

Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, May 5, 2010

The regular meeting was preceded by a special meeting closed session regarding: CONFERENCE WITH LABOR NEGOTIATOR, pursuant to Government Code Section 54957.6 Agency designated representative: Michael Rock, Town Manager; Employee Organizations: Police Officers Association and Management Employees; and PUBLIC EMPLOYMENT pursuant to Government Code 54947 (Position Title: Police Chief).

Call to Order/Roll Call:

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

STAFF MEMBERS PRESENT: Michael Rock, Town Manager
Jim Moore, Planning Director
Laurie Ireland-Ashley, Finance Director
Jim Karpiak, Town Attorney
Roger Meagor, Ross Valley Fire Chief
Kathy Wilkie, Public Works Director
Judy Anderson, Town Clerk

Mayor Tremaine called the meeting to order at 7:45 pm.

Presentation of the Flag and Pledge of Allegiance

Cub Scout Pack 7 presented the flag and led the pledge of allegiance.

Proclamation Honoring the Boy Scouts of America on the occasion of the 100th anniversary of the organization

M/S, Weinsoff/Bragman, Motion to proclaim recognition and support of the Boy Scouts of America on the occasion their 100th anniversary.

AYES: All

Mayor Tremaine presented the proclamation.

The Boy Scouts presented the Town with a gift of a piece of wood from their founder's home.

Approval of Agenda and Affidavit of Posting

M/S, Weinsoff/Bragman, Motion to approve the agenda and the Affidavit of Posting with the amendment to the agenda to adjourn in honor of Dirk Denny, a Fairfax resident who died surfing at 50 years of age.

AYES: All

Announcement of Closed Session Action

Mayor Tremaine announced that the Council had received information and had given direction to labor negotiator Town Manager Rock and that the Council had unanimously approved a resolution

determining the industrial disability for Police Chief Hughes after 39 years of service to the community.

Announcements

Mayor Tremaine made the announcements listed on the Agenda.

Adoption and Presentation of a Resolution of the Town Council of the Town of Fairfax naming a connector street between Tamalpais and Scenic as "Shapiro Lane" in honor of the contributions made to the community by Helen and Carl Shapiro- *Bragman/Weinsoff*

M/S, Bragman/Weinsoff, Motion to adopt a Resolution of the Town Council of the Town of Fairfax naming a connector street between Tamalpais and Scenic as "Shapiro Lane" in honor of the contributions made to the community by Helen and Carl Shapiro.

AYES: All

Town Clerk Anderson presented the Resolution to Carl Shapiro.

Carl Shapiro, 123 Scenic Road, thanked the Council for the honor and introduced four generations of Shapiros present at the meeting.

Open Time for Public Expression

Trevor Hughes, Porteous Ave., stated that he came to the meeting to acknowledge the Town Council and the staff for their creativity and willingness to take on the topic of the school siting and congratulated the Council for having Jim Moore on staff.

Anya Schandler, Barker Ave., stated that she had come to the Town Council with a complaint earlier in the year and was more than satisfied with the result; that she was pleased and impressed by what the Town offered; thanked the Council for the hours they gave and the quality of their work; and stated that all the staff at Town Hall were friendly and helpful.

Presentation on the status and activities of the Marin Economic Forum (a public-private partnership focused on Marin County development and economic issues) - *Robert Eyler*

Robert Eyler, Interim CEO, Marin Economic Commission, presented a report on the mission and activities of the Commission. There was a discussion about the definition of growth.

Mayor Tremaine opened the discussion to the audience.

Gene Spate, Mill Valley, stated that he liked Mr. Eyler's enthusiasm and energy, acknowledged his education and expertise, but that some of the concepts he described seemed a little "old school;" that he would like to hear a presentation on the Transition Movement; and that we had to get away from the idea of growth and move more into sustaining and reducing.

Valeri Hood, Dominga Ave., suggested that the Town get a speaker from Transition West Marin and echoed the sentiments of the previous speaker.

Presentation by Adam Scow of Food and Water Watch regarding a pending ballot measure requiring a vote by Marin Municipal Water District ratepayers before district funds are used for the construction of a desalination plant – *Bragman*

Adam Scow, Food and Water Watch, a national organization, stated that he had been working on the issue of desalination for about two years and that he had concerns about the high cost of desalination and the large amount of energy required for the process. He noted that the leftover brine from

desalination would have to be filtered through the sanitary district with the sludge to be sent to the landfill and that the cost of the process would be borne by the ratepayers. He stated that the process wasn't really needed in Marin because water use was actually down 6% from the previous year and water conservation measures could be used to reduce the demand even further and that desalination could be growth inducing. He urged support of the planned initiative to require a vote of the people to move forward with desalination, stated that about 11,000 signatures were needed to get it on the ballot and asked the Town to consider endorsing their efforts. He reported on his efforts to secure endorsements from environmental organizations in Marin.

Mayor Tremaine opened the discussion to the audience.

Alexander Binik, Meadow Way, stated that he had reservations about the building of a desal plant; that the Bay was not very clean and contained petroleum products and outflow from sewage treatment plants; that MMWD had stated that they had the technology to produce the water but that oil companies had said the same thing about offshore drilling; that we should be doing everything we can to conserve water; and that even if Marin went forward in the future with desal, that it should be delayed until better systems were created.

Ann Spake, Sustainable Tanamonte, stated that it was very significant that the County had determined that there was no net increase in water use for development; that there had been an increase of 22,000 in Marin's population since the 1970's, but a decrease in the use of water during that time; that funds should be used for conservation; that what we didn't know could hurt us; and that desalination from a very toxic bay would be risky since standards for contaminants were inadequate, some of the toxin levels couldn't be measured, and some of the toxic chemicals could permeate the membrane used by desalination.

Brennan Ketcham, Planning Commissioner, stated that gray water was counted in conservation; that a Conservation Element of the General Plan was being drafted for the Council's consideration; and that the Town could develop gray water systems.

Diane Hoffman, Porteous Ave., encouraged the Council to support water conservation rather than desalination.

Valeri Hood, Dominga Ave., thanked Mr. Scow for his presentation and also encouraged support for conservation rather than desal; stated that taking water out of the Bay was a bad idea and that the lack of endorsement from Sierra Club wasn't as important because they had become kind of corporate.

George Bianchini, San Geronimo Valley resident, described the measures he had taken at his home to conserve water including using tanks to capture rain water and stated that he was opposed to desalination and in favor of more conservation.

Niccolo Caldararo, Frustuck Ave., stated that he used to be opposed to desal, that he had researched it and that the more recent desal plants were much more efficient; that our ground water level was dropping and becoming polluted; that a groundwater study was needed; that conservation was good, but that more needed to be done, like desal, to take the stress off our water table; that if we wanted to limit development, it should be done by addressing our carbon footprint and the overall effect we were having on the environment.

Councilmember Reed suggested that we look at the desal trail of money and that just a few individuals would make money off of it and that conservation and the use of gray water should be the priority.

Vice Mayor Bragman stated that water was a basic human right with everyone entitled to good clean water and that the proposed initiative would bring it before the voters. He urged support of the initiative and stated that a few people shouldn't be deciding about the quality of our water.

COUNCIL REPORTS AND COMMENTS

Councilmember Weinsoff reported on his attendance at the General Assembly of the Association of Bay Area Governments and at the monthly meeting of the Marin County Council of Mayors and Councilmembers (MCCMC). He stated that the MCCMC meeting had been especially valuable because the speaker, Larry Meredith, had talked about the impact of the new national healthcare reform.

Councilmember Hartwell-Herrero, described meetings held with staff and Councilmember Weinsoff on homelessness; reported that she had participated in the "We Read" program at Fairfax-San Anselmo Children's Center; and announced the Youth Commission meeting planned for Monday evening, May 17th, and described her efforts to revitalize the Commission and youth programming.

Vice Mayor Bragman reported on his attendance at the Board meeting for the Media Center of Marin and efforts to have fiber connection to the Women's Club soon to prepare to broadcast Council meetings.

Councilmember Reed described his attendance at a recent Safe Routes to School meeting and the two weekend charrettes held on the school siting in Fairfax and announced that the charrette results would be discussed by the School Board at a meeting scheduled for May 20th.

Mayor Tremaine reported on the Ross Valley Fire Board meeting and announced that Friday was the official start of the Marin Energy Authority when they would start providing energy and invited the other Town officials to the ceremony at 1 p.m. at the lagoon at the Civic Center. He also stated that he had been involved in the charrettes and looked forward to presenting the information to the Ross Valley School Board, and thanked Planning Director Moore for organizing the meetings and making them work.

TOWN MANAGER REPORT

Town Manager Rock reported that the Sir Francis Drake project had been completed that day and that the striping would be done shortly and that the Fair-Anselm Center had new management with a sale of the property for March of 2011.

CONSENT CALENDAR

Approval of Town Council minutes of April 7, 2010 – Town Clerk

Authorization for the Mayor to sign a letter to the California Public Utilities Commission requesting a moratorium be placed on the installation of SMART meters in the Town of Fairfax – Tremaine

Adoption of a Resolution of the Town Council of the Town of Fairfax approving the Eighth Annual Fairfax Car Show scheduled for September 12, 2010, and authorizing closure of the Parkade and a portion of Broadway – Town Clerk

Authorization for the Mayor to sign a letter opposing potential legislation that would undermine the local hotel tax (TOT) collection by local governments – Town Manager

Mayor Tremaine opened the discussion of the Consent Calendar to the audience.

Valeri Hood, Dominga Ave., asked about the smart meter item and whether or not Mayor Tremaine had brought the issue forward with the Marin Energy Authority Board.

Alexander Binik, Meadow Way, reported that he had submitted some suggestions for the letter before the Council regarding smart meters and confirmed that information dropped off for the Council earlier

about the dangers of smart meters had been distributed. He announced that demonstrations were being planned about Proposition 16, smart meters and other issues.

M/S, Weinsoff/Reed, Motion to adopt the Consent Calendar as presented.

AYES: All

Introduction and First Reading of Ordinance No. 751, an Ordinance of the Town Council of the Town of Fairfax amending a second unit amnesty program to eliminate the requirement for fire suppression sprinklers for existing second units qualifying for legalization - *Planning*

Planning and Building Services Director Moore presented the staff report.

There was a discussion of the fire suppression elements in the proposed ordinance and in the existing Town Code.

Vice Mayor Bragman stated his support for hard wired smoke alarms connected to the main unit and stated that relaxing the sprinkler requirements was not meant to abandon safety provisions, but was part of the effort to legalize existing unit and to raise the health and safety standards of those units.

Planning Director Moore noted that Town Attorney Karpiak had determined that it was in the purview of the Council to review the sprinkler provision and noted that the County of Marin had relaxed the sprinkler requirement for second units.

Fire Chief Meagor acknowledged that the Council was concerned about meeting their affordable housing requirements and that their efforts to encourage residents to legalize existing second units was one way to accomplish that goal. He reviewed the history of the Town's adoption of the Fire Code that implemented the sprinkler requirements in 1999 and that included findings of fact including weather patterns, topographical/geographical setup of the community and the roads and streets that delayed fire response. He noted that Ross Valley Fire Service did not meet the national standard response times for fire calls and that they had seven people on duty in the two towns when fourteen was the standard. He stated that local codes were more stringent than State codes; that second units would have to meet the standards in the Town's code including separate entry, access, water supply, etc. He further stated that sprinklers and smoke alarms protected residents and that the Fire Service required them for 50% remodels, new homes and second units.

In response to a question from Councilmember Weinsoff asking whether or not he was supportive of the ordinance, Fire Chief Meagor stated that it would cost a homeowner less than \$50/month over thirty years to provide the level of fire safety he recommended.

Mayor Tremaine opened the public hearing.

Diane Hoffman, Porteous Ave., stated that the Town shouldn't require sprinkler systems for second units or remodels, and that it should be voluntary.

M/S, Bragman/Reed, Motion to waive further reading of Ordinance No. 751, an Ordinance of the Town Council of the Town of Fairfax amending a second unit amnesty program to eliminate the requirement for fire suppression sprinklers for existing second units qualifying for legalization and to read the title only.

AYES: All

M/S, Bragman/Tremaine, Motion to introduce Ordinance No. 751, an Ordinance of the Town Council of the Town of Fairfax amending a second unit amnesty program to eliminate the requirement for fire suppression sprinklers for existing second units qualifying for legalization.

Roll Call Vote:

Weinsoff: NO; Hartwell-Herrero: AYE; Bragman: AYE; Reed: AYE; Tremaine: AYE

Mayor Tremaine adjourned the meeting for a break from 9:25 to 9:45 p.m.

Discussion and Consideration of the Amended and Restated Joint Powers Agreement among the Town of Fairfax, Town of San Anselmo, and the Sleepy Hollow Fire Protection District for the Ross Valley Fire Department – Tremaine

Chief Meagor presented the staff report.

Vice Mayor Bragman, stated that he was representing Fairfax and the Town's point of view in the JPA; that he didn't see the advantage of adding Sleepy Hollow for a \$93,000 contribution when they would receive two votes and become an equal partner for that contribution; that San Anselmo and Fairfax were larger entities whereas Sleepy Hollow was being granted the same representation for 2,000 residents; that it was not a unanimity agreement; acknowledged that a lot of work had gone into the voting procedures but that he was reluctant to give up full partnership to a minority member; that the withdrawal provisions under the old agreement had a different division of property and that the new agreement no longer provided an obligation to distribute a proportionate amount of the assets; and that there was no discussion of the reserve fund that Sleepy Hollow had accrued over the years. He requested that Chief Meagor send him an accounting of the cost of equipment paid over the years and how it had been depreciated and noted that over 2.5 million dollars had been spent on equipment and that the equipment was used by all the agencies. He stated his objection to Fairfax becoming a minority on the Board.

Mayor Tremaine explained the development of the voting rules and stated that a lot of thought had gone into how to structure the new JPA; that a unanimous vote would be required for certain issues like the budget, major financial issues, operational decisions or any real critical decisions; that the current Fire Board didn't want to tell Sleepy Hollow how to spend their reserves; that the Sleepy Hollow reserves had to be spent on fire services; and that the Ross Valley reserves were in rolling stock.

Councilmember Reed expressed concern about the voting guidelines, especially a possible deadlock that could be detrimental to Fairfax; stated that the Fairfax station belonged to the Town of Fairfax but that the control and use of the space in the JPA was given to the Fire Service, even though the Town had space problems; and asked if the \$93,000 to be paid by Sleepy Hollow represented the depreciated value of the rolling stock.

Councilmember Weinsoff ascertained that Sleepy Hollow had over three million dollars in their bank account. He stated that the new JPA was giving a long-standing partner, Sleepy Hollow, equitable treatment and that the parties involved did not have a problem with it.

Fire Chief Meagor stated that 1.2 Million dollars was the value of the rolling stock and that Sleepy Hollow had contributed to it through San Anselmo and noted that all the members felt like they were paying a fair share.

Councilmember Hartwell-Herrero asked for an explanation of the advantage to Fairfax of adding Sleepy Hollow to the JPA and asked what Sleepy Hollow would do if Fairfax didn't sign the agreement.

Mayor Tremaine stated that what improved service for Ross Valley Fire would improve service for Fairfax; that the fact that Sleepy Hollow contracted with San Anselmo for fire service was a weak link for the organization; that they could have Sleepy Hollow contract with Ross Valley Fire but they had already been contributing for 28 years; that Sleepy Hollow would say if asked that they probably should have joined when the JPA was first formed; that everybody was protected on the major issues with the

vote structure; that the main benefit to Fairfax was that the Town would lock in paying the 30.4% share of costs and would be part of a stronger JPA and Fire Service with an entity that had deep pockets; and that the Firefighters thought it was a good idea.

In response to a question from Councilmember Hartwell-Herrero, Mayor Tremaine stated that, if Fairfax didn't agree to the revised JPA adding Sleepy Hollow as a member, that Sleepy Hollow could probably build a firehouse and contract with the County causing the Fairfax share of the cost to go way up.

Councilmember Hartwell-Herrero asked if Sleepy Hollow would be willing to amend the agreement to add a provision that they would help out in an emergency with their surplus funds.

Mayor Tremaine stated that it seemed logical that their reserves would be spent on the Fire Service.

Vice Mayor Bragman stated that if Sleepy Hollow wasn't comfortable sharing their assets after twenty-eight years, that there was a well-drafted separation agreement.

Town Attorney Karpiak stated that in the current agreement the assets were shared by two entities so that if one withdrew, there would be no JPA, whereas with three parties, the entity would survive if one party withdrew.

Vice Mayor Bragman suggested that the new agreement could be drafted like the old JPA, with the distribution of the assets according to the contributions made by the entities; that there weren't currently many assets but that there would be in the future; that Fairfax was going from being an equal partner to being a minority partner; that he would like Fairfax to have unanimity on capital purchases over \$50,000 and for all major decisions; that he would like firefighters to be trained as paramedics since most of the calls were medical calls; and that equity for withdrawal should be included in the agreement.

Mayor Tremaine stated that Fairfax would have veto power on major issues; that it was possible to operate with two firefighters at each station because of the close proximity of the 3 firehouses; that there was a long laundry list of things that Sleepy Hollow had wanted that they didn't get in the agreement because they wanted it to happen more than they wanted their special interests; and that the original JPA was a simple agreement and they had crafted the new one to maintain the simplicity.

Councilmember Weinsoff stated that there had always been equity on the board with the members and they had kept the cost down because of the ability to man three fire stations with two firefighters each; that having Fairfax pay 30.4% of the costs would seem like a dream if the Town contracted for the services where they would have to pay much more; and noted that the negotiations had been arduous and intensive and he wasn't sure how much wiggle room there was for changes in the agreement.

Vice Mayor Bragman asked why the provision for withdrawal had been taken out of the new agreement and stated his opinion that unanimity should be extended to all major financial decisions and that withdrawal should protect the assets of the withdrawing party.

Mayor Tremaine opened the discussion to the public.

Valeri Hood, Dominga Ave., stated that she had heard no convincing argument that it was a good agreement for Fairfax; that the school district was a failed JPA and that this sounded like another failed JPA; and she stated that she would like to know the financing for firefighters who walked for candidates in elections in Fairfax.

Mark Bell, Dominga Ave., stated that the withdrawal provisions should be clarified as Vice Mayor Bragman had suggested and that Sleepy Hollow should part with some of their reserves.

Frank Egger, Meadow Way, ascertained that Town Attorney Karpiak was the attorney who had drafted the agreement, that he was the attorney for both the Town and the Fire Service, and that the attorneys

for San Anselmo and Sleepy Hollow had also reviewed the agreement. He stated that the Fire Service was a 1.7 million dollar budget item for Fairfax and that Fairfax needed its own independent financial and legal analysis of the contract to properly evaluate it for Fairfax. He asked about the unfunded liability for the Ross Valley Fire Service and ascertained that it was about three million dollars. He stated that Fairfax was going from a 50% vote to 33%; that the people in the unincorporated areas of Fairfax paid less for fire service than residents of Fairfax; that 92% of the fire calls were for medical assistance so it was important that the Fairfax station be manned 24/7. He suggested that a clause be added to the agreement to ensure that the station was open 24/7 as promised by the commitment made by the passage of Measure "I;" that supporters of the consolidation would be better served if they had a Fire District that could serve the unincorporated area too and be represented by elected officials.

Mayor Tremaine stated that they had explored the formation of a Fire District but that it wouldn't have been good for Fairfax financially.

Frank Egger stated that he believed that Councilmember Weinsoff had a conflict of interest because he had received a large portion of his campaign financing from firefighters and that he should recuse himself from the issue.

Town Attorney Karpiak stated that Councilmember Weinsoff did not have a conflict.

Thomas Finn, Sleepy Hollow Fire Service, expressed his gratitude to Roger, Town Manager Rock and Mayor Tremaine for their work bringing the document forward; that there was some sense in the room that Sleepy Hollow was trying to gain some advantage over Fairfax which wasn't the case; that all the parties weren't completely happy with the agreement which usually meant you had a good agreement; that Sleepy Hollow was increasing the percentage that they paid, not taking a portion of the assets, and paying \$93,000 as their share of the reserves; that Fairfax was locking in at 30.4% and was responsible for 40% of the costs; that Sleepy Hollow was responsible for 10% of the calls and would be paying 14% of the cost; that it was a new era and Sleepy Hollow was a willing and enthusiastic participant; that the agreement would create a stronger relationship between the three parties; and that he was not sure that they had the stomach to go through all the nit picking of the document.

There was a discussion about what items would be subject to unanimity on the board.

Vice Mayor Bragman stated that he didn't see why there would be a problem with unanimity on major purchases or on adding protections for a withdrawing member.

Tom Finn, Sleepy Hollow Fire Service, stated that the fewer items that were subject to unanimity the smoother things would run and stated that they would be willing to consider a unanimity clause as suggested by Vice Mayor Bragman, for large financial purchases, possibly with a dollar amount.

Town Manager Rock suggested that the budget passage require a unanimous vote and that it would cover major purchases.

Mimi Newton, Mono Ave., as an attorney, acknowledged the work of the other attorneys and the parties that had gone into the negotiated agreement and suggested that the Council come to their consensus on the issue and on what should be in the agreement and then return to negotiations with a stronger position. She noted that the Sleepy Hollow representative had stated that he would be willing to consider the unanimity issue for instance, indicating that they were willing to negotiate further.

Bruce Ackerman, Valley Road, it was an agreement that made sense and all the parties had worked on it; our interest was to keep it working; it had worked for 28 years; that the most important thing was good fire protection; that he wasn't an attorney and hadn't read the agreement, but that he had listened carefully to the discussion and that it seemed like a reasonable agreement.

Councilmember Weinsoff asked that it be taken to a vote.

Councilmember Hartwell-Herrero stated that she was still confused.

Mayor Tremaine stated that the divisions that had been overcome in the process were deep and, at several points, he had thought they wouldn't reach agreement; that they had talked for about for two years before the agreement was reached; that he didn't want to go back with re-openers; and that Fairfax had more to say about the JPA than they would have about a contract between San Anselmo and Sleepy Hollow.

Councilmember Reed stated that he appreciated the efforts made to reach the negotiated agreement but that it might be reasonable to have big ticket purchases included as something requiring a unanimous vote.

Mayor Tremaine stated that Vice Mayor Bragman's request for a clearer definition of the provisions for withdrawal was an issue that could be discussed by the Fire Board and that slight amendments to be made going forward were better addressed by the Fire Board; and that if it didn't happen in the current year, it wouldn't happen until the next fiscal year.

M/S, Weinsoff/Tremaine, Motion to adopt the amended and restated Joint Powers Agreement among the Town of Fairfax, Town of San Anselmo, and the Sleepy Hollow Fire Protection District for the Ross Valley Fire Department.

Roll Call Vote:

Weinsoff: AYE; Hartwell-Herrero: NO; Bragman: NO; Reed: NO; Tremaine: AYE

M/S Weinsoff/Tremaine, Motion to re-agendize the item for the June Council meeting.

AYES: All

There was a consensus of the Council to adjourn the meeting to Saturday, May 22nd at 10 a.m. to complete the agenda items not heard.

The meeting was adjourned at 11:55 in memory of Dirk Denny, a Fairfax resident who was killed in a surfing accident.

Respectfully submitted,

Judy Anderson, Town Clerk