

Fairfax Town Council Minutes  
Regular Meeting  
Fairfax Women's Club  
Wednesday, August 5, 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  
Laurie Ireland-Ashley, Finance  
Mark Lockaby, Building Official  
Jim Karpiak, Town Attorney  
Roger Meagor, Ross Valley Fire Chief  
Yvonne Roberts, Management Analyst  
Judy Anderson, Town Clerk

Mayor Weinsoff called the meeting to order at 7.40 pm.

Approval of Agenda and Affidavit of Posting

M/S, Bragman/Tremaine, 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 announced the final performances of Sam Parry's musical Relativity – the Musical! on August 6, 7 and 8 and the Good Festival to be held on Saturday, August 8<sup>th</sup>, 11:00 a.m. to 6:00 p.m., in Bolinas Park.

Open Time for Public Expression

Cindy Ross, Lansdale Ave., stated that she had been laid off from a job in the public schools and was trying to establish an after school tutoring and homework club, voiced her support for the witch Joey at the Farmers Market and extended happy birthday wishes to Lew Tremaine.

Reverend Joey Telly, stated that she gave readings at “Yeah Baby” at the corner of Taylor and Sir Francis Drake and reported that she had witnessed many near accidents at that intersection and suggested that a blinking light crosswalk be installed at that location to improve safety. She suggested that placing a police officer at the intersection to issue citations would help.

Councilmember Maggiore stated that she had discussed the problem with the Town Manager the previous year and suggested that there could be ways to slow down the traffic.

Town Manager Rock stated that there were things that could be done to the crosswalk to make it safer.

Mimi Newton, Mono Ave., expressed concern about a retaining wall in the creek near Egger Grove.

Councilmember Brandborg expressed concern about the crosswalk at Park and Bolinas; stated that it was especially important to make it safe since it was a main route to the playground and to school; and asked that the crosswalk be included on any list of crosswalks needing attention.

Interview and appointment of candidate to serve on the Parks and Recreation Commission for a full four-year term to August 31, 2013

The candidate was not present. The item was continued.

Presentation of Resolution of Commendation to Karen Arnold for her service to the Town as a Parks and Recreation Commissioner

Mayor Weinsoff presented the Resolution to Karen Arnold in recognition of her many contributions to the Town as a Parks and Recreation Commissioner.

Presentation on the Street Smarts Campaign by Deborah Cole, Parisi Associates Transportation Consulting – Public Works

On behalf of the Transportation Authority of Marin (TAM), she presented an overview of the Street Smarts Campaign aimed at improving traffic safety with banners and outdoor signs to emphasize enforcement and the rules of the road. She stated that they were working with public works to find the most critical places for the signage that would be up for six weeks and that there would be a Web site with a survey to allow for input on the program.

Update on Marin Energy Authority by Jamie Tuckey, County of Marin

Ms. Tuckey presented an update on Marin Energy on what they had been doing since formation in 2008. She reviewed grant proposals, the results of the Request for Proposals received and stated that the final contract would go back to the member cities for final approval in December or January.

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

**Approval of Town Council minutes of June 20 and July 1, 2009 – Town Clerk**

**Accept and File Monthly Finance Reports for April and May, 2009 – Finance**

**Adoption of a Resolution of the Town Council of the Town of Fairfax making findings for the denial of the appeal for 177 Frustuck Avenue – Planning**

**Adoption of a Resolution of the Town Council of the Town of Fairfax Accepting Upper Scenic Road as a Town-maintained road – Public Works (continued from June 3 and July 1 meetings)**

**Authorization to release plans and specifications to bidders and to award the contract to the lowest qualified bidder for Sir Francis Drake Resurfacing funded through the American Recovery and Reinvestment Act – Public Works**

**Authorization to release plans and specifications to bidders and to award the contract to the lowest qualified bidder for the Glen Drive Culvert FEMA project – Public Works**

**Adoption of a Resolution of the Town Council of the Town of Fairfax in opposition to a statewide proposition sponsored by PG&E to require local governments to obtain a 2/3 vote of the electorate before providing a community choice electricity program - Bragman**

**Approval of request from Parks and Recreation Commission (PARC) to draft an ordinance for Council consideration to prohibit music from being played on the tennis courts – PARC, Town Manager**

Mayor Weinsoff noted that getting Upper Scenic to be accepted as a Town-maintained road had taken years and was a collaborative effort with the cooperation of the neighbors and stated that it wouldn't have happened without the Public Works Director.

Councilmember Bragman requested a correction to the minutes of June 20<sup>th</sup> to reflect that Vice Mayor Tremaine was appointed as the representative to TAM and Councilmember Bragman as the alternate.

Councilmember Bragman ascertained that striping would be done from curb to curb on Sir Francis Drake as part of the resurfacing project.

Councilmember Brandborg asked that the final costs for the projects listed be given to the Council at some point.

Town Manager Rock stated that the cost of the projects would be presented to the Council before the projects began.

Councilmember Brandborg asked that the approval of the findings for 177 Frustuck be removed from the Consent Calendar so that she could vote against the adoption of the resolution.

SB/LT, Motion to approve the Consent Calendar with the requested correction to the minutes of June 20<sup>th</sup> and with a "no" vote for Councilmember Brandborg and an indication that Councilmember Bragman recused himself on the adoption of findings for the denial of the appeal for 177 Frustuck.

AYES: All

Request that the Town Council determine that the keeping of livestock, fowl and a recreational vehicle on an undeveloped parcel of property in Fairfax be declared a public nuisance and direct Town Attorney to begin nuisance abatement proceedings against the property owner; Residential Single-family RS 6 Zone District; Adoption of a Resolution of the Town Council of the Town of Fairfax declaring a nuisance, Patrice Phillips, property owner – Planning

Senior Planner Neal presented the staff report.

Councilmember Bragman ascertained that the complaints were all from County residents, not Fairfax residents, and that the property owner could apply for a use permit and later apply to build a house on the property.

Mayor Weinsoff opened the public hearing.

Patrice Phillips, property owner, stated that she intended to build a single family home when she purchased the property; that she had begun to apply for a use permit in 1996; that it was a cumbersome and confusing process and she had withdrawn the application; that it had been her intention to build the house first and then

put the animals on the property, but that financial difficulties had prevented her; that she had done a survey and a soils survey and that civil engineering work had been done – all prerequisites for building a single family home; that she understood that she had to have all the work done before applying for a building permit; that she had gotten rid of the pigs and still had six small sheep, four goats, and two guard dogs, and would like to keep those animals; that she paid in excess of \$18,000 in property taxes on the property; that she had her motor home on the property; that she didn't think the code prohibited her from keeping her motor home there; and that nobody could see it where it was located unless they trespassed on her property. She stated that Planning Director Moore had started working for the Town in April; that she had received a letter that the animals weren't allowed shortly after he started; that the letter quoted the number of feet from neighbors' windows required for livestock in the code; that Planning Director Moore and Senior Planner Neal had both asked that she apply for a use permit; that, meanwhile, there had been complaints from the Homeowners Association; that she didn't want to apply for the use permit; that she wanted to keep the sheep and goats on the property; that there had been a fire on the property two years previous; that the animals kept the grasses down; that classes from local schools had visited the animals; that she wanted to keep the animals; and that the animals were not there to be an annoyance to the Town.

Steve Frappiere, 575 Oak Manor, stated that his property bordered the subject property, below where the animals were kept; that he had lived there for ten years; that he loved the beauty of the property, but, in the last 3 years the quality of their lives had changed; that their bedroom was in the back of the house with the neighbor's fence about 45 feet from their bedroom windows; that the noise at six a.m. on a Saturday morning made it difficult for them; that the dogs, "Percy" and "Mojo", were taking care of the other animals but that they had problems with the dogs barking; that the dogs had electric shock collars, but the dogs started barking again when the batteries ran out; that sometimes an animal got caught in the fence or was attacked by other animals; that the property owner, Patrice, responded to their complaints, but because she didn't live on the property it became their problem. Mr. Frappiere further reported that, over the last few years, he had used earplugs and had put in double paned windows to muffle the noise; that it was a tough situation; and that livestock and a residential neighborhood didn't mix.

Glen Dal Porto, 595 Oak Manor, stated that he lived next to the road through the subject property; that he had a wife and two children; that they shared a back and side property line; that he was surprised that the farm did not have a tenant on the property; and that the pigs had gotten out about 5 times in the last year. He described an incident on May 21<sup>st</sup>, when six very large pigs entered their yard from the back. He stated that he had called animal control and the Sheriff's office; that the pigs had destroyed their yard and had broken lights in their driveway; and had also damaged the deck which was made unsafe to walk on. He further stated that pools of water on the walkway from his watering attracted them; that the pigs had seemed desperate for water; that the Sheriff's officers didn't do anything but were shocked by the incident; that Patrice had promised to get rid of the pigs and take care of the damage done by the pigs; that they had never been contacted by Patrice; that she had told them that because she got rid of the pigs didn't mean she wouldn't get more pigs in the future; told them that the insurance company would be contacting them but the company never did; that they sent a registered letter that was not picked up; that it smelled like manure when you entered his property; that he was concerned about the runoff from the animals into the creek; and it was unsafe, unsanitary and unrealistic to expect animals to fend for themselves.

Nancy Finston, 14 Von Court for 29 years, on the hilltop directly opposite where the animals were kept. She stated that she had taken her neighbor to court because of the barking and the crowing of the rooster; that she spent \$22,000 on double-paned windows but could still hear the crowing of the rooster; that she was upset by the acquisition of another rooster; thanked the FX police for listening to her complaints; that the owner wasn't there and didn't hear the noise; that the owner wasn't there when the animals got out and created a hazard on the road; that she didn't take care of the problem; and that it had been incredibly difficult over the years.

Amy Gussman, 243 Oak Manor Drive, 12-year resident, stated that Patrice had made her and her family very welcome on her farm and that they had enjoyed the animals.

Jon Marchant, Oak Manor, stated that he had two children who had enjoyed the animals, and that he hoped something could be worked out to keep the animals.

Sheila Cain, 8 Gregory Drive, the property across from Patrice Phillip's residence, stated that the Phillip

residence also smelled bad; that the property looked terrible; that the yard looked like a vacant lot; and that her inability to sell her own house may have been due to the poor condition of the Phillip's property.

Robert Clayder, 440 Oak Manor Drive, stated that the 50 acres provided a buffer from nature, that he sympathized with the neighbors, and that Ms. Phillips had been a responsive and a good neighbor to him.

Kristin Dommen, 545 Oak Manor Drive, expressed concern about the livestock manure, erosion, and surface water; submitted a picture of a landslide that affected her property; stated that it could alter the future stability of her property; and stated that she would like restoration and appropriate management of the soil.

Frank Egger, Meadow Way, stated that land annexed by the Town and not zoned would automatically become R-1 zoning; that there was a court-ordered settlement in the Fairfax Hills v. Fairfax case where 20 homes were approved with specific locations and that he didn't know if the property in question was part of that development; described pig damage at his winery that was very destructive; and stated that it was a tough decision for the Council to make.

Rita York, 520 Oak Manor, 25-year resident, stated that she had been walking on the property all that time; that it started with 4 goats and a watchdog; that she had received permission to walk the owner's dogs; that she had enjoyed it immensely; that she would hate to see the animals leave; that she liked the pigs but agreed that it was not a good place for pigs; that she would hate to see the dogs leave; and that many of the neighbors were fond of the dogs.

Anne Wilson, owner of the last house at the top of Oak Manor, stated that it had been a joy to see the transformation with the gate and the fence that kept the kids out on the weekends; that she knew that the pigs were a problem; and reported that she asked that the camper be moved and Patrice moved it.

Ed Hurd, 550 Oak Manor since 1997, stated that he was sympathetic to the concerns expressed by the other neighbors about the runoff and the noise and that he preferred that it be kept a residential neighborhood.

Mark Lubamersky, 530 Oak Manor, stated that two houses were taken off their foundations on Julian Crest Drive in the past due to slide activity; that water spilling over in the slide area could cause land slippage; that livestock in the area compromised the slide area; and that he was a downhill neighbor deeply concerned about the area.

Patrice Phillips, responded and stated that the old landslide was on County property; that the County had built an overhead culvert above where the slide occurred; that she hadn't been aware of the slide and the culvert when she bought the property but that the County had maintained the culvert and had installed swales above it that did work; that the County was maintaining the entire area above the slide; that her property was a 50-acre parcel with views of Tamalpais, San Francisco and the bay; that there were 7-acre minimum properties around her; that she was trying to build a house; that she had lived in FX for 16 years on Tamalpais and Gregory; and that she would like to build a house and keep some animals on the land.

Mayor Weinsoff closed the public hearing.

Vice Mayor Tremaine, directed his comments to the property owner and stated that it was pretty clear that she needed to complete the Town process and needed to move the animals away from the neighbors; and that she couldn't be allowed to continue to have a negative impact on the neighbors. He further stated that he was inclined to not pass the resolution declaring the nuisance but instead was willing to direct staff to work with Ms. Phillips to get something before the Planning Commission. He stated that he didn't object to the animals as long as the neighbors weren't negatively impacted.

Councilmember Brandborg stated that building a house and pursuing a use permit were two different issues; that a use permit process would allow for conditions to be placed on the use; that there had to be some kind of control of the situation; and that the use permit process should be started right away.

Councilmember Maggiore stated that the Town was giving her more and more chances and that the delays didn't solve the problems; that the property owner had said she would do better but hadn't; that she wasn't paying attention to her neighbors; that there shouldn't be any animals on the property; that the nuisance

should be abated and the property owner fined.

Councilmember Bragman stated that it was clear that there was an ongoing nuisance at the property; that people were suffering and had tried to work with the property owner; that the neighboring community had been very tolerant but the conditions had become intolerable; that hopefully something could be worked out but that it had to be tracked closely; that part of the compliance had to be moving the animals away from the neighbors; that the testimony seemed to be from people who had acted responsibly to protect themselves; that if the matter were continued to the next meeting, a use permit application would have to be made and the animals would have to be moved. He expressed concern about the runoff of animal waste; noted that a similar problem had been mitigated at the Marin Stables but that such measures would take an investment of money and effort to move forward; that he was willing to continue it for one month; that the property owner was responsible for damage caused by her animals; and stated that he didn't understand the delay in making restitution for the damage done to the neighbors.

Councilmember Brandborg expressed concern about the animals and the absent owner; cautioned the property owner that she needed to pay attention to her animals; and stated that she wasn't willing to wait for thirty days.

Mayor Weinsoff stated that there were three concerns: noise, smell, and the soil and water impact; that we all had to be sensitive to our neighbors; that the problems on the site were not minimal; that it would take an investment to rectify the problems; and that he was willing to continue the matter for 30 days.

Motion by Councilmember Maggiore to approve the resolution declaring a nuisance died for lack of a second.

No second.

M/S, Bragman/Tremaine, Motion to continue the public hearing to the September meeting to have Ms. Phillips submit a use permit application with mitigation measures to bring the property into compliance with the Town Code and all applicable codes.

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

Mayor Weinsoff adjourned the meeting for a break from 9:30 to 9:40 p.m.

Introduction and First Reading of Ordinance No. 742, 50% Remodel Ordinance (continued from June 3 and July 1) – Planning

Senior Planner Neal presented the staff report.

Mayor Weinsoff opened the public hearing.

Pam Meigs, Planning Commissioner, stated that the change was long overdue, that she was in favor of moving ahead with it, and that the Planning Commission supported it.

M/S, Tremaine/Bragman, Motion to waive further reading and to read the title only of Ordinance No. 742, the 50% Remodel Ordinance.

AYES: All

M/S, Tremaine/Bragman, Motion to introduce Ordinance No. 742, the 50% Remodel Ordinance.

AYES: All

M/S, Weinsoff/Bragman, Motion to hear the item regarding the garbage contract next on the agenda.

AYES: All

Discussion of contract for solid waste and recycling services with Marin Sanitary Service – Solid Waste Subcommittee; Bragman, Brandborg

Town Manager Rock presented the staff report and noted that the suggested changes to the contract were outlined in the report with work still being done on a couple of other points.

Councilmember Bragman explained the wording he wanted to change in the contract, apologized for missing a couple of meetings that caused the delay, and emphasized the need to set goals for greenhouse gas reduction and zero waste and to set a process for joint review of our progress in meeting those goals. He noted that the contract would be in effect for the next ten years and that landfill & greenhouse gas issues would be paramount during that time.

There was a consensus of the Council to continue the item.

Report on status of State Budget and impact on the Town of Fairfax – Town Manager

There was a consensus of the Council to continue this item.

Report on the status of the General Plan and Specific Plan – Planning

There was a consensus of the Council to continue this item.

Acceptance of response to Grand Jury report entitled, “Saving Marin Major Crimes Task Force” – Police Department

Police Chief Hughes presented the staff report.

Councilmember Maggiore confirmed that the Fairfax contribution amount was \$32,000.

Chief Hughes noted that our share would have been much higher without the restructuring and confirmed that San Rafael was no longer a member of the Task Force.

M/S, Brandborg/Tremaine, Motion to accept the response to the Grand Jury report.

AYES: All

Acceptance of the Town of Fairfax 2005 Greenhouse Gas Emissions Inventory and setting of an emissions reduction target for 2020 of 15% below 2005 levels – Town Manager

Management Analyst Roberts presented the staff report and stated that the inventory presented a baseline report for the year 2005 to determine the Town’s emissions; that the report differentiated between government and community emissions; that the government operations produced miniscule emissions in comparison to the community’s emissions; that the public needed to be educated and to be firmly involved; and requested that the Council accept the report and set an emission reduction goal of 15%.

Vice Mayor Tremaine stated that the Council had already set a goal of 20% by resolution and that he did not want to reduce that goal.

M/S, Tremaine/Maggiore, Motion to accept the report with an emission reduction goal of 20%.

AYES: All

Discussion/Consideration of endorsement of Pilot Low Income Elderly and Disabled Cable Discount – Bragman

Councilmember Bragman explained that the low income, elderly and disabled customers used to get a discount on cable services but that the newly negotiated agreement didn’t include that policy; that the Marin Telecommunications Authority (MTA) had made an effort to have a discount program on their own in

partnership with other agencies in the community like the Center for Independent Living and Marin Housing to provide the same discount as before; that Fairfax probably had 30 or 40 people eligible for the discount; that it would cost Fairfax about \$200/year and would be done on a pilot basis to track the costs. He asked for the Council's endorsement of the program.

M/S, Tremaine/Maggiore, Motion to endorse the program as presented.

AYES: All

Discussion/Consideration of traffic issues on Mono Lane – Tremaine

Vice Mayor Tremaine presented the report. He stated that the range of speed detected on Mono Lane with the new police department device was 10 to 19 mph. He concluded that perhaps the speed was exaggerated by the owner of the Fairfax Inn who had complained about speeding; that he would keep an eye on the situation; that the Council might want to consider some type of traffic calming device in the future; and suggested the installation of a stop sign at Pacheco and Mono.

Adoption of a Revised Resolution of the Town Council of the Town of Fairfax, California, Calling for the Holding of a General Municipal Election to be Held 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

Councilmember Bragman requested that the Clerk provide the Council with a calendar of deadlines for arguments and rebuttals.

Councilmember Brandborg objected to the "revitalize youth services" wording and stated that she had a problem committing to a program that hadn't been developed and that didn't have a dollar amount.

Councilmember Bragman stated that the Council had heard the same argument five years ago and that he wanted to support youth programs with \$18,000 from their six million dollar budget.

Councilmember Maggiore stated that the youth commission met four times per year and had events that they had trouble funding and that Police Sergeant O'Callaghan had spoken at a meeting five years previous about the need for youth programs.

M/S, Tremaine/Maggiore, Motion to adopt the Revised Resolution of the Town Council of the Town of Fairfax, California, Calling for the Holding of a General Municipal Election to be Held 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.

AYES: All

Introduction and First Reading of Ordinance No. 745, an Ordinance of the Town Council of the Town of Fairfax Establishing an Administrative Enforcement Mechanism for Violation of the Town Code – Building/Planning

Building Official Lockaby presented the staff report. He explained the process and how it would be handled, with appeals going first to the Planning Director, then the appointed Hearing Officer, then the Town Council, and finally to court if necessary. He noted that the Hearing Officer was to be appointed by the Town Manager or could be the Town Manager.

M/S, Brandborg/Tremaine, Motion to waive further reading of Ordinance No. 745, an Ordinance of the Town Council of the Town of Fairfax Establishing an Administrative Enforcement Mechanism for Violation of the Town Code.

AYES: All

M/S, Brandborg/Tremaine, Motion to introduce Ordinance No. 745, an Ordinance of the Town Council of the Town of Fairfax Establishing an Administrative Enforcement Mechanism for Violation of the Town

AYES: All

Adoption of a Resolution of the Town Council of the Town of Fairfax Adopting Mission, Vision and Core Values for the Town – Town Manager

Town Manager Rock presented the staff report.

Councilmember Brandborg suggested some alternate language and Councilmember Maggiore suggested the elimination a repeated phrase.

M/S, Tremaine/Brandborg, Motion to adopt the Resolution adopting Mission, Vision and Core Values for the Town as amended.

AYES: All

Designation of Voting Delegates and Alternates for the League of California Cities Annual Conference, September 16-18, 2009, San Jose – Town Clerk

Town Clerk Anderson presented the staff report and it was determined that no Council member would be in attendance so that no designation was necessary.

Authorization for Town Manager to execute a Memorandum of Understanding with the Town of San Anselmo for Jointly Sponsored Recreation Programs – Town Manager

Town Manager Rock presented the staff report and introduced Dave Donnery, the new San Anselmo Director of Community Services who described the hiring of someone from the community, Camille Esposito, to work on programs in Fairfax.

There was a discussion about the revenue split for the Fairfax programs. It was confirmed that 35% would go to San Anselmo and 15% to Fairfax, with 50% of the net profit to the contractor. Fairfax residents would get a special resident rate for classes in Fairfax and the other changes were outlined in the report.

M/S, Bragman/Tremaine, Motion to authorize the Town Manager to execute a Memorandum of Understanding with the Town of San Anselmo for Jointly Sponsored Recreation Programs.

AYES: All

Authorization for Mayor Weinsoff to sign a letter to Marin County Supervisor Brown requesting funding for various projects in Fairfax – Town Manager

There was a consensus of the Council to have the mayor work with the manager to craft the language and send the letter out.

Reports from Town Officials

No reports were given.

Council reports and comments

No Reports were given.

ADJOURNMENT in memory of Alex Forman, MMWD Board Member at 11:00 p.m.

Respectfully submitted,  
Judy Anderson, Town Clerk