

Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, July 16, 2008

Call to Order/Roll Call:

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

COUNCILMEMBERS ABSENT: David Weinssoff

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

Mayor Maggiore called the meeting to order at 7:40 p.m.

Approval of Agenda and Affidavit of Posting

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

AYES: Bragman, Brandborg, Maggiore, Tremaine
ABSENT: Weinssoff

Announcements

Mayor Maggiore made the announcements as listed on the agenda.

Open Time for Public Expression

Ingrid Weiss, Scenic Rd., Chamber of Commerce, Announced that Kay Ryan, Fairfax resident, had been chosen to be the United States Poet Laureate.

Chris Lang, President, Chamber of Commerce, read a letter from the Chamber about their contributions to the Fairfax Festival, the accomplishments of some of the members, the Chamber's Website at Fairfaxcoc.com, and the upcoming "First Fridays in Fairfax" events. He encouraged people to join the Chamber and thanked the Council for recognizing the top sales tax producers and for hiring Pam Gibson as a consultant for downtown revitalization.

Patrick Troupe, Olema Rd., gave an update of the Good Festival to be sponsored by the Parks and Recreation Commission, stated his desire to connect all the local organizations for the event, and to work to make our town more sustainable. He invited the Town Council and staff to have a table at the Festival, asked the Mayor to speak at the Festival and invited everyone to attend on Saturday, August 9th in the park. He also announced that a "Village of the Future" was to be held on August 10th to make the Town more sustainable.

Peter Waring, Willow Ave., urged the Town to adopt a green building ordinance so that any project in Town would adhere to green building practices.

Niccolo Caldararo, Frustuck, thanked the Town Council for his appointment to the Open Space

Committee and explained that he had been out of the country when the interviews were held.

Interview and appointment of candidates for the Design Review Board to complete an unexpired term to January 31, 2009

The Town Council interviewed candidates Michelle Suzanne Baucke and Mallory Geitheim (candidate Geoff Smick was not present).

M/S, Brandborg/Bragman, Motion to appoint Mallory Geitheim to serve on the Design Review Board to complete an unexpired term to January 31, 2009.

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

Presentation of the Draft Economic Sustainability Plan by Pam Gibson

Pam Gibson presented an overview of the Draft Economic Sustainability Plan. She described five economic development goals and strategies. The goals presented were: (1) Assist and promote business retention and expansion so existing businesses could be successful and remain in the community; (2) Target and attract new businesses that would complement those that were already in Fairfax and that were compatible with "community character;" (3) Enhance the image of Fairfax as "business friendly;" (4) Support and pursue economic enterprises that maintained or improved the environment; and (5) Investigate the feasibility of forming a Redevelopment Agency to sustain the economy in the downtown core.

Mayor Maggiore opened the discussion to the audience.

Michael Mackintosh, Pastori Ave., recommended that the eminent domain feature of any proposed Redevelopment Agency (RDA) be removed.

In response to a question from Charles Kuhn, Town Attorney Karpiak explained that eminent domain was the ability of government to take property for commercial purposes.

Chris Lang, Chamber of Commerce President, thanked the Town Council for hiring Pamela Gibson and stated that the Chamber was looking forward to working with the town on the implementation of some of her recommendations.

Ingrid Weiss, Chamber of Commerce Executive Director, stated that "eminent domain" would be deleted from any RDA proposed for Fairfax.

Niccolo Caldararo, Frustuck Ave., stated that in the 60' and 70's, he had worked to oppose RDA's because they destroyed small businesses and produced cookie cutter towns; that he didn't understand why businesses expected the Town to bail them out; and suggested the formation of a business district to allow businesses to tax themselves to pay for improvements and assistance. He further stated that the business community had the responsibility to improve their own businesses; that more events held in Town increased liability exposure and the need for police; and urged the Council to focus attention on the needs of the residents.

Mallory Geitheim expressed concern about goals two and three that could turn Fairfax into Mill Valley or Sausalito; stated that she supported the sustainability idea; that she didn't think it was a good idea to have realtors decide who would occupy buildings; urged the Council to encourage businesses but not to invest in the businesses; and asked that no more parking be taken away downtown.

Pamela Gibson, Consultant, explained that the ideas presented had come from the 45 businesses who had given input; that nobody wanted to be Carmel or have a cookie cutter anything; and that

RDA's were separate entities. She further explained that RDA's were in a defined area, usually a downtown business area; that the taxes didn't go up except for those in the defined area; that the revenue could be used for flood control or other purposes; that the laws governing RDA's had changed; and that there were a lot of misconceptions about RDA's.

Town Manager Rock clarified that Redevelopment funding did not take away from the General Fund.

Chris Lang, Chamber President, asked to clarify the misconception and stated that the merchants were not going to the Town asking for funding but were asking to work together with the Town to have a healthy and prosperous downtown.

Mayor Maggiore thanked Ms. Gibson for her presentation and the report and noted that the plan would be on a future agenda for adoption.

Consent Calendar

Adoption of Resolution No. 2561, A Resolution of The Town Council of the Town of Fairfax Authorizing the Director of Public Works to Implement the Non-Motorized Transportation Pilot Program (NTPP)

Authorization to issue a Request for Proposals for Non-motorized Transportation Pilot Program (NTPP) Fairfax-San Rafael Bicycle Connector Study

Authorization to issue a Request for Proposals for a NTPP Parkade Circulation Study

Authorization to Advertise and Solicit Construction Bids for 300 Olema Road – Fairfax Creek Restoration Project

Approval of letter in opposition to AB 2716 which would expand employer's costs and liability by requiring that employers provide paid sick leave to all employees regardless of whether they are part-time, temporary, or seasonal (continued)

Adoption of Resolution No. 2562, A Resolution of The Town Council of The Town of Fairfax Urging The State of California to Repeal the Local Preemption Ban which Prohibits Local Jurisdictions from Banning Pesticides throughout their City and County Limits, Bragman

M/S, Tremaine/Bragman, Motion to approve the Consent Calendar with the continuation of the item regarding a letter in opposition to AB 2716 to allow time to get more information on the legislation and to compose a better letter.

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

Mayor Maggiore adjourned the meeting for a break from 8:58 to 9:08 p.m.

Request for Council approval of staff recommendation to use all the excess monies from the refinancing of the 2000 Measure K Bonds for future Measure K Projects

Town Manager Rock presented the staff report. He stated that interest rates had gone down to make it attractive to refinance the bonds to take advantage of lower interest rates. He explained that Scenario A described keeping the change in funds in the town to accomplish more Measure K projects and that Scenario B reflected passing the gain to the individual taxpayers. He stated that staff recommended Alternative A which would refinance the bonds and direct the excess monies to fund outstanding Measure K projects while repaying slightly less than the previous

obligation. He explained that this would provide an opportunity to demonstrate the Town's resourcefulness, provide more visible improvements, and improve the Town's infrastructure.

Councilmember Tremaine summarized the question by asking whether the Town should take the \$165,000 to use toward Measure K projects or give approximately \$4/year back to the taxpayers.

M/S, Tremaine/Bragman, Motion to approve Scenario A as recommended by staff.

AYES: Bragman, Brandborg, Maggiore, Tremaine

ABSENT: Weinsoff

Public Hearing and discussion with the Town Council of the Town of Fairfax on 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)

Public Hearing and discussion with the Town Council on 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

Mayor Maggiore introduced the topic and announced that there would be a workshop on September 27th to discuss the Mixed Use Overlay and that the matter was on the agenda for discussion only, not for adoption.

Planning and Building Services Director Welsh presented the staff report and stated that the report was designed to address misconceptions and misinformation about the subject. Her report included a Power Point presentation.

Councilmember Tremaine stated that the Mixed Use Overlay document that was forwarded to the Town Council from the Planning Commission had some open questions and that the public was being asked to help answer those questions. He explained that 20-25 affordable units per acre was what the State wanted; that the main questions were the 20% affordable housing requirement and the third story possible with the Mixed Use Overlay zone; that the Town had to do something; that there was grant money that the Town wasn't eligible for without an approved housing element and that the State could also restrict future funding, namely for emergencies. He stated that the State had originally wanted the Town to apply the Mixed Use Overlay to the entire downtown; that the Town Council was going to have tough decisions to make; that the special Saturday meeting planned was coming up; that he hoped it wouldn't become an argument; that the areas of disagreement could be worked out; that he would like to create 100% affordable housing, not market rate housing, but that the Town needed a certified housing element and was looking for input from the public.

Mayor Maggiore stated that she and Councilmember Tremaine were members of an affordable housing committee; that she supported affordable housing but wanted something that the community could live with; that they needed to continue to have diversity in the community; and stated that the culmination of the discussion would be at a future meeting.

Councilmember Bragman stated that the plan before them wouldn't create much affordable housing, only 20%; that it wouldn't meet the affordable housing mandate; that housing statistics showed that Fairfax had the most affordable housing in Marin County; that the State was telling us that we had to build more affordable housing when 983 of the existing 3306 units were considered low or very low income households; that the current configuration of housing already included low income housing and affordability; and that the largest single entity for housing stock was the unincorporated area of the county where less than 20% of the units were low income.

Planning Director Welsh explained different ways to manipulate the zoning to decrease the

density and stated that the minimum of 20% affordable housing would make a project eligible for the mixed use overlay.

Councilmember Tremaine stated that the spirit of the housing element passed by the Town Council was to create only affordable housing in the downtown.

Mayor Maggiore opened the discussion to the public:

Barbara Coler, referred to a letter she had submitted regarding her concerns about the Mixed Use Overlay zone and presented the main points of the letter. She stated that she wasn't clear on the purpose of the ordinance; that there should be a minimum of 50% affordable housing as requested by California Department of Housing; that she wasn't clear whether or not the requirements spelled out in a letter to the Town from California Housing had been met; that the California Environmental Quality Act (CEQA) document didn't really address the traffic impact nor did it account for greenhouse gas production; stated that she had prepared and reviewed many CEQA documents and, in her opinion, the Mixed Use Overlay shouldn't use a Negative Declaration; and urged the Town Council to look at it holistically and to take a little more time.

Patty Rosenfeld, Live Oak, stated that 50% of new development was supposed to be commercial; that we already had vacancies in town and a chain store ordinance; that we shouldn't be building boutique businesses in this economy; that it wasn't a viable plan; and expressed concern about the traffic and our existing businesses.

Planning Director Welsh clarified that the Central Highway zone didn't prohibit franchises but that the Central Commercial Zone did.

Bruce Ackerman, Valley Rd., member of the General Plan Advisory Committee, stated that the people who had worked on the Mixed Use Overlay had worked very hard on it; that 100% affordable housing probably wasn't put forward because the market made it difficult to create affordable housing and, if the limit was set too high, projects wouldn't be financially viable.

Planning Director Welsh noted that other towns required 100% affordable housing but that they were for subsidized projects.

Chris Lang, Canyon Rd., stated that the Mixed Use Overlay Zone would allow housing in the commercial zone and the State was demanding that we create more dwelling units; suggested that all the commercial areas be rezoned with the current height restriction kept in place and that Marin Town and Country Club be eligible for the Mixed Use zone. He further stated that any increased density should be 100% affordable; that adding housing to the current site of the IGA grocery store would be stifling to businesses in an already traffic jammed area; that he was not in favor of height bonuses; that the parking lot at Albertson's was already inadequate; that affordable housing shouldn't be built there; and that the Negative Declaration was not enough.

Niccolo Caldararo, Frustuck Ave., referred to a study he had read about affordable housing; stated that there were no punitive measures imposed by the State, that no funds for towns had been withheld; that towns had been sued by private organizations; that no municipalities had lost funding for non-compliance with housing elements; and that it had been determined that the affordable housing requirements were unfunded mandates that could not be enforced. He further stated that Housing Elements were designed to make towns grow and to make it so that realtors and developers could make money; and that 40% of California towns were in violation of the State's mandated housing elements.

Cindy Ross, Lansdale Ave., expressed confusion about the issue; stated that she wasn't opposed to revitalization but didn't get the idea of a mitigated negative declaration; and that she lived in the area proposed for the mixed use and had concerns about traffic, safety and three story buildings.

Jane Richardson-Mack, Open Space Committee, spoke as a professional artist-designer and stated that three-story buildings at the entrance to our town would not be attractive and that we needed to provide affordable housing but that the old Albertson's site was the wrong place for it.

Mimi Newton, asked for 5 minutes because she represented a group; stated that whatever was adopted had to be in accordance with the Open Space element of the General Plan that included ridgeline scenic corridors, stream courses, and visually distinctive areas and gateways. She used the Open Space map to describe her objections to the compromise to the visually distinctive areas and gateways and noted that there were visually distinctive areas throughout the identified parcels and that development would block the views. She stated that the flood prone areas and undeveloped areas should be used for flood zones and not be developed.

Trudy Totty, Manor Road, stated that she had lived in a mixed use development; that it had been completely alive because of the mix of housing and shops; that it was hard for her to imagine a 35 ft. building at the Albertson's site; that she didn't like the State dictating to us; and urged the Council to use the core values that were posted in the meeting room when making their decision.

Sarah, Pastori Ave., stated that growth for growth's sake was the heart of the cancer cell, that an Environmental Impact Report (EIR) was essential to the values supported by the community; that the mitigation proposed was too weak; urged the Council to use common sense; stated that the steelhead population was decreasing; that other species in and near the creek were suffering; that property values were plummeting; that she would like to see low income defined; that if affordable housing were to be approved that it should be 100% affordable; and that she had lived in other places and had seen the impact of hillsides vanishing and land covered with buildings.

Joseph, Porteous Ave., stated that a mitigated negative declaration for dense housing in a flood plain was not adequate and that an EIR was needed; that an EIR would be expensive but would avoid future lawsuits; that Fairfax and Sausalito were the two towns in Marin that didn't have certified housing plans; and asked for an explanation of how the other towns had complied,

Valeri Hood, Dominga Ave., stated that she had watched a film from the Fire Dept. about a potential firestorm that showed that evacuation in an emergency would already be difficult without adding to the population and the traffic; that a dense project at the Albertson's site didn't make sense; recommended that the Council join with other towns and object to the housing requirements set by the Association of Bay Area Governments; and used the analogy of the success of the "Stop the Spray" movement to illustrate that it was possible to join together with other towns and change the mandated housing requirements.

Mayor Maggiore stated that the public hearing was to hear from the citizens and that the Council was listening.

Councilmember Tremaine thanked everyone for the tenor of the discussion and stated that all were very respectful.

Councilmember Bragman asked if the Town Attorney could advise the Council on which municipalities had passed their housing elements and whether or not any funds had been withheld by the State for lack of compliance.

Councilmember Brandborg stated that the creation of affordable housing was the goal and that there were barriers like the density required and the environmental review, but we should do more than fight the numbers. She further stated that we wanted to keep diversity in the community.

Mayor Maggiore adjourned the meeting for a break from 10:28 to 10:34 p.m.

Discussion and Consideration of designating \$29,966.04 from the sale of Town property in 2004 to be transferred from the General Fund to the Open Space Fund (73-673-931) for

acquisition of future open space, Bragman

Councilmember Bragman presented the item. He reported that the proceeds of the sale of town property to Denise Dunn in 2004 had been used as seed money for the purchase of the Melvin property; that the seed money had been repaid to the town; and that those proceeds, by policy, should be used for the purchase of open space.

Mimi Newton, Chair of the Open Space Committee (OSC), stated that she was strongly in support of the proposal; that the OSC had put in a lot of effort to secure the money to pay the Town back for the purchase of the Melvin property; and the money would provide a nice nest egg for the OSC.

Ryan O'Neil, Original member of OSC, stated that the OSC had met the challenge to pay back the money for the purchase of the Melvin property; that Open space was a value of the community; and that the money would help OSC make more money.

Frank Egger, Meadow Way, clarified that the land that was sold in 2004 was not open space; that the owner of the Dunn property had inadvertently built structures on Town land and that land had been sold to the property owner; that the Town hadn't sold any other open space; and that it would be good to put the funds into the OSC.

Jane Richardson-Mack, OSC, asked the Council to let OSC have the money to lend legitimacy to their efforts and stated that they had a lot of energy and dedication going forward.

Councilmember Bragman offered to draft a resolution for the transfer of the funds.

Reports From Town Officials

Town Manager Rock reported on the budget process and the meeting dates for the hearings. There was a consensus of the Council to have a second meeting in August on the 20th for a budget hearing and to adopt the budget at the September 3rd meeting.

Council Reports and Comments

Councilmember Tremaine reported that there was a meeting scheduled for the following Friday at 3:30 p.m. of the JPA Oversight Committee.

Councilmember Bragman requested that items on the Council agenda be attributed to someone. After a brief discussion, it was the consensus of the Council to direct staff to place Council names on the appropriate agenda items.

Mayor Maggiore reported that she was not having success in putting forward the Fairfax position on the Sir Francis Drake project near Samuel Taylor Park and was still trying to stop the removal of the redwood trees.

Mayor Maggiore reported that she and Councilmember Tremaine had met with the Affordable Housing Collaborative.

On motion duly made and carried, the meeting was adjourned at 11:05 p.m.

Respectfully submitted,

Judy Anderson, Town Clerk