

Fairfax Town Council Minutes  
Regular Meeting  
Fairfax Women's Club  
Wednesday, April 7, 2010

The regular meeting was preceded by a special meeting closed session regarding pending litigation, Fairfax v. Berg.

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

Mayor Tremaine called the meeting to order at 7:35 pm.

Approval of Agenda and Affidavit of Posting

M/S, Bragman/Weinsoff, Motion to approve the agenda and the Affidavit of Posting.

AYES: All

Announcement of Closed Session Action

Mayor Tremaine announced that the Council had met with legal counsel regarding Fairfax v. John and Marlia Berg, that direction had been given to staff and that no action had been taken.

Announcements

Mayor Tremaine made the announcements listed on the Agenda and Councilmember Weinsoff described the films to be shown at the Documentary Film Festival.

Open Time for Public Expression

No speakers came forward.

Interview and appointment of candidate(s) for appointment to the Parks and Recreation Commission for a full four-year term to March 31, 2014

Vicki Burns, current member of the Parks and Recreation Commission was the only applicant for the position.

M/S, Reed/Hartwell-Herrero, Motion to appoint Vicki Burns to a full four-year term on the Parks and Recreation Commission.

AYES: All

Interview and appointment of candidate(s) for appointment to the Volunteer Board for a full three-year term to March 31, 2013

Anya Schandler, current member of the Volunteer Board, was the only applicant for the position.

M/S, Reed/Weinsoff, Motion to appoint Anya Schandler to a full three-year term on the Volunteer Board to March 31, 2013.

AYES: All

Update on the activities of the Marin Economic Forum – Robert Eyler

This item was continued due to the illness of the speaker.

Council Reports and Comments

Councilmember Weinsoff stated that he would be attending the Association of Bay Area Governments' General Assembly that was about the implementation of SB 375 and the development of strategies for sustainable communities in the Bay Area and invited the other Council members to attend.

Mayor Tremaine reported that the launch of the Marin Energy Authority would be on May 7<sup>th</sup> at 1 p.m. He invited the other Council members to join the Board and others in support of Marin Clean Energy at the ceremony.

Councilmember Reed reported that he had attended the Ross Valley School Board meetings about the overcrowding of the schools; that the Facilities Subcommittee had met; and that a charrette was being organized by the Town to provide an opportunity for the public to review the options and to provide input and possible solutions to the problem. He further reported that he had attended a Marin County Council of Mayors and Council Members meeting where he had received information about a program that used Federal stimulus money to help homeowners save energy with home equity loans for energy improvements.

Town Manager Rock reported that the County and the Marin Managers were looking at the program and would recommend either joining California First, a collection of 14 counties necessary to be big enough to qualify for a bond to provide the loans, or the County of Sonoma to provide such a program in Marin.

Vice Mayor Bragman announced that the first outreach meeting on the possible amendment to the smoking ordinance was held, that an amendment to the smoking ordinance was being considered and that another informational public meeting would be held at the Fairfax Library. He further reported that he and Councilmember Hartwell-Herrero had met with Marin Sanitary about the possibility of adding composting to the franchise agreement.

Councilmember Hartwell-Herrero reported on a meeting she and Councilmember Weinsoff had attended with Ritter House about homeless issues in Fairfax; reported that she had also attended the meeting about smoking in multi-unit buildings; that she had met with Supervisor McGlashan about the potential ban on plastic bags and about efforts to have all the towns come up with the same ordinance to make it easier countywide; that she had spoken to second and third graders at Manor School about being a Council Member; and asked for help and ideas for revitalizing the Fairfax Youth Commission.

Marie Brougham, stated that the CA Building Performance Contractors Association, with a Website at CBPCA.org, offered training on sustainability issues and reported that they had stimulus money to provide training about energy efficiency and green building, and how to make energy efficient buildings.

Anya Schandler, 4 Barker Ave., asked if the Town Council was looking at local people to join the effort to help the homeless in Fairfax. Councilmember Weinsoff assured her that they were working on it.

Report on joint meeting of the Parks and Recreation Commission with San Anselmo

Town Manager Rock reported that the two towns met twice a year to discuss the agreement for the joint recreation programs offered; that San Anselmo did all the administration and produced the program guide; that the agreement (Memorandum of Understanding) would be renewed in August; that FOCAS, (Fairfax Open Circle Arts) was so popular that Fairfax was challenged to find places for all the classes offered; and that online registration was available for the jointly offered programs.

Report on Use of Manpower Temporary Employees through Federal Stimulus Funds

Town Manager Rock presented a report on the possibility of hiring an employee through Manpower using Federal Stimulus Funds to pay the salary of that employee for up to six months. He also reported that the Town had received a Federal stimulus grant for street lights with more energy efficient induction technology lighting.

Consent Calendar

**Approval of Town Council minutes of February 27, March 3, 10 and 20, 2010 – Town Clerk**

**Report on the status of the General Plan Update – Planning**

**Authorize the Town Manager to sign a contract with Van Midde and Sons Concrete for the Fire Station Driveways – Public Works**

**Adoption of a Resolution of the Town Council of the Town of Fairfax Approving a Facility Use Policy for Special Events sponsored by the Parks and Recreation Commission – Town Manager**

**Report on the status of the perchlorethylene (PCE) spill at the Fair Anselm retail center – Bragman**

**Proclamation declaring April as Fair Housing Month in Fairfax – Town Clerk**

**Proclamation declaring April as Library Month in Fairfax – Town Clerk**

**Adoption of a Resolution of the Town Council of the Town of Fairfax re-naming Central Field “Contratti Field” in honor of Town Employee Rudy Contratti for his dedication to the maintenance of the field – Town Clerk**

**Adoption of a Memorandum of Understanding between the Marin County Farmers Market and the Town of Fairfax for the 2010 Fairfax Farmers Market – Town Manager**

**Adoption of a Resolution opposing Proposition 16: The California Constitutional Amendment Ballot Initiative entitled: New Two-Thirds Vote Requirement for Local Public Electricity Providers” – Town Manager**

**Adoption of a Resolution of the Town Council of the Town of Fairfax designating Commissioners and other persons performing voluntary services without pay as employees for the limited purpose of qualifying for workers’ compensation insurance coverage under California Labor Code section 3200, et seq., Town Clerk**

Michael Mackintosh, owner, 60 Pastori, requested that the status of the General Plan, the PCE Spill, and the Financial Reports be taken off the Consent Calendar for discussion.

Vice Mayor Bragman asked about the information presented in the financial report about liability claims and requested a list or summary of claims against the town. He asked that the minutes from February

27<sup>th</sup> reflect his suggestion that the Town's surplus funds currently held in the Local Agency Investment Fund be invested in Ginnie Mae's to realize a better return with the decision to be made as part of budget discussions.

Approval of Financial Reports through February, 2010 - Finance

Finance Director Ireland-Ashley presented the staff report.

Report on the status of the General Plan Update – Planning

Planning and Building Services Director Moore presented the report and stated that the goal was to have all the elements of the General Plan before the Council by July.

Report on the status of the perchlorethylene (PCE) spill at the Fair Anselm retail center – Bragman

Vice Mayor Bragman reported that an enforcement order had been issued; that all the parties had retained counsel; that a plan was being developed to clean up the site; that it was not a Town matter but was being reported on because it was a health concern for Fairfax; and that it was in the jurisdiction of the Department of Toxic Substance Control.

In response to a question from Councilmember Reed about the use of the non-turf areas by the Farmers Market, Town Manager Rock reported that the requirements for the Farmers Market were the same as in previous years.

M/S, Reed/Bragman, Motion to adopt the Consent Calendar.

AYES: All

**REGULAR AGENDA**

Discussion and Consideration of a Resolution adopting a telecommuting policy – Finance

Town Manager Rock stated that a resolution would be presented at the next meeting for adoption of the policy.

Finance Director Ireland-Ashley presented the staff report and the policy for discussion. She reported that the telecommuting agreements with the affected employees would have to be renewed annually and that the policy required a more stringent safety/OSHA setup in home work spaces than at the main office.

There was a discussion about the hours of the two employees currently telecommuting; whether or not there was a negative side to telecommuting for a small agency; that it could change the culture of the organization; that there was a preference for hiring local people; that it was a new trend to allow telecommuting; that new methods like offering telecommuting were needed to find and retain staff; that it was good for the environment; that it could benefit the town; and that there weren't any qualified local applicants for the two positions currently telecommuting.

Michael Mackintosh, 60 Pastori Ave., stated that he was glad we had our Finance Director; that, in a small community, it was important that the staff was available to the public; that, if the telecommuting option was offered to some employees, it had to be offered to all employees; and that morale was extremely important.

Valeri Hood, Dominga Ave., stated that she agreed with Vice Mayor Bragman, that hiring local was always the right thing to do.

Diane Hoffman, Porteous Ave., stated that she found it hard to believe that a local person couldn't be

found to do the job and that employees should be willing to work and commute to the Town.

There was a consensus of the Council to allow a maximum of half-time for any granted telecommute.

Review and Discussion of East-West Bikeway Plan – Planning

Planning and Building Services Director Moore presented the bikeway study and reported that it would be brought back to the Council for final approval in May with minor amendments that had been suggested. He stated that it had been a collaborative effort with Fairfax taking the lead with the help and support of Vice Mayor Bragman and Councilmember Reed and others; that the study identified projects that would be eligible for funding; and that the implementation of the plan would provide a safe route for bicyclists from Fairfax to San Rafael.

Councilmember Reed asked to see the striping plan for the Sir Francis Drake paving project early in the process; stated that it had been a phenomenal experience working with the committee; and that the study outlined real projects that would be eligible for Federal government funding.

Public Works Director Wilkie reported that a revised striping plan had just been delivered and she outlined the changes to the plan noting that Parisi had done everything he could to change the design to make it consistent with the bikeway study.

Vice Mayor Bragman thanked the Planning Director and Patrick Seidler, a member of the committee; stated that it would be used once it was built; that it was a very positive step that would positively impact traffic and community health; and that he looked forward to the final version at the next meeting.

Andy Peri, Marin County Bicycle Coalition, commended staff and Vice Mayor Bragman for bringing it forward in the first place; that he appreciated the opportunity to get Class A bikeways to San Rafael; and that he looked forward to the final document.

Joseph Odom, Porteous Ave., stated that bicyclists on Center Blvd. created a safety hazard and suggested that a sign be placed at the beginning of Center to say something like "Not recommended for bicycles."

Diane Hoffman, Porteous Ave., agreed with Mr. Odom and supported the idea of signage to make it safer.

Alexander Binik, stated that he thought there were signs directing bicycles to Lansdale and that the signage had changed making it confusing.

Michael Mackintosh, 60 Pastori Ave., reported on a blind spot at a stop sign on Lansdale and Pastori and encouraged the Council to approach Center from Pastori and note the problem.

Planning Director Moore stated that the Town had no authority to restrict bike traffic on Center.

Michael Mackintosh, 60 Pastori, offered a section of his property for a bike path to avoid the intersection.

Mayor Tremaine adjourned the meeting for a break from 9:18 to 9:28 p.m.

M/S, Reed/Hartwell-Herrero, Motion to hear the item regarding smart meters as the next item.

AYES: All

Discussion/Consideration of plans by PG&E and MMWD to install "smart meter" technology designed to utilize wireless technology, related health issues, potential water and energy savings – Reed

John Reed presented the report and described the issues with the “smart meters” including compromising privacy; inconsistent billing and unwarranted increases in consumer invoices; increased EMF exposures; possible fire danger and other negative consequences. He suggested that we request a moratorium on the installation of smart meters in Fairfax.

Councilmember Weinsoff thanked Councilmember Reed for bringing the issue to the Council’s attention; reported that the MMWD was considering something similar with water meters; suggested that perhaps MMWD could brief the Council on the issue; and stated that Sebastopol would be debating the issue on April 21<sup>st</sup>.

Councilmember Hartwell-Herrero asked about any success other communities had trying to stop the meters and reported that MMWD couldn’t install smart meters in Fairfax until the end of the two-year study project in Fairfax.

Councilmember Reed responded that installations of the smart meters in Bakersfield had resulted in a class action suit.

Mayor Tremaine stated that the Marin Energy Authority was considering a smart meter program and requested more information about the smart meters to bring it to that board.

Mayor Tremaine opened the discussion to the public:

Mark Bell, Dominga Ave., reported that a PG&E spokesperson had called him with a script and was unable to answer questions about the meters; that PG&E should use the money for renewable energy sources; and, if the public saved water or energy they just got charged more for it.

Diane Hoffman, Porteous Ave., thanked Councilmember Reed; called the smart meter number given to her; warned that if such a meter were attached to your house, PG&E would be able to take readings of gas and electricity use hourly; that she had been told that there wouldn’t be a choice; that PG&E was getting tons of calls from people who didn’t agree with the readings from the smart meters; that it was possible to call up or go on line to see your energy use by the hour; that if the whole Town of Fairfax said “no,” PG&E would send meter readers to Fairfax; and urged the Council to tell PG&E that we didn’t want smart meters.

Valeri Hood, Dominga Ave., read a few things that she had downloaded from the internet on the subject; that PG&E had spent 2.2 billion dollars so far; that some people were talking about a moratorium on the smart meters; that the meters would eliminate jobs for meter readers; that the meters would emit radiation; and stated that more information about the dangers of the meters could be found at [emfsafetynetwork.com](http://emfsafetynetwork.com).

Joseph Odom, Porteous Ave., stated that, as a Town, we had written a telecommunications plan and it stated that a telecommunication transponder couldn’t be installed without a public hearing; that he wasn’t sure if it was legally possible to object to the installation of the meters; that the Town could declare a moratorium to give the Council time to explore the issue; and urged the Council to use cautionary principles.

Valeri Hood, Dominga Ave. suggested that the Town might have some jurisdiction since it the meters would also be on power poles and other places.

David Glick, Cascade Drive, asked when PG&E had ever done anything good for the Town; stated that the Town shouldn’t allow smart meters; and that PG&E was not our friend.

Alexander Binik, Toxics Institute, Fairfax, asked that the Council direct staff to draft a letter to the Public Utilities Commission; that it was a State issue; that local communities could have a big impact by standing up and saying that it was not acceptable; that it was important to get the media to start talking

about it; that anything that the Town could do to initiate action on the issue would be appreciated; and encouraged the Town to look at models of what other towns had done.

Mayor Tremaine ascertained that Mr. Binik was willing to work with him to draft a letter for the Council's consideration to the Public Utilities Commission.

Alexander Binik, Meadow Way, reported that a State Senate Committee on the issue had been formed and read from a letter from a resident about her experience with a smart meter that had been installed in her home who asked to remain anonymous. Her letter described health problems that she believed were from electronic or radio frequency poisoning caused by the smart meter.

M/S, Reed/Bragman, Motion to direct Mayor Tremaine to draft a letter to the PUC and draft a moratorium for the Town of Fairfax or the strongest action possible.

AYES: All

Adoption of a Resolution authorizing budget adjustments 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.

Vice Mayor Bragman requested copies of the legal service billings and Town Manager Rock agreed to provide him with a copy of the March invoice as the only one not yet provided.

M/S, Bragman/Hartwell-Herrero, Motion to adopt the resolution as presented and to direct staff to provide Vice Mayor Bragman with the requested invoice.

AYES: All

Discussion/Consideration of possible amendments to the Second Unit Amnesty Ordinance in response to the recent Fire Forum discussions – Bragman

Vice Mayor Bragman presented the report and explained that the main reasons he didn't think that the amnesty had worked to encourage residents to legalize second units was the inability to bring the units up to current code, especially the fire codes. He stated that the Fire Marshall's interpretation of the code required the installation of expensive sprinkling systems. The consequences of this interpretation were that more units stayed underground and didn't get legalized or inspected. He further stated that the fire code was subject to a degree of interpretation and suggested that language be included in the ordinance to exempt some of the existing illegal units from sprinkling requirements and noted that the State Fire Marshall had exempted cleaners from sprinkling requirements. The subject units were built before 2005 and weren't being inspected for health and safety violations because they were underground.

In response to a question from Councilmember Hartwell-Herrero about the potential for litigation in the case of fire, Vice Mayor Bragman stated that immunity attached to decisions made in a discretionary manner by a municipality.

Councilmember Reed stated that it was clear that sprinklers put out fires and saved lives but that they were expensive; that the units in question could be brought into compliance in many areas; and that the Town was setting the bar unrealistically high so that owners weren't applying for the amnesty.

John Owens, 177 Frustuck, expressed agreement with Vice Mayor Bragman; stated that fire sprinklers were inside the building and minimized damage to the structure but didn't save lives; that smoke detectors saved lives; that the Uniform Housing Code made a house safe; that smoke detectors in second units had to be linked to the main house; that when the second units were legalized they received a street address enabling public safety response to find the unit; and that the crux of the

amnesty was for safety.

Vince D'Amico, Arboleda Circle, stated that Vice Mayor Bragman had an excellent idea and asked when the last second unit burned in Fairfax or when a second unit resident had been killed in a fire to illustrate that installing sprinklers was not a priority.

Peter Ramsay, Mono Ave., suggested a change of wording to the ordinance to address the problem with the definition of "newly created units" to read "shall not be classified as a newly created second unit and a sprinkler shall not be required."

M/S, Bragman/Hartwell-Herrero, Motion to direct staff to draft an amendment to the ordinance to address the issue.

AYES: All

Discussion:

Vice Mayor Bragman asked the Fire Board representatives their opinions on the issue.

Mayor Tremaine stated that it seemed pointless to have the amnesty ordinance with the sprinkler requirement that produced no legalized units; that the legalized units were necessary for the Town to meet its housing goals; and that the Town needed to make the amnesty ordinance actually produce some units to help us meet our housing requirements.

Councilmember Weinsoff suggested that the Fire Chief be part of the discussion to receive his input.

Discussion/Consideration of widespread non-compliance with Town fence height ordinance, and possible solutions that both regulate deer ingress and preserve unimpeded visual quality above 4' in height – Reed

Removed from the agenda.

Adoption of a Resolution authorizing the Mayor to execute an MOU with the Marin Energy Authority and a Guaranty and related instruments in connection with a working capital loan in exchange for certain annual payments from the MEA Tremaine

Mayor Tremaine introduced the topic and recommended that the Town make the loan for 16 months, get a rebate over a 2-year period and show the Town's commitment to the Marin Energy Authority (Authority). He reported that the energy cost savings would be over \$7,000 the first year and that the Authority was anticipating more revenue than what their business plan called for.

Councilmember Weinsoff asked about the potential risk involved and whether or not the funds could be retrieved in the case of a Town emergency.

Town Manager Rock reported that the risk was minimal and was only really for the period of time until the first fees were received by the Authority in May and June.

There was a discussion about placing the guarantee money in a separate account, using a town-owned building as collateral, and about the other parties contributing financially to the Authority.

Councilmember Hartwell-Herrero suggested that the Town try to get as many merchants as possible to choose the "deep green" option.

Councilmember Reed stated that the risk the Town was taking was very low and that he was willing to take the risk.

Michael Mackintosh, 60 Pastori Ave., asked what the Council's priority for spending would be if a default happened; that he would not encourage the use of the Pavilion as collateral; described his experience with PG&E when he called about the smart meters; and stated that the Town was subordinated to Shell Oil through the Authority.

M/S, Hartwell-Herrero/Bragman, Motion to adopt a Resolution authorizing the Mayor to execute an MOU with the Marin Energy Authority and a Guaranty and related instruments in connection with a working capital loan in exchange for certain annual payments from the Marin Energy Authority.

AYES: All

Adoption of a Resolution of the Town Council of the Town of Fairfax approving the Dark Green option for energy choice with Marin Energy Authority – *Town Manager*

Town Manager Rock presented the staff report and recommended the dark green option.

M/S, Weinsoff/Hartwell-Herrero, Motion to adopt the resolution approving the dark green option for energy choice with Marin Energy Authority.

AYES: All

Authorize the Mayor to sign a letter requesting the Town of Fairfax be considered for the honor of becoming a Cittaslow community – *Hartwell-Herrero*

Councilmember Hartwell-Herrero provided an overview of the history of the Cittaslow movement. She described how the City of Sonoma had done it through a collaboration with a local nonprofit and recommended that the Town join with Sustainable Fairfax in the same way. She stated that she hoped that it could be funded by private donations.

Danita, Sustainable Fairfax, stated that 129 towns across the world were part of the Cittaslow community with only one in the United States so far; that Fairfax could be the second but would have to beat out Sebastopol; described the Cittaslow criteria used to qualify; stated that the Town's various efforts would meet the values of the organization; that it was an opportunity for Fairfax to become known internationally and meets the sustainability requirements; that Sustainable Fairfax could help the Town meet its goals; that the cost of the application was about \$800 with annual dues of \$2,000/year; that Sonoma had received private donations to pay these amounts; that Sustainable Fairfax was willing to have a fund raiser for the Town if necessary; and urged a "yes" vote on the letter.

Councilmember Hartwell-Herrero stated that the next step would be to have someone from Sonoma come down and help complete the application.

M/S, Hartwell-Herrero/Weinsoff, Motion to approve the letter from the Mayor as proposed.

AYES: All

Request for appointment of Alternate to the MCCMC JPA Oversight Committee of the Marin County Council of Mayors and Council Members – *Weinsoff*

Councilmember Weinsoff presented the report.

Mayor Tremaine offered to serve as the alternate

The meeting was adjourned at 11: 22 p.m.

Respectfully submitted,

Judy Anderson, Town Clerk