accept the use of nuclear power. He stated that he believed that the PG&E spokesmen had put forward the worst case scenario for CCA. He stated that we were talking about financial risk as opposed to public safety risk and the risk of the planet; that we were at risk; that we were changing the climate and that we needed to change, that risk was inherent in change; and that we weren't going to be around in the future to worry about the cost if we didn't take action.

Councilmember Brandborg stated that the cost to the consumer was very important, but that the discussion was just beginning and that there was more exploring to be done. She stated that she would like to receive more information from unbiased sources; that it was a very polarized issue and that they had just received a presentation from PG&E; and stated that Ms. Collins' advice was sound advice and that the CCA wouldn't happen without the support of the larger cities in Marin, no matter what action was taken in Fairfax.

Mayor Maggiore, stated that if we could control how we generate our power, it could be the way we could become independent of monopoly, which was democracy; and that we could start in Fairfax as part of a democratic movement.

Town Attorney Karpiak reported that the CCA ordinance might be ready for adoption in July.

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

CONSENT CALENDAR

Approval of Town Council minutes of April 2, 2008

Financial Report/Check Register

Award of bid for Creek Road Bridge Bank Rehabilitation project

Adoption of Resolution No. 2543, A Resolution of the Town Council of the Town of Fairfax Authorizing Execution of Community Development Block Grant Agreement (Renewal) with the County of Marin

Request to substitute Planning Commissioner Shelby LaMotte for Planning Commissioner Pam Meigs as a member of the Floor Area Ratio Subcommittee

Adoption of Resolution No. 2544, A Resolution of the Town Council of the Town of Fairfax in Support of Representative Woolsey's efforts to Examine the Conduct of Recent Immigration and Customs Enforcement Operations in Our Community and Urging the Cessation of Immigration, Customs Enforcement (ICE) Sweeps in our Community, Bragman

Progress Report on update of General Plan

Jim Garrety, resident of the Canal neighborhood in San Rafael and representative of the Immigrant Rights Alliance, spoke in support of the adoption of Resolution 2544, reported that he had met with other groups, like Canal Community Alliance, who also strongly objected to the recent customs raids in San Rafael, and thanked the Council for their support. He stated that the people of the Canal were the backbone of the community and deserved the Town's support.

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

AYES: All

Appeal of Tree Committee denial of application No. 08-T-35, the removal of a redwood tree at 9-13 Banchero Way

Councilmember Bragman recused himself and left the room because of his membership on the Tree Committee that made the decision being appealed.

Chief Hughes presented the staff report.

Mayor Maggiore opened the public hearing.

Jean Moore, 14 Banchero Way, Board Member of Village West Homeowners Association, stated that they also loved redwood trees; that the roots were trimmed about ten years previous; that the tree was beginning to lean eastward; that it was planted by a homeowner about 30 years previous; that the sidewalk had been redone once because the roots were interfering with pipes; that residents of Banchero Way were very worried about the tree, especially with the storms they had been experiencing, and the arborist recommended removal of the tree. She stated that they were willing to replace the tree.

Councilmember Brandborg referred to the report from the building official about ADA compliance and the claim that there was damage to structures, and questioned the possible liability exposure for the Town if the application were denied.

Building Official Lockaby stated that the path affected was the only pathway to the residences on Banchero Way.

Richard Pedemonte, Tree Committee member, stated that the committee felt it was a nice tree, thought it would take some effort to save the tree at perhaps a comparable cost to removing it; that an arborist would naturally support what the client wanted for their tree; that he had consulted another arborist who provided options for how to save the tree; and suggested that the applicant be asked to do more due diligence before proceeding to remove the tree.

Chris Lang, former member of the Tree Committee, thanked the Committee for their work, stated that past committees had requested reports from soils engineers about trees slated for removal, and further stated that it was important to go through the process.

Mayor Maggiore closed the public hearing

It was clarified that there had been a vote of the Board of the Homeowners Association, but not of the entire membership.

There was a consensus of the Council that more information was needed to determine what physical damage was occurring to property, if there was a danger that the tree might fall, about the impact of the tree on the walkway, and whether or not there was a way to save the tree.

M/S, Tremaine/Weinsoff, Motion to continue the public hearing with a request for more information from the appellants.

Councilmember Brandborg left the meeting at 9:45 p.m.

Presentation of proposed Town of Fairfax Flood Mitigation Plan, Paula Schulz

Paula Schulz, Consultant, presented an overview of the proposed Fairfax Flood Mitigation Plan. She stated that there would be two public hearings on the Plan; that the Plan would help to consolidate documents already in existence; that once the Plan was adopted and approved by FEMA, the Town would be eligible for grants; that the Ross Valley Flood Control District information was incorporated into the Plan as was the Town's hazard mitigation plan; that one of the specifications in the hazard mitigation plan was that the General Plan Advisory Committee would review the hazard mitigation plan aspects that were flood related; that the Disaster Council had been the oversight body for the Plan; that the public comment period would end on June 18th; and that she was hoping for Council approval of the Plan on June 18th.

In response to a question from Councilmember Bragman about the affect of the plan on the flood insurance rates of people in the flood zone, Ms. Schulz explained that there were a lot of criteria in the plan to help reduce flood insurance premiums. She noted, however, that the reductions were incremental and would require a tremendous amount of work on the part of the Town.

In response to a question from Councilmember Bragman about whether or not the program to install floodgates for merchants could be expanded to residences, Ms. Schulz stated that the Town could apply for mitigation of flood hazards on behalf of some residents, but that the project cost had to justify the potential savings and that the benefit/cost ratio would determine the project.

Mayor Maggiore stated that the Disaster Council was scheduled to meet on the next Friday and that a program for residential flood gates could be addressed at that time.

Mayor Maggiore opened the discussion to the public.

Chris Lang, Chamber representative, suggested that the Town enlarge the capacity of the pipe from Town Hall to down near the Marin Town and Country Club and stated that the increase in the pipe capacity would help the merchants on Bolinas Road. He also suggested that the Town explore the idea of daylighting the creek downtown to reduce flooding. He requested, on behalf of the merchants, that engineers' estimates be sought for such a project.

Vice Mayor Weinsoff stated that Flood Zone 9 District should be addressed with Mr. Lang's suggestions and that the increased pipe capacity was already one of their possible funded projects.

Chris Lang, Chamber representative, requested that the Town Council take the request to make the project a priority to the Flood Zone District on behalf of the merchants and citizens.

Tony Yudice, Forrest Terrace, asked for clarification about what pipe was being referred to and asked how the increased capacity would affect water flow downstream and how it would affect private retaining walls.

Ms. Schulz stated that hydrologic studies needed to be completed before any specific pipes or culverts could be included in the plan.

The Council reviewed the agenda at 10:00 p.m. and determined that the agenda could be completed without continuing any items.

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

Mimi Newton, Chair of the Fairfax Open Space Committee (FOSC) expressed her excitement about the Ross property; referred to photos of the property that were displayed; noted that the property bordered Marin County Open Space land; that it was comprised of about 10.9 acres; asked that the Council put it on the list of desired properties for acquisition by the Town; and stated that Mr. Ross had approached the FOSC and the Marin County Open Space about the sale of his property.

Mayor Maggiore opened the discussion to the audience.

Pam Meigs, Chair, Planning Commission, spoke in support of the Town Council endorsing the FOSC's recommendation to make the Ross property a priority for purchase.

Chris Lang, Chamber of Commerce representative, stated that the strategy of the Open Space group in the 80's was to get the property owner to donate the property in exchange for tax breaks and suggested that FOSC use this as one of their strategies too. He reported that Supervisor Brown hadn't heard about the Town's intentions regarding the Wall property and that he needed to be informed for the project to go forward. He also related his experience at the entrance to the Egger Preserve noting that the property was posted that no bicycles were allowed and suggested that FOSC work to avoid the conflicts in the use of open space that had been encountered by the County.

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

AYES: All

Adoption of Resolution No. 2545, A Resolution of the Town Council of the Town of Fairfax in Support of the Withdrawal and Redeployment of United States Troops from Iraq and in Opposition to Expansion of the War to Iran, Bragman/Maggiore

Councilmember Bragman presented the item and stated that it had been placed on the agenda at the request of Congresswoman Woolsey; that the Council had previously passed resolutions against the war; and that the current resolution reiterated that anti-war position and included opposition to the expansion of the war to Iran.

Mayor Maggiore opened the discussion to the public:

David Glick, Cascade Drive, thanked Mayor Maggiore and Councilmember Bragman for bringing the resolution forward, stated that he was proud to be a resident of a town that spoke out against the war, and he read a poem about the horror of war.

Jim Garrety, Canal Neighborhood, told the Council that they served as an example of restoring democracy to the community.

Patricia Murray, Piper Court, stated that U.S. Representative Woolsey had risen more than 200 times to denounce the war and the lies that led to the war; that she had contacted the mayors of the towns and cities in Marin and Sonoma to end the war and end the occupation and to say that we must negotiate with Iran. Ms. Murray read the poem, "The War Prayer" by Mark Twain.

Craig Slater, Scenic Road, Peace and Justice Coalition, stated that the war did affect everyone in Fairfax; that the resolution was very strong; that the justifications for expanding the war into Iran were based on lies told by the government; and that the U.S.

Conference of Mayors would be held soon with consideration of two resolutions regarding elimination of all nuclear weapons and against military action in Iran.

M/S, Maggiore/Bragman, Motion to adopt Resolution No. 2545, A Resolution of the Town Council of the Town of Fairfax in Support of the Withdrawal and Redeployment of United States Troops from Iraq and in Opposition to Expansion of the War to Iran.

Vice Mayor Weinsoff stated that it was his practice not to not vote on matters not directly related to Fairfax, and that he would abstain from the vote on the resolution.

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

Introduction and First Reading of Ordinance No. 735, an Ordinance of the Town of Fairfax amending Section 2.28.120 of the Fairfax Town Code limit 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

Planning Director Welsh presented the staff report.

Mayor Maggiore led a discussion about the proposed ordinance. Town Attorney Karpiak, in response to a question from Councilmember Bragman, clarified that action minutes would be adequate for appeals as long as written findings were made and appropriate resolutions passed for decisions made by the Planning Commission.

Pam Meigs, Planning Commission Chair, stated that the two-year term for the Chair of the Commission limited the opportunities for the other members to serve as Chair.

M/S, Weinsoff/Tremaine, Motion to waive further reading and read the title only of Ordinance No. 735, an Ordinance of the Town of Fairfax amending Section 2.28.120 of the Fairfax Town Code to limit 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, Weinsoff/Tremaine, Motion to introduce Ordinance No. 735, an Ordinance of the Town of Fairfax amending Section 2.28.120 of the Fairfax Town Code to limit 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

Introduction and First Reading 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 (continued from 5-7-08)

Town Attorney Karpiak presented the staff report.

M/S, Tremaine/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 introduce 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

Discussion and consideration of creation of Pedestrian and Bicycle Bump Out on Broadway, Bragman

Councilmember Bragman introduced the topic. He stated that he had been approached by the owner of “The Scoop” about the possibility of a “bump-out” to expand on the use of an abandoned parking space by the stop sign in front of his business on Broadway. Councilmember Bragman further explained that the Bicycle-Pedestrian Advisory Committee (BPAC) had recommended that a bike rack be placed at the same location; that the Scoop owner had offered to pay a portion of the cost to make it into a small seating area; and that the seating area and the bike rack installation could be combined. He suggested that a cost estimate be sought for such a project.

Public Works Director Wilkie stated that she was happy to prepare a drawing; that it needed to be prioritized with other possible projects suggested for downtown; that the merchants would have to be consulted; and that the Town had a bike rack that would be suitable for the location.

There was a consensus of the Council to consider the matter further at a future meeting with more information provided, including a conceptual drawing.

Mayor Maggiore opened the discussion to the public.

Chris Lang, Canyon Road, recommended that the Council proceed with the temporary plan for a bike rack and bollards; stated that a “bulb-out” would take longer and would cost more; and suggested that the temporary installation could be expanded in the future.

M/S, Tremaine/Bragman, Motion to adjourn the meeting in memory of Stan Schriebman to June 18th.

AYES: All

Respectfully submitted, Judy Anderson, Town Clerk