

DRAFT Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, May 6, 2009

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

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
Laurie Ireland-Ashley, Finance
Jim Karpiak, Town Attorney
Ken Hughes, Chief of Police
Mark Lockaby, Building Official
Judy Anderson, Town Clerk
Joanne O'Hehir, Minutes Clerk

Mayor Weinsoff called the meeting to order at 7.30 pm.

Approval of Agenda and Affidavit of Posting

M/S, Tremaine /Bragman, 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 and pending litigation and that direction had been given.

Announcements

Mayor Weinsoff announced that a deal between the owners of the site of the former Albertson store and a prospective new purchaser had fallen through.

Mayor Weinsoff announced that information on the H1N1 virus was available on the Town's Website.

Councilmember Maggiore announced that she would not be running again in the forthcoming elections.

Town Manager Rock requested the addition to the Consent Agenda of a resolution to enable the Town to participate in the Bay Area Quality Management District's (BAAQMD) application to the

Department of Energy (DOE) to provide partial funding for a Neighborhood Electric Vehicle, (NEV), as an urgency item.

M/S, Tremaine/Bragman, Motion to place on the Consent Agenda the Adoption of Resolution No. 09-36, A Resolution of the Town Council of the Town of Fairfax Authorizing Participation in the Bay Area Air Quality Management District's Grant Application Process for Partial Funding of a Neighborhood Electric Vehicle Purchase with American Recovery And Reinvestment Act Monies and to Authorize the Town Manager to Represent the Town in the Application.

AYES: All

Open Time for Public Expression

Michael Mackintosh, Pastori Avenue, stated that the First Annual Marin Sonoma Concourse d'Elegance event would be taking place on May 17, 2009, at the Marin Center to benefit Marin Hospice. Councilmembers accepted Mr. Mackintosh's gift of tickets to the event having conferred with Counsel.

Jim Fox, Sleepy Hollow, provided materials to Council Members on a possible future memorial sculpture to Jerry Garcia.

Patrick Troupe discussed the creation of a peaceful and prosperous world that began with communities. He stated that he would be available to speak to people if they wished, and he noted that community activities would be taking place in Fairfax.

Annual report from Representative to the Marin Commission on Aging

Interview and appointment of candidate to serve as the Fairfax representative to the Marin Commission on Aging for a three-year term to June 30, 2012 – Town Clerk

The representative to the Marin Commission on Aging was not at the meeting, and both related items were continued to the next meeting.

Interview and requested re-appointment of candidate to the Volunteer Board for a full three-year term to May 31, 2012

Holly Bragman was interviewed as a candidate to continue to serve on the Volunteer Board.

M/S, Bragman/Tremaine, Motion to appoint Holly Bragman to the Volunteer Board.

AYES: All

Presentation by the League of Women Voters regarding proposed Campaign Finance Reform

Alyssa Giambastini, President of the League of Women Voters, described a finance reform campaign that the League had undertaken to alert voters to unethical campaign activities and noted that a County Ordinance was expected to be enacted that called for greater transparency for election mailers and campaigns. Ms. Giambastini requested Council Members to sign a pledge to conduct a fair campaign to send to the League of Women Voters that would be published.

Mark Bell, Dominga, commented on negative campaigning and stated that candidates should resign if they did not carry out their promises once they were in office.

Ms. Giambastini noted that negative campaigning took place when someone misled or intimidated things about a candidate that were not true.

Councilmember Maggiore expressed concern that negative campaign materials sometimes provided an opposing view and that she would not want a campaign to be monitored unless it was egregiously wrong.

Mayor Weinsoff noted that Council Members should not comment upon one another's campaigns.

All the Council members, except Councilmember Maggiore signed the pledge to use fair campaign practices.

Consent Calendar

Adoption of Resolution No. 09-36, A Resolution of the Town Council of the Town of Fairfax Authorizing Participation in the Bay Area Air Quality Management District's Grant Application Process for Partial Funding of a Neighborhood Electric Vehicle Purchase with American Recovery And Reinvestment Act Monies and to Authorize the Town Manager to Represent the Town in the Application. (Added as an Urgency item)

Town Council minutes of November 19, 2008 and April 1, 2009

Accept and File Monthly Finance Report for March 2009 and First Quarter 2009 Investment Report

Adoption of Resolution No. 09-30, a Resolution of the Town Council of the Town of Fairfax appointing Town Manager Michael Rock as Deputy Town Clerk

Accept and File Report on the Floodgate Grant Program

Acceptance of a \$10,000 Grant for the Deer Park Trail from the Emig Trust Fund

Report on FEMA flood map and Flood insurance

Adoption of Resolution No. 09-32, A Resolution of the Town Council of the Town of Fairfax Authorizing the Artists-in-Residence to Renew the Mural at Central Field

Adoption of Resolution No. 09-33, A Resolution of the Town Council of the Town of Fairfax Authorizing the Director of Public Works to Implement the Resurfacing of Sir Francis Drake Boulevard From June Court to the West Town Limit Through the American Recovery and Reinvestment Act of 2009

Councilmember Brandborg requested the removal of the item on the Ross Valley Fire Department to be heard before the public hearings.

Councilmember Bragman requested that on Page 4 of the minutes of November 19, 2008, in the penultimate paragraph, the word "falsely" should be inserted between the word "out" and

“stating” to read as follows: “stated that the appellant’s attorney had sent a letter out falsely stating that Mr. Bragman was doing illegal construction”

Councilmember Brandborg inquired if remaining monies from the Floodgate Grant Program would be spent on floodgates. Town Manager Rock stated that the Council would decide how the monies would be spent as part of the budget process.

Councilmember Bragman noted that the Town’s reserve account was not included in the account reconciliations presented. Finance Director Ireland-Ashley stated that it was a separate fund but that she would provide Council Members with a listing of fund balances.

Michael Mackintosh, Pastori Avenue, requested that the item on the FEMA flood map be removed from the Consent Calendar for discussion.

M/S, Tremaine/Brandborg, Motion to approve the Consent Agenda with the amendment to the minutes of November 19, 2008, and the removal of the item on the Ross Valley Fire Department and the item on the FEMA flood map to be heard on the regular agenda.

AYES: All

Adoption of Resolution No. 09-31, A Resolution of the Town Council of the Town of Fairfax commending the Ross Valley Fire Department for hosting the Fire Explorer Training Program - Brandborg

M/S, Tremaine/Brandborg, Motion to adopt Resolution No. 09-31, A Resolution of the Town Council of the Town of Fairfax commending the Ross Valley Fire Department for hosting the Fire Explorer Training Program.

AYES: All

Councilmember Brandborg presented a Resolution of Appreciation to Paramedic Gavin Illingworth of the Ross Valley Fire Department.

Report on FEMA flood map and Flood insurance – Bragman

Town Manager Rock presented the staff report.

Mayor Weinsoff opened the discussion to the public.

Michael Mackintosh expressed his concerns about the cost of flood insurance.

Town Manager Rock stated that no new Fairfax parcels had been added to the updated flood map, but that the County had sent some Fairfax property owners a letter about flood insurance that caused confusion.

Councilmember Bragman stated that the County had not provided sufficient time for people to appeal against the decision to designate their properties in a flood zone, which would affect some homeowners’ insurance.

Mayor Weinsoff stated that flood controls in Ross Valley were necessary to solve flooding issues.

Mark Bell, Dominga Avenue, stated that the flood map was inaccurate and described the problems he had experienced trying to secure flood insurance.

Adoption of Resolution No. 09-34, A Resolution of the Town Council of the Town of Fairfax Adopting Guidelines for all Town Council appointed Commissions, Committees, and Boards – Town Manager

Mayor Weinsoff announced that the item was being brought forward to accommodate some committee members who were present. Town Manager Rock stated that he wished to postpone the item so that he could discuss the guidelines with the various committees before they were presented to the Town Council.

M/S, Brandborg/Tremaine, Motion to continue the Adoption of Resolution No. 09-34, A Resolution of the Town Council of the Town of Fairfax Adopting Guidelines for all Town Council appointed Commissions, Committees, and Boards, to the meeting on June 3rd, 2009.

AYES: All

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

Councilmember Bragman recused himself because of a potential conflict due to his ownership of property within 500 square feet of the subject property.

Planning Director Moore presented the staff report and explained that the project had been denied because it consisted of four stories. Planning Director Moore noted that a Deed Restriction had been applied to the storage space below the carport for a previous project, but that the Deed Restriction had never been filed at the County.

Mayor Weinsoff opened the public hearing.

The applicant, John Owens, provided materials showing support for his project including a petition in support of the project signed by 126 people. He stated that he would be providing a legal, affordable, sustainable second unit which satisfied the goals of the Second Unit Ordinance. He further stated that there were no neighborhood objections as the Planning Commission hearing; that two reasonable variances were required; that the unit qualified for a platinum standard for sustainability and energy efficiency; that it would be built within the existing footprint; that they were providing twice the required parking; and that no findings that could be legally supported were part of the denial of the application.

Shane Deal, Bell Avenue, owner of the property next door, stated that he supported the project.

Niccolo Caldararo, Frustuck Avenue, stated that the owner had bullied homeowners on the hill and threatened to sue people. He further stated that the Deed Restriction had not been filed and that he hoped the law and Town ordinances would be upheld.

Mark Bell, Dominga, stated that the Deed Restriction should have been filed.

Ted Pugh, Acacia Avenue, explained how exceptions could be made to allow fourth stories.

Peter Ramsay, Mono Ave, stated that he supported the affordable housing project.

John Reed, Scenic Rd., stated that homeowners should be allowed to build larger homes when green building materials were used.

Larry Bragman, Hickory Road, speaking as an individual, stated that the applicant had falsely accused him of building on his property without permits, and he noted that Mr. Pugh had modified the design of his house in order to comply with the law. Mr. Bragman stated that if the Council was inclined to approve the project, that the Deed Restriction should be filed prior to the issuance of the building permit.

Peter Lacques, Planning Commission Chair, Oak Avenue, stated that the applicant had originally planned to build a carport, which had been a factor in the decision of the Planning Commission on a previous application. Mr. Lacques explained that the project had been denied by the Planning Commission because it consisted of four stories.

Bill Madsen, Porteous Avenue, stated that he supported the project because it provided affordable housing and did not expand the building envelope.

Mayor Weinsoff closed the public hearing.

In response to Councilmember Brandborg, Planning Director Moore confirmed that the Deed Restriction still needed to be filed.

Councilmember Tremaine expressed concern that more four-story applications would come forward if this were approved and he stated that no evidence had been presented that the new unit would be affordable. Councilmember Tremaine stated that the Deed Restriction was requested on the storage area because it was the intent of the Town Council that a second unit should not be built in that location.

Councilmember Maggiore expressed concern that the Deed Restriction had not been put in place and stated that she supported the Town's height limit and third-story policy.

Councilmember Brandborg stated that the space was available to build a second unit and that it would aid the lack of affordable housing. Councilmember Brandborg stated that she would like the appeal to be upheld.

Mayor Weinsoff provided an opportunity for the appellant to rebut the comments made during the public hearing.

Mr. Owens stated that he had not been presented with a Deed Restriction.

Planning Director Moore stated that the Deed Restriction should be signed if the Council upheld the appeal in order to preclude a third unit from being built on the property. He noted that the garage had not been built and that if it was not constructed, the project would consist of a three-story house with a second unit that would meet the Town's requirements.

Consensus was reached by Council Members to continue the item to the next meeting which would allow the owner to file the Deed Restriction and explore other possibilities which pertained to the project.

Mayor Weinssoff adjourned the meeting for a break from 9:25 to 9:35 p.m.

Interview and appointment of Candidate to serve on the Volunteer Board to complete an unexpired term to July 31, 2010

Lana Pereyaslavska was interviewed as a candidate to serve on the Volunteer Board.

M/S, Bragman/Brandborg, Motion to appoint Lana Pereyaslavska to the Volunteer Board to complete an unexpired term to July 31, 2010.

AYES: All

Introduction and First Reading 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

Planning Director Moore presented the staff report. He noted that it was important that the ordinance not expose the Town to claims that it was slow in allowing the removal of hazardous vegetation.

Councilmember Brandborg expressed concern about the proposed tree-replacement ratio of 3 to 1 and the Town's recommendation of arborists.

Town Manager Rock stated that the intent was for the Town to draw up a list of professional arborists to be used by applicants.

Councilmember Bragman supported the use of a list of arborists who would provide a second opinion for tree removal requests and suggested that language should be added to augment the Urban Wildlife Interface Code to involve the Fire Department in tree removals.

There was a consensus of the Council that the tree-replacement ratio of 3 to 1 should be removed and that the Tree Committee should be allowed discretion in determining tree replacement. The Council discussed the process for the removal of heritage trees and the use of permit fees and agreed to continue the discussion after considering the Master Fee study.

Mayor Weinssoff opened the discussion to the public.

John Reed, Scenic Road, stated that he believed fines should be raised for the illegal removal of heritage trees.

Town Attorney Karpiak discussed the difficulties of imposing civil fines for tree removals.

Karen Arnold, Meadow Way, stated that homeowners with heavily wooded properties needed to understand the implications from a fire and insurance standpoint and described her wooded property that caused her to be denied insurance coverage.

Ryan O'Neil, Canyon Road, Tree Committee member, stated that he had lost his homeowner's insurance, but was concerned that property owners could benefit financially by removing trees on their property. He believed that a fee should be charged for the illegal removal of large trees.

Michael Mackintosh, Pastori Ave., stated that people needed to be educated about trees and that tree maintenance could prevent the necessity of removal.

Peter Lacques, Planning Commission Chair, stated that there was general consensus on the Planning Commission that it was important to set standards for tree removal decisions and that they had discussed permit fees and fines during the drafting of the proposed ordinance.

Council gave direction to staff to include the thoughts and considerations that were discussed for the first reading of the Draft Ordinance in June.

Agenda Review

Due to the lateness of the hour, consensus was reached among Council Members that the items pertaining to the Adoption of Resolution No. 09-34, Adoption of Resolution No. 09-35, Discussion on brush-clearing and the Review of the Town's policies regarding contracts would be continued to the next meeting.

Approval of Town contract with Camille Esposito, Fairfax Open Circle Arts (FOCAS) to establish children's recreational programming in Fairfax – PARC

Town Manager Rock presented the staff report and stated that the program would provide an opportunity for the Town to expand its children's recreational program.

Mayor Weinsoff opened the discussion to the public.

Karen Arnold, Parks and Recreation Commissioner, stated that people wanted this type of program and that Camille Esposito was already offering a very successful program for the Town.

In response to Councilmember Bragman, Ms. Esposito stated that the program would cater to children under five and that they planned to hold affordable art classes for children of pre-school age and perhaps older.

Town Attorney Karpiak led a discussion on insurance and Town Manager Rock noted that the Town would be liable for insurance because it would be too onerous for the program manager to provide the required insurance.

M/S, Maggiore/Tremaine, Motion to approve the Town contract with Camille Esposito, Fairfax Open Circle Arts (FOCAS) to establish children's recreational programming in Fairfax with the friendly amendment that requiring finger printing and background checks of staff would be included in the contract.

AYES: All

Update on the status of the General Plan Elements

Planning Director Moore stated that the Circulation and Land Use Elements should be ready for review by the Town Council in July or August.

Mayor Weinssoff stated that the process had been slow and Councilmember Tremaine stated that the Planning Commission was doing a good job.

Report from the Affordable Housing Committee regarding potential sites

Councilmember Tremaine reported that discussions had been taking place with the Pastor of the Lutheran Church on Sir Francis Drake Blvd and with the owner of the site of the former Mandarin Garden Restaurant. He stated that both parties had expressed interest in creating affordable housing on the two sites.

Mayor Weinssoff opened the discussion to the public and the owner of the property of the former Mandarin Garden Restaurant stated that he agreed with the staff report.

Planning Director Moore discussed the prospective sites and stated that they would move forward with a site-capacity plan and would seek funding if the Council wanted to move forward.

There was a consensus of the council to accept the report and direct staff to move forward.

Request for a letter from the Mayor urging the Marin-Sonoma Mosquito and Vector Control District to preserve the "No-Spray List" – Bragman

Councilmember Bragman presented a brief report and stated that the Town should support a continuance of the "No-spray list" and the use of the telephone notification system. He stated that he would draft a letter to that effect if he had support from the Council.

Councilmember Maggiore stated that the letter should reflect the general wish that there be no spraying.

Mayor Weinssoff opened the discussion to the public.

Michael Mackintosh stated that the letter should point out that the Town's ordinance required notification of the use of pesticides, to which there was general consensus among Council Members.

M/S, Bragman/Tremaine, Motion to approve a draft letter from the Mayor to be sent urging Marin-Sonoma Mosquito and Vector Control District to preserve the "No-Spray List" and to encourage the implementation of a telephone warning system.

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

Reports from Town Officials

Town Manager Rock reported on the noise from Ghiringhelli's Pizza that a citizen had complained about at the previous Council meeting and stated that there was nothing in the existing noise ordinance that would suggest that there was a violation of the Town Code. Town Manager Rock stated that he had not received other complaints, that the noise level had seemed reasonable when he walked past.

Direction was given to Town Manager Rock to contact Yvette Wakefield, the citizen who complained, and suggest that she contact the Police Department, who might investigate the matter.

Council Reports and Comments

Mayor Weinsoff reported that he would be attending a luncheon at the invitation of the Vice President of the Marin County Council of Mayors and Council Members (MCCMC).

Mayor Weinsoff reported that he and Councilmember Brandborg had met with the Marin County Green Building Collaboration prior to the last MCCMC meeting and he requested approval for the Council for him to continue meeting with the group as the Fairfax representative, to which the Council agreed.

Adjournment

On motion duly made and carried, the meeting was adjourned at 11pm.

Respectfully submitted,

Joanne O'Hehir