

Fairfax Town Council Minutes  
Regular Meeting  
Fairfax Women's Club  
Wednesday, October 3, 2012

The regular meeting was preceded by a Closed Session from 6:30 p.m. to 7:00 p.m.-  
Conference with Legal Counsel, Anticipated Litigation, pursuant to Government.  
Code Section 54956.9(b): one potential case.

Call to Order/Roll Call:

**COUNCILMEMBERS PRESENT:** Larry Bragman  
Pam Hartwell-Herrero  
Ryan O'Neil  
John Reed  
David Weinsoff

**STAFF MEMBERS PRESENT:** Judy Anderson, Interim Town Manager  
Jim Karpiak, Town Attorney  
Jim Moore, Planning Director  
Mike Vivrette, Finance Director  
Chris Morin, Chief of Police

Mayor Hartwell-Herrero called the meeting to order at 7:00 pm.

Approval of Agenda and Affidavit of Posting

M/S, Bragman/Reed, Motion to approve the agenda and the affidavit of posting.

AYES: All

Announcement of Closed Session Action

Mayor Hartwell-Herrero announced that the Council received information gave direction to staff.

Announcements

Mayor Hartwell-Herrero made the announcements as they appeared on the agenda and also announced the annual Creek Cleanup on Sunday, October 14th

Presentation by Manor School Green Team about helping bird in Fairfax

Mayor Hartwell-Herrero welcomed the Manor School Green Team. The team asked the Council to help them make Fairfax a friendlier place for birds, snakes, lizards, and other small animals. They discussed the importance of taking care of the environment and recommended the use of cat bibs to prevent cats from hunting birds..

Ms. Valeri Hood, Dominga Ave., stated "cat bibs" worked and urged people to shut their curtains since birds injured themselves by flying into windows.

Presentation regarding the potential impact of Propositions 30 and 38 on local schools, Jim Cerreta, Business Manager, Ross Valley School District

Mr. Jim Cerreta, Business Manager, Ross Valley School District stated California schools were still in a financial crisis. He discussed how each proposition would impact the district. He noted

if both measures passed, the one with the most votes would be implemented and that Proposition 38 would be implemented for 12 years and Proposition 30 for 4 years. He described how each measure would have very different outcomes for the district.

Councilmember Weinsoff noted he had seen a lot of advertisements for Proposition 38 but not a lot for Proposition 30. Mr. Cerreta agreed and stated he had heard that the supporters of Proposition 30 were gearing up to hit the airwaves.

Councilmember Bragman asked if there was any organized opposition to either Proposition. Mr. Cerreta stated mostly taxpayers associations opposed the measures.

Mayor Hartwell-Herrero asked Mr. Cerreta if he was recommending a “yes” vote on both Propositions. Mr. Cerreta stated he was not allowed to make recommendations on ballot measures and that his presentation was informational only

### Open Time

Mr. Douglas Green, Bennett House, Taylor Drive, submitted a petition with over 400 signatures in support of a ban on gasoline-powered leaf blowers. He stated that the devices were a problem for people with serious health issues and a form of noise pollution. Councilmember Weinsoff asked Mr. Green about his position on electric leaf blowers. Mr. Green stated the petition referred to gasoline- powered devices only.

Councilmember Bragman stated the Council had discussed this issue several years previous and that it might be time to agendize the issue.

Councilmember O’Neil Mr. Green if he brought up the issue with the administrators of the Bennett House. Mr. Green stated that he had but had not gotten a response.

Ms. Cindy Ross, Landsdale Avenue, asked for further investigation into continued exposure to toxic chemicals from a business at the Fair Anselm Shopping Center; stated she would like the air tested near her residence. Ms. Ross reported that October was “Domestic Violence Awareness Month”.

Interim Town Manager Anderson stated court-mandated testing had been done by the Department of Toxic Substances at the Fair-Anselm Center.

Ms. Valeri Hood, Dominga Avenue, stated the League of Women’s Voters no longer hosted the Presidential debates. She encouraged everyone to read the recent study entitled “GMO’s Cause Massive Overuse of Pesticides”. She stated there would be a march across the Golden Gate Bridge in support of Proposition 37 on Saturday, October 6<sup>th</sup> starting at 10:00 a.m.

Mr. Steve Franks, Willow Avenue, expressed concerned that The Good Earth was receiving deliveries as early as 3:30 a.m andstated the conditions of the Use Permit were not being enforced.

Planning Director Moore stated there was a one-year review period for the mitigation measures; that staff was aware of the concerns; that the Building Official and Police Department made regular site visits.

Councilmember Weinsoff stated the situation was unacceptable and that he had tried to schedule a meeting to address neighborhood concerns.

Mayor Hartwell-Herrero asked what could be done about Use Permit violations.

Planning Director Moore stated there was an administrative citation process and that the Planning Commission would be reviewing the use permit conditions at a meeting within the first year of operation.

Ms. Sophia Lehey, Willow Avenue, agreed with Mr. Franks that the delivery trucks were a problem. She asked the Council to discuss at a future meeting an ordinance that would control light pollution. She asked the Council to look at the timing of the stoplights at the intersection of Willow Avenue and Sir Francis Drake Boulevard.

Mr. Michael Mackintosh asked about the status of the search for a Town Manager. Interim Town Manager Anderson stated she would discuss this issue during her Town Manager's report. Mr. Mackintosh asked for more information about what occurred during the Closed Session. Town Attorney Karpiak stated the Council did not have to reveal what was discussed during a Closed Session. Mr. Mackintosh reiterated his request for information regarding invoices and correspondence between the Town and CSW Engineering.

Mr. John Hanley stated the Town had not done its due diligence with respect to the Use Permit conditions for The Good Earth.

#### Interview and appointment of candidate to the General Plan Implementation Committee

M/S, Weinsoff/Reed, Motion to appoint Ms. Cassidy DeBaker to the General Plan Implementation Committee.

AYES: All

#### Interview and appointment of candidate to the Affordable Housing Advisory Committee for a full four-year term to June 30, 2016

M/S, Bragman/Reed, Motion to re-appoint Mr. Tony Gardner to continue to serve on the Affordable Housing Advisory Committee for a full four-year term to June 30, 2016.

AYES: All

#### Council Reports and Comments

Councilmember Weinsoff reported he attended the Marin County Council of Mayors and Councilmembers (MCCMC) meeting; the Fire Board meeting; the Spirit of Marin Luncheon; the Visioning/Choosing the Future meeting; and he attended the Environmental Action Committee of West Marin meeting.

Councilmember Reed reported he attended the Safe Routes to Schools meeting; the Fire Board meeting; the GPIC/Affordable Housing meeting; and the Town Picnic which he stated was wonderful.

Councilmember Bragman reported he attended the Marin Municipal Water District (MMWD) Board meeting; the Marin County Board of Supervisors meeting; and the Affordable Housing meeting.

Councilmember O'Neill reported the Youth Commission would be meeting the following week; that he had been meeting with the Building Official regarding the new FEMA flood maps; and stated that the Major Crimes Task Force had not met.

Mayor Hartwell-Herrero reported she attended the Rotary Car Show; the GPIC/Affordable Housing meeting; that she had hosted the Cittaslow meeting; attended the Chamber of Commerce meeting; moderated a Zero Waste Panel; and attended the Community

Development Block Grant (CDBG) meeting.

Interim Town Manager Report

Interim Town Manager Anderson reported the search for a Town Manager was in progress and they were focusing on a local approach; that the job flyer would be posted on the Town Website; and that the deadline for applications was October 31<sup>st</sup>. She also reported that she had attended the MCCMC meeting and the Spirit of Marin Luncheon.

Consent Calendar

**Approval of Town Council minutes for the August 20 & 27 and September 5, 2012 meetings - Town Clerk**

**Approval of Financial reports for July, 2012 – Finance**

**Approval of Notice of Completion for Oak Manor Sidewalk Project**

**Adoption of Resolution 12-64, a Resolution of the Town Council of the Town of Fairfax authorizing the release of Revised Plans and Specifications for the Sir Francis Drake Bike Lane Striping Project- Interim Town Manager**

**Adoption of Resolution No. 12-65, a Resolution of the Town Council of the Town of Fairfax authorizing the release of Plans and Specifications for the School Bike Route (Fairfax Bike Spine) Project- Interim Town Manager**

**Approval of the waiver of fees for the use of the Women’s Club on Thursday, October 25<sup>th</sup> for the showing of the film “Genetic Roulette” about the dangers of GMO’s- Interim Town Manager**

**Adoption of Resolution No. 12-66, A Resolution of the Town Council of the Town of Fairfax in support of the Marin County November 6, 2012 Ballot Measure A, “Marin Parks, Open Space and Farmland Preservation Transactions and Use Tax Ordinance”- Weinsoff/Open Space Committee**

Councilmember Weinsoff referred to the agenda in support of Measure “A” and thanked the Open Space Committee for their hard work.

Ms. Cindy Ross referred to the agenda item regarding the Bike Route and expressed concern that the pathway from Shemran Court to the White Hill School field was private property and was part of the project.

Councilmember Reed stated that the Town had an easement across the pathway.

Mr. Andy Peri, representing the Marin County Bicycle Coalition, thanked the Council for their efforts on the Oak Manor Sidewalk Project, the Bike Lane Striping Project, the sponsorship of the movie about GMO’s and the support of Measure “A.”

M/S, Weinsoff/O’Neil, Motion to approve the Consent Calendar with corrections to the August 20 and September 5, 2012 minutes.

AYES: All

The Council took a 10-minute break at 8:40 p.m.

## Public Hearings

150 Bolinas Road, Appeal of Planning Commission approval of a Use Permit Modification to allow 7-11 to remain open 24 hours a day; Assessors' Parcel No 002-101-13; Central Commercial CC Zone District; Richard Mathews Trust, owner; Rajiv Uppal, business owner; Misty Moreno, appellant (continued from September 5, 2012)- Planning

Planning Director Moore presented a staff report.

Mayor Hartwell-Herrero opened the public hearing.

Mr. Riley Hurd, attorney for the appellant, stated the appellants have lived at the property for 22 years and for 17 of those years the store had been open from 7:00 a.m. to 11:00 p.m. In 2007 the hours changed from 6:00 a.m. to midnight and they immediately felt the impacts of that change; that they were opposed to the request to keep the store open 24 hours; that this additional entitlement was allowed by the Conditional Use Permit which required that findings be made including the following: "The development and use of the property shall not create a public nuisance or cause excessive or unreasonable detriment to adjoining properties...or cause adverse physical or economic affects....or create undue or excessive burdens in the use and enjoyment thereof....." He stated this finding could not be made. In addition, he stated that there would be no benefit to the community in granting their request.

Ms. Misty Moreno, appellant, stated they rarely slept through the night without interruptions. Patrons of the store threw trash and urinated in her yard. She asked the Council to uphold the appeal.

Mr. Rajiv Uppal, owner, stated he had agreed to install a sound wall and that there was a public restroom in the store that was used a lot.

Mr. John Hanley, Olema Road, urged the Council to uphold the appeal and support the neighbors. He stated a sound wall would not help with the noise.

Ms. Cindy Ross, Lansdale Avenue, stated a lot of people would enjoy the convenience of the longer hours, that the noise and urination problems were a police matter. She asked the Council to deny the appeal.

Ms. Valeri Hood, Dominga Avenue, stated she had noticed the noise level in town increasing over the years and that she sympathized with the neighbors.

Ms. Lark Tittle, 7-11 employee, stated the owner had worked very hard over the last year to change the hours of the store to help the residents of Fairfax and that there were an additional 40 people coming into the store during the new hours.

Mr. Hurd asked the Council to focus on the code and give the appellants a six-hour respite so they could sleep.

Mayor Hartwell-Herrero closed the public hearing.

Councilmember Weinsoff stated he strongly supported the appeal; that when the appellants moved into their home the store was open from 7:00 a.m. to 11:00 p.m.; and that allowing the store to be open 24 hours per day was not acceptable since it would result in deleterious impacts to the neighbors.

Vice Mayor Reed stated it was a quality of life issue; that he was not convinced that making

them convert to the former hours would make it quieter since there was noise from the building compressors; that it was a difficult decision since the Council should balance out the needs of the community; and that he was hoping the sound wall would meet those needs.

Councilmember O'Neil questioned Ms. Tittle and determined that the business owner chose not to sell alcohol from midnight to 2:00 a.m.; that the alcohol sales during that time period would be about \$100 to \$200, and that the store would be worth substantially more when the franchise was sold if it were allowed to be open 24-hours.

Councilmember O'Neil ascertained from Ms. Moreno that a realtor and an appraiser had provided her with the information that her home had significantly decreased in value and expressed concern that she had not submitted that information in writing.

Mr. Hurd referred to Councilmember O'Neil's request for a written statement from a realtor and stated it was clear case law that public testimony was acceptable evidence on which to base findings.

Councilmember Bragman stated he had filed a directed referral on the application about a year previous; that the 7-11 owners were a part of the community and the store was serving a need; that it was hard to look at the code, hear the testimony, and not think that this request might cause the type of excessive or unreasonable detriment to an adjoining property; and that the property had not always been zoned Central Commercial and was formerly zoned Commercial Highway which allowed a variety of service, retail, and wholesale business with long operating hours. He further stated that he was not persuaded by the argument that the appellants did not know there could be extended hours since that was the law for decades; and that the current zoning, Central Commercial, did not allow for extended business hours.

Mayor Hartwell-Herrero re-opened the public hearing.

Ms. Megan Arnold, 200 Bolinas Road, stated she heard the noise from the 7-11 all night long.

Ms. Michelle Reese, Sherwood Oaks Apartments, stated the apartment building was very quiet after midnight and that the small community of Fairfax did not need a store that was open 24 hours.

Mayor Hartwell-Herrero closed the public hearing.

Mayor Hartwell-Herrero stated the findings in front of the Council were inconclusive.

Councilmember O'Neil asked the business owner if he would agree to close the store at 2:00 a.m. if he were allowed to sell alcohol until that time.

Ms. Tittle stated that the owner was not interested in closing the store at 2:00 a.m. and that he wanted to make it a safer environment.

M/S, Weinsoff/Bragman, Motion to uphold the appeal and ask staff to return with findings to grant the appeal and revoke the permitted open hours from midnight to 6:00 a.m.

AYES: All

Authorization for staff to submit an application for One Bay Area Grant funding for Parkade Circulation Project- Planning

Planning Director Moore presented a staff report. He noted that the agenda items regarding funding for the installation of speed tables and to survey the crosswalks and seek funding were also possible candidates for this application process.

Vice Mayor Reed stated he met with a representative of the Transportation Authority of Marin (TAM) who indicated that there were three "pots of money" to possibly provide funding and that the Parkade project would make it safer for pedestrians, bicyclists, and vehicles and he supported it.

Councilmember Bragman stated this was a good opportunity to get long-term grants.

Mr. Andy Peri, representing the Marin Bicycle Coalition, thanked staff for bringing this issue forward. He stated the Council would need to draft a new Complete Streets policy if they received this funding.

M/S, Bragman/O'Neil, Motion to authorize staff to submit the application for One Bay Area Grant funding for the Parkade Circulation Improvement Project.

AYES: All

Request for direction to staff to seek funding for installation of speed tables and other improvements on the East-West Corridor through Fairfax- Reed

Vice Mayor Reed presented a report and stated the request was a result of several accidents involving automobiles and bicyclists at Azalea and Broadway; that this intersection had problems with site lines and was controlled in only three directions due to the topography; that he recommended the installation of a speed table at this intersection and six others along the corridor; and asked that Planning Director Moore include this project when applying for funds.

M/S, Reed/O'Neil, Motion to authorize staff to seek funding for installation of speed tables and other improvements on the East-West Corridor through Fairfax.

AYES: All

Adoption of Resolution No. 12-66, a Resolution of the Town Council of the Town of Fairfax authorizing temporary closure of Certain Streets and Portions Thereof (Bolin Road and Dominga Avenue) to allow for a Halloween Parade on October 31, 2012

Mayor Hartwell-Herrero stated she would like Bolin Road closed during the Halloween parade.

Councilmember O'Neil stated he would like the Council to consider closing Dominga Avenue on Halloween evening and that the closure would provide a safe environment for children and families.

Police Chief Morin stated he had no problem with closing Dominga Avenue from Pacheco Avenue to Creek Avenue on Halloween night.

Interim Town Manager Anderson stated she would not recommend eliminating the parking spaces on Broadway.

Mr. Joe McWilliam, representing the Chamber of Commerce, stated he was in charge of the parade and suggested blocking off the parking from 4:00 p.m. to 6:00 p.m. on Broadway from the movie theatre to Grilly's. He expressed concern about the children's safety.

Councilmember O'Neil stated he did not support eliminating the Broadway parking for two-hours since it would give people a false sense of security and Vice Mayor Reed agreed.

Police Chief Morin stated he did not support the elimination of parking on Broadway or the closure of Bolinas Road or Broadway on a weekday.

Mayor Hartwell-Herrero stated the resolution would be amended to delete the closure of Bolinas Road and allow the closure of Dominga Avenue from Pacheco Avenue to Creek Road from 6:00 p.m. to 9:00 p.m.

M/S, O'Neil/Reed, Motion to adopt Resolution No.12-66, A Resolution of the Town Council of the Town of Fairfax Authorizing Temporary Closure of Certain Streets and Portions Thereof To Allow for a Halloween Parade on October 31, 2012 as amended.

AYES: All

Request for direction to staff to survey the crosswalks in Town to assess the need for upgrades and explore funding opportunities through Safe Routes to School and other sources- O'Neil

Councilmember O'Neil stated the underground crosswalk lights cost \$600 each to replace; that the Town of San Anselmo was using a much more efficient LED system; suggested that staff to put all the crosswalk repairs into one comprehensive package.

Planning Director Moore stated staff could prioritize crosswalk repair and submit it for funding as a separate project. Interim Town Manager Anderson stated staff would need to evaluate what is out there and determine costs and that getting the repairs done was a long-term project.

Councilmember O'Neil stated he wanted to make sure that the items got on the "to-do list".

Councilmember Bragman stated the Building Official had done a survey on the crosswalks and curbs in Town.

Mr. Andy Peri stated he supported this project.

Mr. Douglas Green stated the crosswalk on Sir Francis Drake Boulevard from M & G's Burgers to the Fairfax Market was very dangerous.

Ms. Cindy Ross stated the public should be involved in prioritizing the crosswalks and offered to help with the list

M/S, Reed/O'Neil, Motion to authorize staff to seek funding for a crosswalk repair project.

AYES: All

Discussion/Consideration of the introduction of a noxious weed ordinance- Bragman

Councilmember Bragman presented a report and noted the Marin Municipal Water District (MMWD) had recently published its Draft Vegetation Management Plan which called for the elimination or control of 27 species of weeds that were highly invasive; that the district would be taking a coordinated approach; and that he was of the opinion that the issues could be resolved in a sustainable way without the use of herbicides or pesticides.

Councilmember Weinsoff had questions about the creation of an ordinance that would levy fines.

Ms. Janet Cline, Natural Resources Manager for MMWD, discussed the Draft Vegetation Management Plan and noted the District would be opening up the environmental review process in the next month; that the Environmental Impact Report (EIR) would take about six months to prepare; that there would be a minimum 45-day period for public review and comment; and she noted the Town of Fairfax had a very unique stake in the plan.

Reconsideration of Council decision to remove Town of Fairfax Entryway sign at Pastori and Sir Francis Drake- Bragman

Councilmember Bragman stated residents on the east end of Town would not see the Town announcements if the sign were removed.

Councilmember Weinsoff stated the sign was an anachronism and in disrepair.

Mayor Hartwell-Herrero noted the time and stated the Council should talk about the issue at the next meeting.

M/S, O'Neil/Bragman, Motion to adjourn the meeting at 11:41 p.m.  
AYE                All

Respectfully submitted,

Toni DeFrancis  
Recording Secretary