

Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, July 1, 2009

The regular meeting was preceded by a special meeting closed session regarding labor negotiations, pending litigation and property negotiations.

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 Moore, Planning Director
Ken Hughes, Police Chief
Kathy Wilkie, Public Works Director
Laurie Ireland-Ashley, Finance
Mark Lockaby, Building Official
Jim Karpiak, Town Attorney
Yvonne Roberts, Management Analyst
Judy Anderson, Town Clerk

Mayor Weinsoff called the meeting to order at 7.35 pm.

Approval of Agenda and Affidavit of Posting

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

AYES: All

Announcement of Closed Session Action

Mayor Weinsoff announced that information was received from the Town Manager and Legal Counsel on labor negotiations, pending litigation and property negotiations and that direction had been given.

Announcements

Mayor Weinsoff stated that vacancy announcements were posted on the Town's Website and introduced Dan Pesaturo, an intern in the Planning Department who was present at the meeting.

Open Time for Public Expression

David Kroll, Claus Drive, requested that the Public Works Department assume the maintenance of Jolly Hill behind the Bennett House for weed abatement at the site at least once a year.

Public Works Director Wilkie responded that the property was on the work schedule in the next few weeks.

Lou Vaccaro, Olema Road, presented copies to the Clerk and the Town Council of an opinion piece written by Jean Bonander, Larkspur Town Manager, about the high cost of joining Marin Clean Energy; expressed his opinion that Fairfax should reconsider their membership in light of the current budget problems; and listed some of the Bay Area cities that had dropped out of similar groups.

CONSENT CALENDAR (Members of the audience may address any item on the Consent Calendar at this time)

Approval of Town Council minutes of June 3, 2009 – Town Clerk

Accept and File Monthly Finance Report for April, May 2009 – Finance (continued to 8-5-09)

Approval of the filing of a Notice of Completion for Measure K Phase II Proposition 1B Pavement Resurfacing Project – Public Works

Approval of the Pavilion Photovoltaic System Design & Installation Project Notice of Completion (Solar Project) – Public Works

Renewal of Artists-in-Residence Contract for one year to June 30, 2010 – Town Manager

Adoption of 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 Fiscal Year 2009-10 – Finance

Request from the Affordable Housing Task Force to apply for a Workforce Housing Grant - Planning

Adoption of a Resolution of the Town Council of the Town of Fairfax authorizing the Town Attorney to cooperate with the League of California Cities, as well as other cities and counties, in litigation challenging the constitutionality of any seizure by State government Local Street Maintenance funds (Gas Tax Funds) – Brandborg

Adoption of a Resolution of the Town Council of the Town of Fairfax Authorizing the Town Manager to sign a Licensing Agreement for Temporary Art Installations with the Ritter Center for Art Houses of Marin Project – Town Manager

Adoption of a Resolution of the Town Council of the Town of Fairfax approving the Finance Director position and establishing salary range and adding the position to the management classification and deleting the Senior Accountant position – Town Manager

Adoption of a Resolution of the Town Council of the Town of Fairfax in Support of the Food-to-Energy Program as a Renewable Energy Project – Town Manager

Approval of Extension of contract for Youth Services with Community Action Marin for a Summer Program in Fairfax – Town Manager

Mayor Weinsoff confirmed with Town Manager Rock that the item accepting a portion of Upper Scenic Road as a town-maintained would be continued to the August meeting.

M/S, Tremaine/Bragman, Motion to adopt the Consent Calendar with the removal of the item regarding Upper Scenic and the continuance of the monthly financial reports.

Roll Call Vote:

Bragman: AYE; Brandborg: AYE on all but the two notices of completion because of the omission of the cost of the projects; Maggiore: AYE; Tremaine: AYE; Weinsoff: AYE

Councilmember Brandborg stated that she was voting “No” on the two Notice of Completions on the agenda because she had asked at a previous meeting that the total cost of the projects be included on the notices and had been assured that the amounts would be included.

Adoption of 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, 2009 through June 30, 2010, providing for the appropriations and expenditures of all sums set forth in said budget and repealing all resolutions in conflict herewith - Finance

Finance Director Ireland-Ashley presented the staff report.

Youth Services

Councilmember Maggiore asked about the status of the budget for the Youth and Alcohol Task Force.

Town Manager Rock explained that Community Action Marin would no longer be providing a youth program in the Fall and reported that approximately \$12,000 would then be available for other programs. He further stated that there was \$1,000 in the Parks and Recreation budget for youth services but that it was not designated for the Task Force. He suggested that the Council discuss youth programs at the August meeting.

Councilmember Bragman suggested that the \$12,000 left over from the Measure “F” funding of the afterschool program be designated for a youth program.

Vice Mayor Tremaine suggested that the Town issue a request for proposals to the community to determine whether or not someone in the community was interested in providing youth services.

Mayor Weinsoff noted, as a board member of Community Action Marin, that the service provider needed to have deep pockets.

(Government Accounting Standards Board) GASB 45

Councilmember Bragman asked about the \$77,000 in the budget for the GASB 45 mandate and Finance Director Ireland-Ashley explained that \$54,000 was for future retiree health care obligations, the 30-year amortized unfunded liability portion and that \$13,000 was the current year expenditure (pay-as-you-go) amount.

Defibrillator Purchase

Councilmember Brandborg asked about the status of the budgeted purchase of a defibrillator and Town Manager Rock explained that money was in the 2008-09 budget and that the purchase would be made and charged to the previous year's budget.

Councilmember Bragman suggested that the Town check with the Paramedic Authority because they were making a similar purchase and might be able to offer the Town a discount or to donate one to Fairfax.

Health Care Costs

In response to a question from Councilmember Brandborg, Finance Director Ireland-Ashley stated that \$70,000 to be saved on employee health care was reflected in the proposed budget.

Other Budget Discussion

Councilmember Brandborg noted some typographical errors in the proposed budget and asked that they be corrected in the final printed version. She also requested that the outside consulting costs and contracts be listed with the related amounts and that the budget be brought to the Council one more time with the requested information and corrections.

Mayor Weinsoff opened the public hearing.

Rob Whitelock, Maple Ave., stated that the budget reflected unrealistic policies; that the Town needed to increase revenues; that the installation of paid parking downtown should be considered; and that the Town shouldn't pass Measure "F" until police dispatch was consolidated.

Niccolo Caldararo, Frustuck Ave., stated that historically citizens were willing to pay for their towns; that Fairfax residents had to pay more taxes; and that responsible citizens wanted a beautiful community with services provided.

Mayor Weinsoff closed the public hearing.

M/S, Tremaine/Maggiore, Motion to adopt the resolution to approve of the budget incorporating Councilmember Brandborg's corrections.

Town Manager Rock noted that the Council would review the budget again in September.

Mayor Weinsoff stated that the Council would have to hear from the Town Manager and the Finance Director about the budget on a regular basis.

Roll Call Vote:

Bragman: AYE; Brandborg: ABSTAIN; Maggiore: AYE; Tremaine: AYE; Weinsoff: AYE

177 Frustuck Avenue; Application # 09-02; Appeal of the Planning Commission's denial of a request for a setback variance, a height variance, encroachment permit and a second unit use permit in order to construct a second unit underneath an existing three story, single-family residence and to construct parking for the second unit within the required side yard setback and the adjacent public right-of-way; Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; John Owens and Diana Dullaghan, appellants/ property owners; CEQA categorically exempt, § 15301(e), 15303(a) and 15305(a) and (b) – Planning (Continued from May 6, 2009 and June 3, 2009)

Planning and Building Services Director Moore presented the staff report.

Alan Mayer, attorney for the appellants, stated that the envelope of the building remained the same; that the Town needed more affordable housing and green building; that it wouldn't change the character of the neighborhood; that there was overwhelming neighborhood support for the project; the issue of "precedence" was brought up but that the current project would not set a precedent; and that the Housing Element and other Town documents supported green building and affordable housing, both a part of the project.

Paul Fitzgerald, Corree Lane, noted that the appellant had 130 signatures on a petition in support of the project, that they were not altering the footprint of the existing structure, and that there was already a four-story house with a car deck next to his house in the neighborhood.

Niccolo Caldararo, Frustuck Ave., stated that the four-story precedent was important to avoid; that affordable housing was not the same as low income housing; that there was no guarantee that the unit would be low income; that it would set a bad precedent because the Town allowed the applicant to submit one plan to the community at the beginning of the process and received permission for it and then increased the size with the garage and then applied again to include a second unit. He stated that allowing the garage was a change in the neighborhood because no garages were at the top of properties like the one proposed.

Peter Ramsay, Mono Ave., Planning Commissioner, stated that he worked for Marin Housing as his day job; that small one-bedroom second units were in high demand in the rental market; that Marin Housing had opened the Section 8 housing list recently and had received 12,000 applications in one week; that there was great demand for the type of unit the appellant proposed to create; that a variance had been necessary for the fourth story of the house; that a similar application had been reviewed on Acacia and that neither application changed the size of the building; and that he supported the project as an opportunity for the Town to provide an affordable housing unit.

Pam Meigs, Cypress Drive, Planning Commissioner, stated that she had come to Fairfax for the character and didn't want to see the proposed type of development in town.

Shane Deal, Belle Avenue, expressed his support for the project; stated that he had also moved to Fairfax for the community; that he supported infill development; that the structure of the house wasn't changing; that the appellant was providing the necessary parking; and that it wasn't setting a precedent except for the installation of affordable housing in an existing structure.

J.A. Wanasel, Madrone Road, stated his support for the project and that the Town of Fairfax needed more diversity.

Bill Madsen, Porteous Ave., spoke in support of the project.

Kelly Dunleavy, Ross Valley Reporter newspaper, asked for clarification of the garage issue.

Ryan O'Neil, Open Space Committee, stated that he knew the footprint wasn't changing but that the Open Space Committee was concerned about a proliferation of homes with four stories; that it wasn't this application that he opposed, but the precedent that it would set for four-story homes.

John Owens, appellant, stated that the fourth story was not setting a precedent because it was not their living space but was for an affordable unit so it was actually a three-story residence with a one-story unit.

Mayor Weinsoff closed the public hearing.

Councilmember Brandborg, in response to comments about the structure overcrowding the lot, described the setbacks for the project and noted that they were well within the requirements.

Vice Mayor Tremaine stated that granting the appeal would be setting a precedent for four-story

homes; that affordable housing should be near public transit, not auto-centric; and that the Council had adopted a three-story limit for a reason.

Councilmember Brandborg quoted the Town's Housing Element to show that the Town had already acknowledged limitations on creating affordable housing, "The Town is nearly built-out with all remaining undeveloped land being either very steeply sloped or constrained from development for other reasons."

Councilmember Maggiore stated that she was having difficulty making a decision and acknowledged that the unit would be created in a space that already existed in the structure and asked if the appellants would be willing to trade the garage for the unit.

Alan Mayer, attorney for the appellants, stated that the Owens were willing to sign a deed restriction to guarantee that the second unit would be dedicated to affordable housing; that they were not willing to trade; and that their home was lower than the buildings on either side and did not exceed the 35-foot height limit.

Town Attorney Karpiak clarified that a tie vote would be a denial of the project and recommended that the Council direct staff to prepare findings for approval or denial for presentation at the next Council meeting.

Mayor Weinsoff led a discussion about the standards for approval of a variance. He stated that the Owens had a choice of either the garage or the unit; that he couldn't support the appeal as it stood; and that he was concerned about the possible consequences of the approval of the project.

Alan Mayer, attorney for the appellants, stated that the Owens had a right to a garage, that 80% of the neighbors had garages and that to deny them the garage was to single them out for negative treatment; that he understood the use of the garage as a bargaining chip, but that it was unfair; quoted from the staff's proposed findings for approval included in the February 19th staff report, "Therefore, the development and use of property as approved under the use permit shall not cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens..." in response to comments made about the impact on the neighborhood; stated that the home was lower than the homes on either side; that there were not affordable housing projects in the Town that supported bicycle use and were near public transit as promoted by the Council; that the Town could meet 25% of its housing requirement with infill in existing housing; that the Town should approve the project because it provided affordable housing and used green building techniques as desired by the Town; that the height of the structure was not being increased; that they were willing to commit to a thirty-year deed restriction for the affordable unit; and that the house was already in existence and the height had already been approved.

M/S, Tremaine/Weinsoff, Motion to direct staff to return with findings for the denial of the appeal.

Roll Call Vote:

Bragman: Recused; Brandborg: NO; Maggiore: AYE; Tremaine: AYE; Weinsoff: AYE

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

M/S, Maggiore/Bragman, Motion to hear the item regarding the election before the item regarding the fee study.

AYES: All

Adoption of a Resolution of the Town Council of the Town of Fairfax, California, Calling for the Holding of a General Municipal Election on November 3, 2009, for the Election of Certain Officers and for the Submission to the Voters of a Question Relating to the Renewal of a Special Municipal Services Tax for Five (5) years, Requesting the Marin County Board of Supervisors to Consolidate

with any other Election Conducted on that Date, and Requesting Election Services of the County Clerk, and Setting the Ballot Language – Town Clerk

Town Manager Rock presented the staff report, and noted that he had added to the ballot language, “create a Disaster Recovery Reserve Fund.”

Councilmember Maggiore stated that she thought the \$125 measure should be raised to \$150 to better meet the Town’s needs and because the value of the original measure had decreased.

Councilmember Brandborg stated that when combing dispatch with San Anselmo was explored, it had to wait to happen until after Measure “F” expired because of the previous ballot language that guaranteed 24-7 dispatch and that the frozen police position should be filled to have a fully staffed police department especially since the Town had hired other positions.

Councilmember Bragman stated that the Town might be losing its COPS funding and that adding such specific language might not be helpful; that the Town was promising to provide the same level of safety services; and that they should leave the language alone since it was successful before.

Councilmember Brandborg reiterated that there was still a frozen police officer position and that sometimes the Chief had to work as a patrol officer to cover shifts.

Councilmember Bragman responded that the public probably liked seeing the Chief on the street and that it was a good example of community policing.

Councilmember Maggiore stated that the Fire Chief and the Public Works Director also performed other jobs and that it was appropriate. She stated that she was not pleased with the youth program and that more could be done.

Councilmember Bragman suggested that the language be changed to add the word “revitalize” to have the language read, “revitalize youth programs” and that the “Disaster Recovery Reserve Fund” be deleted from the ballot language.

Mayor Weinsoff opened the public hearing.

No speakers came forward.

Councilmember Brandborg stated that the vacant police officer position had been used in the advertising for the previous Measure “F” and that the position should be filled.

M/S, Maggiore/Brandborg, Motion to add “revitalize youth programs” to the ballot language and to delete the “Disaster Recovery Reserve Fund.”

AYES: All

Adoption of a Resolution of the Town Council of the Town of Fairfax Setting New Fees for Services as a Result of a Master Fee Study Including Business License Fees (continued from June 3, 2009) - Finance

Katie Wilson of Wildan Financial Services, presented the report that provided an overview of the study conducted. She explained that Wildan had been hired by the Town to complete a User Fee Study to identify, through a Cost Allocation Plan, all the incurred costs for the Town to be captured

by the fees charged. She stated that, by law, towns could only charge fees based on reasonable costs of providing services and that the services offered had to be voluntary. She explained how the actual costs were determined using time and materials and fully burdened rates with one of the goals to be to make Fairfax sustainable financially.

Councilmember Maggiore left the meeting at 9:50 p.m.

Councilmember Bragman stated that he was hesitant to accept the recommended new fees while the Town was going out with a tax measure; that he was not sure that the Town should get full cost recovery on all services provided; that a recent building permit he secured for his property had cost \$2400 and would have cost \$4,000 with the new fees; that the Town should get full recovery on some fees, like a resale report; and that the methodology and intention was good, but that the Council should take its time and take a hard look at the fees before raising them.

Building Official Lockaby explained that some of the current fees weren't fair and used roofing fees as an example. He stated that the fees were the same no matter what the cost of the roof, and that the new fees would be valuation based and thus more fair.

There was a consensus of the Council to continue the consideration of the proposed fee schedule to the August 5th meeting and to do a careful review.

Jerry Peeler of Municipal Services was present to speak to the Council about having his company handle the outsourcing of the Town's business license program.

Mayor Weinsoff asked for any statistics available on improved compliance for the cities handled by Municipal Services. Mr. Peeler responded that he was not the regular representative, but that he could provide that information later.

There was a consensus of the Council to continue the presentation to the August 5th meeting.

Mayor Weinsoff and the Council reviewed the agenda to determine the items still to be heard. Vice Mayor Tremaine agreed that the item regarding traffic on Mono could be continued and Councilmember Bragman agreed that the item regarding contracts could also be continued to the next meeting.

Discussion/Consideration of Redemption of Tax Delinquent Properties with Open Space Fund - Bragman

Councilmember Bragman introduced Ryan O'Neil of the Open Space Committee (OSC). Mr. O'Neil reported that the OSC had voted unanimously to request that the Council authorize the purchase of two tax defaulted properties near the Ross property (Parcels numbered 003-071-28 and 003-161-07); stated that the properties wouldn't involve maintenance or liability exposure; that the properties were available for a total of \$15,300 with the Town having the right of first refusal for purchase if the taxes weren't paid; and that the OSC had about \$29,000 in their account that they were willing to spend on the acquisition.

M/S, Bragman/Brandborg, Motion to direct staff to assist the Open Space Committee in purchasing the property.

AYES: Bragman, Brandborg, Tremaine, Weinsoff

NOES: None

ABSENT: Maggiore

Introduction and First Reading of Ordinance No. 742, 50% Remodel Ordinance (continued from June 3, 2009) – Planning

Planning and Building Services Director Moore presented the staff report and noted that the proposed ordinance would change the criteria for the determination of a 50% remodel from a value based definition to a square footage determination.

Councilmember Brandborg stated that her property would be directly affected by the ordinance because it was non-conforming; that there were many non-conforming properties in Fairfax; and that the ordinance would prohibit those properties from adding a bedroom.

Town Attorney Karpiak clarified that a bedroom could be added if all the conditions were met or if the application went through the Planning Commission for a discretionary permit.

Shelley Hamilton, Planning Commissioner, stated that the Commission had addressed the lack of parking in the hillsides and other neighborhoods where added bedrooms could increase the need for parking and that having the 50% remodel determination based on valuation didn't seem as fair as basing it on square footage.

Councilmember Brandborg agreed with the valuation approach but wasn't clear on the reasoning for the exclusion of bedroom additions.

Vice Mayor Tremaine stated that he didn't see the sense of addressing the addition of bedrooms.

Mayor Weinsoff suggested that the Planning Commission work with the Planning Director to address the questions raised by the Council.

There was a consensus of the Council to continue the item to receive clarification from the Planning Commission.

Second Reading and Adoption of Ordinance No. 743, An Ordinance of the Town of Fairfax Repealing and Replacing Town Code Chapter 8.36, Regulating the Removal of Trees – Planning

Mayor Weinsoff suggested that some of the wording in section 8.36.040 of the proposed ordinance was redundant, and the Town Attorney agreed.

Councilmember Brandborg stated that the Town already had a tree ordinance that was working; that the new ordinance was burdensome; that fees shouldn't be charged; that the language in Section 836.060 allowing the Tree Committee to require a computer generated simulation should be stricken and that the section gave planning discretion to the Committee which was beyond their purview; that the Tree Committee shouldn't tell property owners where to plant a tree; and that the Tree Committee didn't always have a quorum for their meetings which delayed the process.

Councilmember Bragman stated that the ordinance gave the Tree Committee discretion in unique circumstances; that the removal of trees could affect neighbors who also had rights; and that the Tree Committee was flexible in the use of its authority.

Mayor Weinsoff opened the discussion to the public.

Chris Lang, Canyon Road, stated that the ordinance was flawed and overly draconian; that the current ordinance worked pretty well; that he had served on the Tree Committee for seven years; that the Tree Committee currently could be flexible but wouldn't be with the new ordinance; that the new ordinance would create problems and produce more appeals; that it would be burdensome for homeowners; and that it would make the Town look foolish.

Ryan O'Neil, Tree Committee Member, stated that he had been on the Tree Committee for three years; that most applications were approved without input from arborists; that sometimes the Tree Committee needed a report from a qualified arborist because the Committee members were volunteers, not arborists; and that the tree cutters were doing the reports and completing the applications, and that it was like asking a barber if you need a haircut.

Shelley Hamilton, Canyon Road, Planning Commissioner, stated that flexibility was good; that the Planning Commission needed a more solid base for findings for decisions regarding trees as part of projects they reviewed; and suggested that, if the Council sent the ordinance back to the Planning Commission for further review, that it be made clear which parts of the ordinance they supported and which parts they found burdensome.

M/S, Bragman/Tremaine, Motion to waive further reading and to read the title only of Ordinance No. 743, An Ordinance of the Town of Fairfax Regulating the Tree Removal and Protection Process in Fairfax.

AYES: Bragman, Brandborg, Tremaine, Weinsoff

NOES: None

ABSENT: Maggiore

M/S, Bragman/Tremaine, Motion to adopt Ordinance No. 743, An Ordinance of the Town of Fairfax Regulating the Tree Removal and Protection Process in Fairfax.

AYES: Bragman, Tremaine, Weinsoff

NOES: Brandborg

ABSENT: Maggiore

Second Reading and Adoption of Ordinance No. 744, Amending Section 2.12.070 (B) (3) regarding the powers and duties of the Town Manager to appoint and remove certain officers - Town Attorney

M/S, Tremaine/Brandborg, Motion to waive further reading and to read the title only of Ordinance No. 744, Section 2.12.070 (B) (3) regarding the powers and duties of the Town Manager to appoint and remove certain officers.

AYES: Bragman, Brandborg, Tremaine, Weinsoff

NOES: None

ABSENT: Maggiore

M/S, Tremaine/Brandborg, Motion to adopt Ordinance No. 744, Section 2.12.070 (B) (3) regarding the powers and duties of the Town Manager to appoint and remove certain officers.

AYES: Bragman, Brandborg, Tremaine, Weinsoff

NOES: None

ABSENT: Maggiore

Discussion/Consideration of updates to the MCSTOPPP (Marin County Stormwater Pollution Prevention Program) Joint Powers Authority Agreement – Public Works
Management Analyst Roberts presented the staff report in the absence of the Public Works Director.

M/S, Tremaine/Brandborg, Motion to approve the revised MCSTOPP Joint Exercise of Powers Agreement as presented and to authorize the Mayor to execute the agreement.

AYES: Bragman, Brandborg, Tremaine, Weinsoff

NOES: None

ABSENT: Maggiore

Reports From Town Officials

There were no reports given.

Council Reports And Comments

Councilmember Bragman reported on complaints he had received about the height of solar structures and the blocking of views. He agreed to discuss the issue after the meeting with the Planning Director.

The meeting was adjourned at 11:00 p.m.

Respectfully submitted,

Judy Anderson, Town Clerk