

Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, December 2, 2009

The regular meeting was preceded by a special meeting closed session regarding pending litigation.

Call to Order/Roll Call:

COUNCILMEMBERS PRESENT: Larry Bragman
Pam Hartwell-Herrero
John Reed
Lew Tremaine
David Weinsoff

STAFF MEMBERS PRESENT: Michael Rock, Town Manager
Jim Moore, Planning Director
Laurie Ireland-Ashley, Finance Director
Jim Karpiak, Town Attorney
Kathy Wilkie, Public Works Director
Mark Lockaby, Building Official
Maria Baird, Community Resources Coordinator

Mayor Tremaine called the meeting to order at 7:30 pm.

Approval of Agenda and Affidavit of Posting

M/S, Hartwell-Herrero/Reed, Motion to approve the agenda and the Affidavit of Posting.

AYES: All

Announcement of Closed Session Action

Mayor Tremaine announced that the Council had received information from the Town Attorney and had given direction on the pending litigation, Fairfax v. John and Marlia Berg and announced that another closed session on the matter might be held later in the month.

Announcements

Mayor Tremaine announced the openings on the General Plan Advisory Committee, the Youth Commission and the Affordable Housing Committee and announced that the January meeting of the Town Council would be held on January 13th rather than January 6th due to the holiday schedule.

Councilmember Weinsoff announced that he and Town Manager Rock, along with Karen Arnold and Michael Pettit of the Pavilion Restoration Committee, had met with Dr. Peters and staff of the Marin Community Foundation to discuss potential funding for the Pavilion.

Open Time for Public Expression

Sierra Salin, Cascade Drive, presented two dollars to each Council member with a request to "do something nice with it" for someone else. Council conferred with Town Attorney Karpiak to make sure it was okay to accept the gifts. Attorney Karpiak responded that accepting the gift was legal and either had to be donated or declared.

Cindy Ross, Lansdale Avenue, stated that she had submitted a letter to Richard Pedemonte, Festival Chairman, regarding a vendor at the Fairfax Festival and ascertained that the Council had received a

copy of her letter.

Glen DelPorto, Oak Manor Drive, announced that, as of the previous day, there were still animals on Patrice Phillips' property that had previously been the subject of an abatement hearing before the Town Council.

Planning Director Moore reported that the property owner had already been notified of the issue and that staff would pursue the matter.

Bruce Ackerman, Valley Road, announced that Fairfax had been selected by the Marin Municipal Water District for a pilot project on water conservation; thanked Pam Hartwell-Herrero for her instrumental efforts to make the project happen; suggested that the Town publicize the program in every way possible; reported that Sustainable Fairfax would be overseeing the project; that the data would be collected every two months when water meters were read; that Fairfax was the ideal community for such a project; and that the alternative to desalination was conservation.

Councilmember Hartwell-Herrero stated that she would report on the project at the next Council meeting.

Mimi Newton, Chair of the Open Space Committee, distributed copies of a letter to the Ross Valley School Board expressing the Committee's opposition to Marin Town and Country Club as a potential site for a new school. She also congratulated the new Council and expressed pride about the possibility that Fairfax had the first Council with a Green Party majority in place.

Ginger Soders-Mason, Kentfield, Director of Pesticide-Free Zone Project, expressed concern that there was only one sign announcing Fairfax as a pesticide-free community and suggested that each park have such a sign.

Interview and appointment of candidate(s) to fill a vacancy on the Volunteer Board for a full 3-year term to September 30, 2012

M/S, Reed/Bragman, Motion to appoint Efren Alba to serve on the Volunteer Board for a full 3-year term to September 30, 2012.

AYES: All

Adoption and presentation of a Resolution of the Town Council of the Town of Fairfax honoring the Sircoff Family as the Apple Familyworks Volunteer Family of the Year

M/S, Bragman/Weinsoff, Motion to adopt the resolution honoring the Sircoff family as the Apple Familyworks Volunteer Family of the Year.

AYES: All

Mayor Tremaine presented the resolution to Anne-Marie, Jonathan and Olivia Sircoff.

Marin Energy Authority Presentation on Power Purchase Agreement, Dawn Weisz

Dawn Weisz, Interim Director, Marin Energy Authority, presented an overview summarizing the updated Power Purchase Agreement (PPA) documents as approved by the Marin County Board of Supervisors and provided to the Town of Fairfax for the final 90-day required review period. She noted that the Supervisors were expected to consider adoption of the PPA at the February 4, 2010 Board meeting.

In response to a question from Councilmember Weinsoff, Ms. Weisz stated that there was no risk to the General Fund for Fairfax to enter into the agreement. Ms. Weisz also announced that they were

expecting PG&E to put an initiative on the ballot in June to challenge the Authority.

Councilmember Reed stated that he had some concerns about dealing with Shell Oil and Ms. Weisz replied Shell would only be serving in a bridge capacity until the Authority secured its own assets; that they needed to contract with a company like Shell Oil that could provide power at the same or lower prices than the current provider; that could offer fixed pricing; that already had local assets; and that was familiar with California's regulations.

In response to a question about energy efficiency goals from Councilmember Hartwell-Herrero, Ms. Weisz reported that the goal was an 11% decrease in the amount of energy purchased over ten years, 1.1% per year, five times more than the existing program. She further stated that if the program for financing for energy efficiency upgrades could be made available to homeowners to be paid for through property tax bills that they would exceed the 11% goal.

Councilmember Bragman noted that AB 32 required a 25% reduction in greenhouse gas emissions by 2020; stated that \$7 million would be saved through the Authority; that Ms. Weisz had researched other programs including one in Ohio that had been in existence since the mid-90's; and that there was also a program in Massachusetts.

Juliet Anthony, Californians for Renewable Energy, asked why the Authority wouldn't go with SPG Solar, or McQuarry Cook rather than Shell Oil; stated that Paul Finn of Local Power who recommended Sempra would also be a good choice; and that if Shell was involved, Californians for Renewable Energy would oppose it.

Vincent D'Amico, Arboledo Circle, also expressed concern about Shell Oil Co. and stated that the Council had a moral responsibility to find another company.

Bruce Ackerman, General Plan Advisory Committee Chair, urged the Council not to let public opinion about Shell Oil keep them from entering into the agreement; that Shell was being considered because they had the capital and the expertise needed; that the contract was critical and included a provision that Shell would stop buying power as soon as green energy sources were available; that the contract was limited to five years; that the goal was to mitigate the risk to make sure that Marin Energy would be successful; and he asked the Council not to let using Shell Oil stop them from going forward with an incredible project.

Lou Vaccaro, Olema Road, stated that he had been told that the Authority wouldn't have to worry about paying shareholders but that Shell Oil had shareholders to pay too; that Sempra would be a good power source; that PG&E had just contracted with Sempra to provide ten megawatts of solar power from Nevada; that it was a fallacy to state that consumers could receive different amounts of green energy since the energy was provided through the same distribution system; that the only way to provide different energy was to construct parallel lines for delivery; and that PG&E recently received an award for providing the cleanest energy in the nation; and stated his opposition to the Marin Energy Authority.

Councilmember Bragman clarified that the electrical generation was what was being separated out; that PG&E was still going to be providing services and paying shareholders; that the Authority would give consumers greater choice; that competition was good; and that it was worth the risk to go forward.

CONSENT CALENDAR

Approval of Town Council minutes of November 4, 9 and 16, 2009

Accept and File Monthly Finance Reports for October, 2009

A Resolution of The Town Council of The Town of Fairfax In Support of the Local Taxpayer,

Public Safety and Transportation Protection Act of 2010

Approval of the date of January 30, 2010 for the Community Fire Prevention and Preparedness Forum

Authorize staff to enter into a contract for payroll processing with a new provider

Authorize staff to issue a Request for Proposals for annual audit services for 2009-2010, 2010-2011 and 2011-2012

Accept report on status of Measure K funds and projects

Authorize the Mayor to sign a letter of commitment for the State Energy Program application of the Association of Bay Area Governments (ABAG) regarding the Bay Area Regional Residential Building Retrofit Program – Town Manager

A Resolution of the Town Council of the Town of Fairfax Authorizing the Filing of an Application for Energy Efficiency and Block Grant Program Funding for the Downtown Streetlight Replacement Project – Public Works

Councilmember Weinsoff requested that the item establishing a Finance Committee be heard with the item regarding Committee assignments.

M/S, Weinsoff/ Bragman, Motion to approve the Consent Calendar with the removal of the item establishing a Finance Committee to be heard with the item regarding Committee assignments.

AYES: All

Mayor Tremaine adjourned the meeting for a fifteen-minute break.

Public Hearings

Adoption of a Resolution of the Town Council of the Town of Fairfax establishing an Administrative Citation Fee Schedule – Building

Building Official Lockaby presented the staff report. He explained the proposed process and stated that there would be a courtesy notice sent to the violator; that the violator could choose to comply with no penalty; that the proposed system would be more effective than using the court system and had been very successful in other jurisdictions; that the violator would have a right to an administrative hearing; that the Planning Director would serve as the hearing officer; that appeals would be heard by the Council if necessary; and that it would be complaint based.

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

M/S, Weinsoff/Bragman, Motion to adopt a Resolution of the Town Council of the Town of Fairfax establishing an Administrative Citation Fee Schedule as presented.

AYES: All

Introduction and First Reading of Ordinance No. 748, an Ordinance extending a second unit amnesty program for a one-year period by amending chapter 17.048 of the Fairfax code regarding certain existing residential second units – Planning

Planning and Building Services Director Moore presented the staff report. He noted that sprinkler installation requirements were preventing some people from applying for amnesty under the program and that the sprinkler issue might well be re-visited after the January Fire Forum at which time the ordinance could be amended.

Councilmember Bragman stated that the Town needed to find money to improve our private infrastructure. He further stated that he would prefer pursuing some kind of public financing for the cost of installing sprinklers or siding, perhaps with a loan program where homeowners could repay loans through their property taxes, rather than trying to avoid the requirements that were developed for health and safety.

Mayor Tremaine opened the public hearing.

Mark Bell, Dominga Ave., stated that he understood why sprinkler systems would be required but questioned why windows/siding needed to be upgraded.

Building Official Lockaby replied that it had to do with fire safety, that tempered glass and composite silicon were less flammable than wood siding; that it also reinforced the possible Fire Department recommendation to “shelter in place” due to difficulty in evacuating hillside neighborhoods; and added that it would take 50-75 years to implement this requirement.

Mayor Tremaine closed the public hearing.

M/S, Weinsoff/Bragman, Motion to waive further reading of Ordinance No. 748, An Ordinance extending a second unit amnesty program for a one-year period by amending chapter 17.048 of the Fairfax code regarding certain existing residential second units.

AYES: All

M/S, Weinsoff/Bragman, Motion to introduce Ordinance No. 748, An Ordinance extending a second unit amnesty program for a one-year period by amending chapter 17.048 of the Fairfax code regarding certain existing residential second units.

AYES: All

Adoption of a Resolution of the Town Council of the Town of Fairfax establishing a Town Finance Committee – *Town Manager*

Town Manager Rock presented the staff report.

Councilmember Weinsoff suggested that the Council representative on the Committee be the Mayor rotating annually and that the resolution be amended to reflect that change.

M/S, Weinsoff/Hartwell-Herrero, Motion to adopt a Resolution of the Town Council of the Town of Fairfax establishing a Finance Committee with the change to the wording to make the Mayor the Council representative on the Committee.

AYES: All

Town Council Committee Assignments – *Tremaine*

M/S, Weinsoff/Hartwell-Herrero, Motion to accept the following assignments:

Bragman: ABAG (Assoc of Bay Area Governments) Alternate
Affordable Housing Committee
Marin Energy Authority, Alternate
Marin Telecommunications Agency
Measure “I” Oversight Committee
MERA Alternate (Chief Hughes, representative)
Ross Valley Paramedic Authority (Frank Egger, Alternate)
Safe Routes to School Task Force, Alternate
Solid Waste Committee

TAM (Transportation Authority of Marin) Alternate
Tree Committee

Hartwell-Hererro: Community Development Block Grant Committee - HCDA
Solid Waste Committee
Tree Committee Alternate
Youth Commission Liaison

Reed: Measure K Oversight Committee
Ross Valley School Board Liaison
Ross Valley Fire Authority, Alternate
Safe Routes to School Task Force

Tremaine: Affordable Housing Committee
Citizens' Disaster Council
Chamber of Commerce Liaison
Finance Committee
Flood Zone 9 Advisory Board, Alternate Representative
League of California Cities
Marin Energy Authority
Marin Telecommunications Agency, Alternate
Measure "I" Oversight Committee
Ross Valley Fire Authority
Shared Services Committee
TAM (Transportation Authority of Marin)
Youth Commission Liaison

Weinsoff: ABAG (Assoc of Bay Area Governments) Representative
Flood Zone 9 Advisory Board Representative
Joint Services Authority Oversight Committee
Ross Valley Fire Authority
Ross Valley School Board Liaison, Alternate
Shared Services Committee

AYES: All

Report from outgoing Mayor Weinsoff on list of neighborhood issues – *Weinsoff*

Councilmember Weinsoff reported on neighborhood issues that had been brought to his attention during the recent campaign and provided a list of those issues that had not yet been addressed including requests for brush clearing in several areas and requests for solutions to traffic safety issues including installation of signs and increased enforcement.

Report on the Broadway Bulb-Out Project – *Public Works*

Public Works Director Wilkie presented the staff report. She included a history of the project that was put forward and paid for by Ray Martin, the owner of the Scoop, to provide a place for a bench and bike rack that became a Town project because of non-compliance with ADA requirements. She further reported that the existing bulb-out would be removed by joint efforts of the original contractor and Town staff; would be reconstructed by Van Midde and Son Concrete; that the work would be scheduled to begin removal on a Monday with construction completed by Friday of the same week to limit disruptions to the local businesses; that the approximately \$5,500 needed for reconstruction of the bulb-out would be taken from the Street Maintenance operating budget; and that Ray Martin had agreed to discuss contributing additional funds if the cost to the Town exceeded \$5,500.

Discussion of the Draft Circulation Element of the General Plan and report on the status of the General Plan – Planning

Planning Director Moore presented the staff report. He stated that the Council and the public would make comments on the Draft Circulation Element but that no formal action was required until all the remaining elements had been reviewed, at which point all eight elements would be “packaged” for Council adoption pending environmental review. He explained the Marin County Bicycle Coalition (MCBC) suggestions already incorporated into the Element and the minor changes suggested by MCBC that staff considered as friendly amendments. He reviewed the status of the remaining elements and stated that the goal was to have them all completed by the end of 2010.

Councilmember Bragman stated that the right pricing of vehicles and parking were conspicuously absent from the Element. He also suggested that the Town create a sidewalk network expanding out from the commercial area with special attention to problem areas like Bolinas Road, Porteous and Park Road to encourage safe pedestrian circulation. He described the inadequacy of the sidewalk from Bolinas from Park Road to Porteous; the advantage to having sidewalks all the way to Deer Park School, a project that could be done in cooperation with the School District; and the lack of safe sidewalk access on Bolinas to Cascade. He noted that there was enough right-of-way on Bolinas and Park to accomplish improved sidewalk access and that funding could be available through the federal government for Bolinas since it was a federally qualified roadway.

Councilmember Reed agreed that pedestrian access was important and recommended that the Draft Circulation Element be posted on the Town’s Web site to encourage public input and noted that the General Plan represented what we wanted to see in our Town so comments from the public should be encouraged and considered.

Mayor Tremaine opened the discussion to the public.

Kim Baenisch, MCBC Executive Director, stated that she had worked with staff and the Planning Commission on the Element and requested two primary adjustments: to add the goal of 20% bike and pedestrian trips by 2020 and compliance with AB1538, the Complete Streets legislation.

There was a consensus of the Council to incorporate the suggested changes.
Mayor Tremaine opened the discussion to the public.

Cindy Ross, Lansdale Ave., stated that it was impossible to cross the street from Bank of America to the Savings and Loan and that the location should be considered with any pedestrian safety improvements the Town might consider.

Report on updates to the Town’s Website and Paperless Office goals – Town Manager

Discussion/Consideration of researching costs of webcasting and/or televising Town Council meetings - Town Manager

At the request of Mayor Tremaine, the two related items were considered together.

Town Manager Rock presented the staff reports. He stated that ABAG could no longer support the existing site, that the site was being converted to a more versatile format, and that the updates to the site would all be working in January. He further reported that the consultant who was implementing the conversion would also be training staff to do most of the maintenance in the future.

Town Manager Rock described the heavy use of paper necessary to produce a Council packet and asked the Council to consider receiving their packets electronically. There was a consensus of the Council to receive their packets on cd or memory stick.

Town Manager Rock stated that staff was working on getting the Women’s Club connected with fiber optics for full webcasting or streaming of meetings.

Councilmember Bragman stated that it was necessary to make the meetings accessible to the public. He described his efforts to get the necessary connections to webstream the meetings and stated that he had been trying to get Comcast to connect the Women's Club to the internet rather than provide cable television as required by the franchise agreement.

There was a consensus of the Council to direct staff to pursue the options available.

There was a consensus of the Council to hear the last item on the agenda regarding the perchlorethylene spill at the Fair Anselm retail center before the other items because there were audience members present to speak to the item.

Discussion of the status of the perchlorethylene spill at the Fair Anselm retail center - *Bragman*

Councilmember Bragman stated that he had added the item to the agenda because the town had received news that there was Perchlorethylene (PCE) contamination at the Fair-San Anselm Center; that the Town had received a complaint about the contamination from Broadway Video; that the investigation was pursued by Broadway Video who hired a toxicologist who provided a report about the levels that were present; and that the report suggested that the levels were acceptable according to OSHA standards and that there was no reason for concern. Councilmember Bragman acknowledged that there were different standards and different levels used by different sources, but that the levels detected far exceeded Proposition 65 (a constitutional amendment) standards; reported that he had used a contact at the Environmental Protection Agency (EPA) to determine that the levels at the site were a definite concern under Federal standards; that the EPA source informed him that the testing methodology used was not the most sensitive and that a Suma canister would be the preferable manner for testing. He urged the Town to pursue the matter; reported that he had been approached by people in the community who wanted to know more about what was going on at the site; that he had called toxic substance control and hadn't gotten any satisfaction; and that he wanted to know what human health risks were present at the site.

Town Manager Rock stated that he had been tracking the issue; that an Air Quality Management District person had come out and had taken samples and didn't find any PCE's, but hadn't provided a written report; that his contact at (Department of Toxic Substances Control) DTSC came to the site two weeks previous but hadn't followed up yet; and that EPA also came out, but had not responded yet.

Councilmember Bragman suggested that a follow-up letter be sent and that we shouldn't be left waiting for information.

Eustace De Saint Phalle, counsel for Broadway Video, stated that the matter had been referred to DTSC, and that the site had tested positive for PCE. He asked about what reports the Town had received since he had seen several reports that indicated that the chemical was present; offered to make the information available to the Town Manager; stated that remediation efforts should be underway; noted that the original spill had occurred in 2001, when some remediation took place; that the chemical was airborne; and that other businesses in the plaza should be included in the testing.

Town Manager Rock stated that it was not a Town issue per se, since it was on private property, and that the County Public Health Department had responded and had referred the matter to DTSC.

It was the consensus of the Council to direct staff to stay on top of the situation and to keep them informed of any developments.

Approval of Town Response to the Grand Jury request regarding the Homeless – *Police*

Police Chief Hughes presented the staff report. He stated that the purpose of the report was to evaluate the numbers of homeless in Marin, and the programs and housing available to them, with the intent to improve existing resources while creating new means of help. The Grand Jury report was entitled, "Homeless: The "Invisible" Problem That Won't Disappear." Two of the conclusions of the report were

(1) a recommendation that the Board of Supervisors should appoint a full time coordinator to help the homeless by coordinating the efforts of all the local non-profits and (2) that the municipalities should work together to provide better public awareness of the plight of the homeless. Chief Hughes stated that the Grand Jury's findings and recommendations were all essentially on point and worthy of support by the Town and that the Town's response reflected that concurrence.

Mayor Tremaine asked the Council for agreement to send a letter with his signature to the Board of Supervisors in support of the Grand Jury's findings and urging them to comply with those findings and offering to work on the problem with the other jurisdictions.

Town Manager Rock reported that the County had already hired a homeless coordinator. Mayor Tremaine suggested that the letter be adapted accordingly.

Councilmember Weinsoff reported on a meeting with the Interfaith Council of Marin and suggested that he and another Council member should visit the local churches to begin a dialog about the homeless issue in Fairfax. Councilmember Hartwell-Herrero volunteered to be the other Council member.

M/S, Weinsoff/Reed, Motion to accept the report.

AYES: All

Report on Temporary Homeless Shelters at St. Rita's Church and Christ Lutheran Church – Planning

Planning Director Moore presented the staff report on the temporary homeless shelters at St. Rita's and Christ Lutheran Church to be available from December 9th through March 24th for up to 30 homeless women at each church one night per week, with pre-screening and staffing provided by Ritter Center and the churches. He noted that this was part of a county-wide program involving 15 churches to help house the homeless for the winter. He further reported that Town staff recognized the dire need to house the homeless of Marin County, particularly during winter months and that the underlying mission of religious institutions was to provide for the needy, and that being homeless in the public commons during winter months presented a severe threat to the health and safety of homeless persons.

Councilmember Hartwell-Herrero reported that the parents of students at Cascade Canyon School on the Christ Lutheran site had volunteered to provide food for the shelter

Terry Hamilton, pastor at Christ Lutheran thanked the Town for their cooperation and reported that the community had been responsive and had been positive about the program.

Town Manager Rock reported that other churches in West Marin and Fairfax were also going to be helping with the program.

Town Manager's Report

Town Manager Rock stated that he would be out of the country from December 15 to 28 and that Public Works Director Wilkie would be in charge in his absence and that Town Hall would be closed the week of December 21st.

Community Resources Coordinator Baird reported that a collection bin had been filled at Town Hall to benefit the Food Bank.

Town Council Reports

Councilmember Bragman reported that there had been a meeting of the Affordable Housing subcommittee on November 17th and that they decided to move forward with both sites under consideration and that workshops were being planned to introduce the proposed projects to the public.

M/S, Tremaine/Hartwell-Herrero, Motion to adjourn in memory of Hank LaPorta and Marianne Barberis.

AYES: All

The meeting adjourned at 11:05 p.m.

Respectfully submitted,

Judy Anderson, Town Clerk