

Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, September 3, 2008

The Town Council met in Closed Session with legal counsel at 6:30 p.m. at the Fairfax Youth Center, 16 Park Road, regarding two potential cases for initiation of litigation and for a conference with Labor Negotiator Rock regarding SEIU employees and the Police Officers Association employees.

Call to Order/Roll Call:

COUNCILMEMBERS 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
Ken Hughes, Chief of Police
Mark Lockaby, Building Official
Laurie Ireland Ashley, Interim Finance Director
Ernie Jung, Senior Accountant
Roger Meagor, Ross Valley Fire Chief
Judy Anderson, Town Clerk

Mayor Maggiore called the meeting to order at 7:30 p.m.

Approval of Agenda and Affidavit of Posting

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

AYES: Bragman, Brandborg, Maggiore, Tremaine, Weinsoff

Announcement of Closed Session Action

Mayor Maggiore announced that information had been received and direction given to legal counsel and staff.

Announcements

Mayor Maggiore made the announcements as listed on the agenda and also announced that a magnet was on the audience chairs and that Firestorm DVD's would be distributed at the Town picnic. Ingrid Weiss, Executive Director of the Chamber of Commerce, announced that there was a Chamber mixer at 6:30 p.m. at Fairfax Lumber on September 11th, and also invited everyone to an upcoming Spirit of Marin luncheon.

Presentation by Elaine Lyford-Nojima of the Marin Environmental Housing Collaborative

regarding the services that the Collaborative provides

Elaine Lyford-Nojima, Staff coordinator for Marin Environmental Housing Collaborative, (MEHC), along with Marge Macris, described their organization and how it had evolved as an organization to develop a vision for the future of Marin County that would include creating environmentally friendly affordable housing. She stated that they offered themselves as a resource to the community; that they had been involved in providing comments for the Marin County General Plan, especially the Housing Element; that they did not have an agenda for Fairfax or for any other community; but that they were in the process of having conversations with Fairfax and other communities.

Marge Macris, one of the co-chairs of the organization, stated that she had been active with the Sierra Club, that she was the former County Planning Director and a former resident of Fairfax. She summarized some of the things they had learned about Fairfax in regard to affordable housing; expressed an interest in providing support to the town for additional economic development, for the possible re-use of some of the commercial sites in Fairfax; noted that there was concern about the need for environmental review and the density and height of any potential development; that they had been successful in getting funding for Housing elements; and offered to help the Town prepare for the workshop scheduled for Saturday, September 27th regarding the proposed Mixed Use Overlay Zone.

Mayor Maggiore opened the discussion to the public.

Nathan Johnson, Staffer for Greenbelt Alliance, resident of Fairfax and homeowner for 8 years, Marin native, stated his background was in environmental protection, that he had been working on the lack of affordable housing in Marin, and that he would like to work with the Council and the community on the vision to make the town a better version of itself.

Yvette Wakefield, Main Ct., stated that MEHC might be able to help the Town and that she was very interested in the issue but was very concerned about affordable housing in a commercial area which was not a healthy environment for housing.

Mark Bell, Dominga Ave., stated that he had suggested at the last meeting that the Town disassociate with ABAG because of their increasing calls for new construction. He further stated that MEHC sounded much more realistic than ABAG and that it would be money better spent to give it to MEHC rather than ABAG.

Councilmember Bragman asked for addresses of completed affordable housing projects that the Council could visit.

Vice Mayor Weinsoff asked the representatives of MEHC if they could outline the steps that would have to be undertaken to create affordable housing.

Councilmember Brandborg suggested that it would be helpful to have any roadmap/guide that MEHC could provide before the Saturday meeting on the Mixed Use Overlay Zone that was planned for September 27th.

Open Time for Public Expression

Rose Taber, Hillside Drive, stated that Councilmember Bragman had brought forward the value of civility at Council meetings the previous year and that a standard had been adopted; that Mayor Maggiore continued to be rude to speakers; that she was still waiting for an apology from the Mayor for being called a liar; that she expected to be treated with respect by the Council; and she submitted some questions about the budget to the staff.

Mayor Maggiore admitted to taking down a poster two years previous and stated that she had offered to apologize to the citizen who had put up the poster but that the person did not attend the following meeting. She further stated that she didn't remember calling Ms. Taber a liar.

Mayor Maggiore opened the discussion to the public.

Mark Bell, Dominga Ave., stated that the Marin Municipal Water District (MMWD) had scheduled a meeting for the following night to get permission to use pesticides to spray Scotch broom on the watershed.

Vice Mayor Weinsoff assured Mr. Bell that he would be attending the MMWD meeting as well and that he would report back to the Town Council on the meeting.

Jennifer Horn, Pastori Avenue, asked about the number of units needed to meet the affordable housing mandate for Fairfax; asked if the Council had adopted a program to make it easier to legalize second units; and asked whether or not the Council had considered a Housing Trust.

Councilmember Brandborg stated that most affordable housing wasn't in private ownership, but was a public collaborative.

Yvette Wakefield, Main Court, stated that she was glad that the music at the Farmers Market had been toned down; that music downtown disturbed her from the Festival and the Town picnic; and asked that the Town bus stops be made "no smoking" and maybe "no spitting" zones?

Interview and appointment of candidate(s) to the Affordable Housing Advisory Committee

Vice Mayor Weinsoff referred to the original resolution wherein members of the Advisory Committee were to be members of the public with specific expertise in affordable housing and suggested that the applications submitted by both Yvette Wakefield and Lito Brindle be considered for other committees.

Town Manager Rock suggested that both applicants complete new applications for the General Plan Advisory Committee or another Town Committee.

Council discussed the issue. Councilmember Bragman stated that it was his understanding that it was going to be a citizens committee and that he didn't think interested residents should be disqualified. Vice Mayor Weinsoff stated that it required a specialized area of expertise. Councilmember Tremaine stated that the resolution used to establish the committee limited membership to five members and that the intent was to tap into expertise in the community. He noted that members of the public would be

able to attend and participate. Mayor Maggione stated that the Council was looking for expert help. Councilmember Brandborg noted that there was a third candidate with the requisite expertise and suggested that he be interviewed.

Tony Gardner, applicant for the Affordable Housing Advisory Committee, stated that he worked in the field of ending homelessness; that he was interested in the appointment because he could use his skills and knowledge to help the community; that affordable housing was needed for homeless people; and that some of his skills were applicable.

M/S, Weinsoff/Bragman, Motion to nominate Tony Gardner to serve on the committee.

AYES: All

Interview and appointment of candidate(s) for Youth Member of the Parks and Recreation Commission for a two-year term

Ivy Meissner, applicant, stated that she had lived in Fairfax for 15 years and wanted to follow in her sister's footsteps to serve as the Youth Commissioner on the Parks and Recreation Commission.

Councilmember Brandborg stated that she was impressed with her wish to create multi-generational events and that the event on the previous weekend had been successful partly because of Ms. Meissner's involvement.

M/S, Tremaine/Weinsoff, Motion to appoint Ivy Meissner as Youth Commissioner on the Parks and Recreation Commission for a two-year term.

AYES: All

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

Shannon Meagher, applicant for the Fairfax Youth Commission, stated that she enjoyed giving back to the community and that she wanted to create more events for teens in the community.

Mayor Maggione noted that Ms. Meagher already attended events and helped out.

M/S, Brandborg/Tremaine, Motion to appoint Shannon Meagher to the Fairfax Youth Commission.

AYES: All

CONSENT CALENDAR

Acceptance of July 2008 Financial Report/Check Register

Approval of Resolution No. 2572, a Resolution of the Town Council of the Town of Fairfax establishing a Limited Term Management Analyst position with job specifications and salary range

Approval of Resolution No. 2573, a Resolution of the Town Council of the Town of Fairfax Reclassifying the Lead Worker position to a Senior Maintenance Worker and approving job specifications and salary range

Adoption of Resolution No. 2574, a Resolution of the Town Council of the Town of Fairfax making certain findings and determinations in compliance with Section XIII B of the California Constitution (Gann Initiative) and Setting the Appropriations limit for the Fiscal Year 2008/09

Adoption of Resolution No. 2575, a Resolution of the Town Council of the Town of Fairfax In Support of Proposition 2, the California Prevention of Farm Animal Cruelty Act, Bragman/Weinsoff

Adoption of Resolution No. 2576, a Resolution of the Town Council of the Town of Fairfax approving an Amendment to the Agreement between the Town of Fairfax and the Fairfax Police Officer's Association

Proclamation designating the month of September 2008 as Prostate Cancer Awareness Month in the Town of Fairfax, Maggiore

Adoption of Resolution No. 2577, a Resolution of the Town Council of the Town of Fairfax Authorizing Temporary Closure of a Portion of Glen Drive for a Bike Race Fund Raiser on Saturday, September 27th from 7 a.m. to 5 p.m.

Mayor Maggiore opened the discussion of the Consent Calendar to the public.

Craig Slater, 20-year resident, member of YES on Prop 2 Campaign, member of Peace & Justice Coalition, thanked the Council for supporting Proposition 2 to prevent cruelty to millions of animals, and encouraged everyone to vote for the legislation and to get involved in the campaign.

Rose Taber, Rainbow Fabrics, asked to discuss the proposed Management Analyst position; noted that Measure F funds were running out; and asked if the position was really needed.

A Prostrate Cancer survivor spoke and stated that he had been an advocate for more awareness of prostrate cancer; that September was Prostrate Cancer Awareness Month; that a simple blood test could indicate prostrate cancer by measuring psa levels; and encouraged all men to find out their psa level starting at age 49 or 50.

Councilmember Brandborg asked to remove two items from the Consent Calendar, the approval of the check register and the item approving the Management Analyst position.

M/S, Tremaine/Bragman, Motion to approve the Consent Calendar with the exception of Item 6 regarding the Management Analyst position to be discussed as a regular item and with Councilmember Brandborg's vote against the approval of the check register.

AYES: All

NOES: Brandborg on the approval of the check register only

PUBLIC HEARINGS

Continued consideration of Appeal of the Tree Committee's denial of a request to remove an 80 foot tall redwood tree that is 90 inches in circumference; between 9 and 13 Banchero Way; Permit # 08-T-35 Assessor's Parcel No. 174-141-53; Planned Development PDD District; Village West Homeowner's Association, applicants/owners (continued from June 4, 2008 and August 6, 2008)

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

Chief of Police Hughes presented the staff report.

Chuck Silvera, Vice President of the Village West Homeowners Association, provided reports from arborists and offered to plant a replacement tree; provided photos to show what the tree was doing to the surroundings; stated that the residents loved the trees but that someone had planted the tree without advance planning; that it had cost over \$100,000 to fix the foundation damage from another tree in the complex; that they were asking for permission to remove the tree; stated that there were 68 residences in the complex with owners trying to keep up the value of their homes; that the reports required had been done at great expense to the Association; and asked that they be allowed to remove the tree.

Gerald Etchingam, owner of property on June Court bordering the property with the tree; stated that arborist Ray Moritz had found that the tree was very healthy and provided benefits to the community; that the tree predated the development as evidenced by the circular walkway around the tree; that there were alternatives to removing the tree; that there was a pathway behind the houses and from the garages; and that the tree had nothing to do with the flooding in the area, that it was the creek that caused the flooding.

Mark Bell, Dominga, asked how long it took for a redwood tree to get to be 80 feet tall.

Vincent D'Amico, Village West resident, stated that the tree was not there when the development happened in 1972; that it was pulling up the sidewalk; that seniors near the tree were having trouble walking there; that if an owner on June Court wanted to accept the liability for the trip hazard from the tree, that would be fine; that the tree was rising and was pulling up the electrical and the irrigation that had already been replaced once; that they didn't have rubber sidewalks in Village West; and suggest that the Council walk the area to see if they would like their parents or children to walk on it.

Building Official Lockaby responded to a statement made that there were alternate routes and noted that there were alternate routes but not any publicly accessible alternate routes.

Councilmember Brandborg stated that Fairfax people loved to plant trees but didn't always plant them wisely; that she used to be on the tree committee; asked about the Town's liability if the permit to remove the tree were to be denied; stated that there was a legitimate concern about the tree roots going into the sewer; and suggested that the appellant be allowed to remove the tree with the agreement to have them plant another tree.

Town Attorney Karpiak stated that the Council would have to make the appropriate findings that would eliminate any liability if they denied the appeal

Councilmember Tremaine stated that it was a beautiful healthy tree but that it was planted in the wrong place; that it would have to be removed at some point in the future; that it was too close to the units; and that the Council had no choice but to allow them to remove it.

Mayor Maggiore stated that the Tree Committee had been formed to protect trees like the one in question; that she didn't know a better arborist than Ray Moritz; that it was a gorgeous tree; that she thought the appellant should try the suggested mitigation measures; that she wanted to save the tree; that she didn't want to go against the Tree Committee; and that she was speaking for the tree and did not want to remove the tree.

Councilmember Brandborg clarified that the Tree Committee had been formed to create a public process for tree trimming or tree removal and that the members had been very preservationist.

Vice Mayor Weinsoff stated that he would have gone with Moritz's opinion, but that the tree's roots had already been trimmed; that the tree was leaning and that he was concerned that the tree could fall; and that there should be substantial plantings to replace the tree.

M/S, Brandborg/Tremaine, Motion to grant the appeal to allow the removal of the tree between 9 and 13 Banchero Way with the planting to go through the Town regarding the choice of the tree.

Vice Mayor Weinsoff suggested a friendly amendment to add a condition to replace the tree with five trees elsewhere on the property.

Councilmember Brandborg accepted the friendly amendment.

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

Mayor Maggiore adjourned the meeting for a break from 8:58 to 9:10 p.m.

Adoption of Resolution No. 2578, A Resolution of the Town Council of the Town of Fairfax adopting the Final Budget of the Town of Fairfax for the Fiscal Year July 1, 2008 through June 30, 2009, providing for the appropriations and expenditures of all sums set forth in said budget and repealing all resolutions in conflict herewith

Town Manager Rock presented the staff report. He explained the Management Analyst position, its funding and functions. He stated that the potential grant income from the position was not included in the budget; that it was vital to continue the FEMA reimbursement efforts for 5 projects; that the position was partly in response to the recommendation by the auditor to give more staff support to the Finance function; that the Management Analyst would also assist the Town Manager in the preparation of the budget; and that the position was recommended for a limited term because Measure F funding would expire June 30, 2010 and so a permanent and long term funding source was not yet guaranteed for the position.

Councilmember Brandborg stated that when Measure "F" was put before the voters, an administrative assistant position had been eliminated and a police officer position not funded; that, in the spirit of Measure F, the Town shouldn't be adding a position; that Fairfax had never laid anyone off so that the position was likely to become permanent; and that she didn't think that the position could be justified.

Mayor Maggiore stated that help was essential for the finance department according to the auditor; that the Town Manager shouldn't be the main person preparing the budget; and that Measure "F" had allowed the Council to do some things and explore some things.

Councilmember Brandborg stated that the manager usually did prepare the budget with the help of the Finance Department; that the auditor had stated that the finance person needed help, not the department; that she opposed the establishment of a position that wouldn't go away with a salary that was higher than it should be and higher than existing positions; and that, if it was a finance problem, why wasn't a finance person being considered.

In response to questions from the Council, Town Manager Rock clarified that the proposed Management Analyst position would be charged at 25% to Public Works for grants and FEMA work; 50% to Finance; and 25% to the Town Manager's budget.

Councilmember Bragman suggested that the Council compromise and authorize the position for one year and noted that the finance department had been restructured.

Councilmember Tremaine stated that the auditor had been very clear about the deficiencies in the Finance Department that the Town had to address; that this position would help finance address some of those issues; that the position would also help with grants and with the preparation of the budget; and that he supported the position.

Vice Mayor Weinsoff suggested that the Council authorize the job for one year to allow time to resolve the remaining FEMA issues and then evaluate the position going forward.

Mayor Maggiore opened the discussion to the public.

Rose Taber, Rainbow Fabrics owner, stated that 84% of the Town's budget was spent on Personnel costs; that former Town Manager Kelly had been given more money to do the FEMA reimbursement work; that now that the Town had hired a real finance person, the need for so much help should diminish; that the Town Manager had always worked on the budget; asked if the Town could really afford this position without passing another measure; and asked where the match money for potential grants would come from.

M/S, Tremaine/Maggiore, Motion to approve the staff recommendation for the Management Analyst position.

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

M/S, Bragman/Weinsoff, Motion to approve the staff recommendation for the Management Analyst position with a one-year term to September 30 2009.

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

Town Manager Rock presented an overview of the proposed budget. He noted that the purchase of new holiday banners were included in the budget. Mayor Maggiore stated that she would like to have the Design Review Board be involved in the selection of the banners.

In response to a question from Councilmember Tremaine, Town Manager Rock reported that \$158,000 was in a CD earning interest from the refinancing of the Measure K Bonds and that Public Works Director Wilkie was going to discuss the disposition of the additional Measure K money with the Measure K Oversight Committee.

In response to a question from Councilmember Bragman, Town Manager Rock reported on the status of the State budget and noted that the Town had not received any gas tax funds since April.

Vice Mayor Weinsoff referred to frustration he had expressed at the last meeting about the loss of parking in front of the five properties on Sir Francis Drake due to the installation of the new sidewalk; reported that he had gone out to the site with Public Works Director Wilkie and had determined that there was no remedy for those property owners; and expressed hope that something could still be done for those people, but stated that he was dropping that concern for the time being.

Mark Bell, Dominga Ave., stated that the Town shouldn't associate with an organization like ABAG (Association of Bay Area Governments) because they didn't share our concerns about the environment and because of their insistence on new units as the only way to provide affordable housing. He stated that some existing units should be counted as affordable housing and that the Town shouldn't do business with ABAG.

Planning and Building Services Director Welsh stated that there was a provision to upgrade substandard units in Fairfax to count toward our affordable housing allotment.

Rose Taber, Rainbow Fabrics, asked if the sidewalks downtown were being addressed in the budget.

Public Works Director Wilkie stated that it was part of Measure K funding listed under infrastructure on Page 92-B of the budget and noted that merchants on Broadway had been requesting sidewalk improvements too.

Town Manager Rock stated that \$125,000 had been allocated from Measure K for Bolinas Road and the downtown area.

M/S, Tremaine/Weinsoff, Motion to adopt Resolution No. 2578, A Resolution of the Town Council of the Town of Fairfax adopting the Final Budget of the Town of Fairfax for the Fiscal Year July 1, 2008 through June 30, 2009, providing for the appropriations and expenditures of all sums set forth in said budget and repealing all resolutions in conflict herewith.

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

Adoption of Resolution No. 2579, A Resolution of the Town Council of the Town of Fairfax Awarding Bid for the Fairfax Creek Channel Reconstruction Project (300 Olema)

Public Works Director Wilkie presented the staff report. She stated that only one bid was received, that it was a difficult project, and that she was requesting approval of the project to move forward between the current date and October 14th.

Mayor Maggiore opened the discussion to the public but no speakers came forward.

M/S, Brandborg/Bragman, Motion to adopt Resolution No. 2579, A Resolution of the Town Council of the Town of Fairfax Awarding Bid for the Fairfax Creek Channel Reconstruction Project (300 Olema).

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

Adoption of Resolution No. 2580, A Resolution of the Town Council of the Town of Fairfax Awarding Bid for the Measure K Phase II and Proposition 1B Street Resurfacing Projects

Public Works Director Wilkie presented the staff report.

She stated that Maggiora and Ghilotti was the lowest qualified bidder; that Upper Scenic was a portion of the project but would not go forward without contributions from the neighbors; that those contributions were currently being solicited; and that a drainage plan was part of that project.

Mayor Maggiore opened the discussion to the public but no speakers came forward.

M/S, Weinsoff/Brandborg, Motion to adopt Resolution No. 2580, A Resolution of the Town Council of the Town of Fairfax Awarding Bid for the Measure K Phase II and Proposition 1B Street Resurfacing Projects.

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

Discussion of town policy regarding the removal of trees on public property, Bragman

Councilmember Bragman described the removal of redwood trees in Bolinas Park that was done without notification; stated that the same arborist who recommended removal of the trees was part of a discussion in 2006 where he recommended keeping the same trees; that there had been a breakdown in communications that was unfortunate when dealing with redwood trees in the park and the community awareness of those trees; that the Town's tree ordinance, Section 8.36.040, stated that it was unlawful for any person to alter or remove any tree without a permit; that the Tree Committee would like to be consulted about any removal of town trees; that the redwood trees were assets and helped reduce greenhouse gases, and water runoff; and that heritage trees deserved protection.

Public Works Director Wilkie stated that she now had a direct link with the Tree Committee; that four trees had fallen in the Park since she became Public Works Director in April; and that she appreciated the Town Council's funding of the tree inventory to better manage the Town trees.

Mayor Maggiore stated that the tree assessment was very important but that the Town had to be cautious about the potential for the trees to fall.

Councilmember Tremaine stated that when he had served on the Tree Committee, the Council member on the Committee had been contacted about emergency removals to assess the situation. He stated that, at a minimum, the Council member on the Tree Committee should be contacted about the potential removal of town trees.

Councilmember Brandborg stated that an emergency was usually something that had to be dealt with quickly, and that she hoped that the Tree Committee wouldn't have to be contacted during a storm in an emergency situation.

Mayor Maggiore opened the discussion to the public.

Mimi Newton, Fairfax Open Space Committee (FOSC), Mono Ave., stated that she was shocked about the removal of the trees in the park; that the FOSC had a liaison to the Tree Committee and would like to be informed about removals; that they would like a process established to provide notification; that the ordinance should reflect the notification process because staff and council members changed; that the FOSC would like the opportunity to assess the situation themselves; that they would like to have a voice; that unless it was a storm situation, the FOSC should be contacted; and that it was important to keep the trees.

Jennifer Horn, 60 Pastori, stated that it was important to have a process to remove town trees similar to the process to remove private trees as was discussed earlier in the meeting.

Councilmember Brandborg stated that the Tree Committee included representatives from the FOSC, the Town Council, the Parks and Recreation Commission and the Planning Commission.

Councilmember Bragman suggested that the emergency removal section of the Tree Ordinance be changed so that notice would be given by the Town Manager regarding tree removals and the word "may" would be changed to "shall" in the ordinance.

There was a consensus of the Council to have the Town Attorney draft language for an amendment to the Tree Ordinance.

Mayor Maggiore adjourned the meeting at 10:45 p.m.

Respectfully submitted,

Judy Anderson, Town Clerk