

Fairfax Town Council Minutes
Special Meeting
Fairfax Town Hall
Monday, August 27, 2012

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

COUNCILMEMBERS ABSENT: Ryan O'Neil

STAFF MEMBERS PRESENT: Judy Anderson, Interim Town Manager
Jim Karpiak, Town Attorney
Jim Moore, Planning Director

Mayor Hartwell-Herrero called the meeting to order at 8:10 a.m. and adjourned to closed session for conference with legal counsel regarding anticipated litigation in one potential case.

Mayor Hartwell-Herrero adjourned the closed session and called the special meeting to order at 9:05 a.m.

Report of Closed Session Action

Mayor Hartwell-Herrero announced that no action had been taken but that direction was given to Town Counsel.

Council review of Pastori Outfall/Bank Restoration Project and request for direction after consideration of options regarding the request for the trimming of a Town tree and other proposed changes in the scope of the work and schedule for the project – Interim Town Manager

Interim Town Manager presented the staff report. She stated that, late in the afternoon of Friday, August 17th, she received an email from Alice Rich of AA Rich and Associates with an estimate for the cost of the fish related work for the project of \$63,000. She explained that she was surprised by the estimated cost of the work, that she had consulted with the Mayor and Town Counsel, and a special meeting was set for Monday, August 20th; that at that meeting, after discussion and public testimony, the Council directed staff to go forward and negotiate a revised contract with AA Rich. She further reported that another meeting was held at the project site on August 22nd, which revealed that the project schedule was not clear to all parties; that a pre-construction meeting was held on Friday, August 24th, and the work schedule was modified to have the fish work begin on August 27th and the construction on August 29th; However, at the pre-construction meeting, the contractor requested that a large limb of a tree in the Town's right-of-way be trimmed to allow a crane to operate and that he could not perform the job without the removal of the tree limb. Such removal was not contemplated by the plans and specifications for which the contract was awarded. She further stated that, after consulting with the Town Attorney, staff determined that the tree work would require an amendment or addendum to the CEQA document with the potential for delays in the project. Since any delay in starting the

project might prevent the project from being completed by the permitting deadline of October 15, she wanted to bring the new developments to the Town Council's attention.

The Council discussed the scheduling issues as well as the costs of the project to date, which were much higher than anticipated.

Georgia McDaniel, CSW Engineering, described alternatives for the project and noted that all the alternatives would require bank stabilization.

Councilmember Bragman noted that the pipe project without the enlargement of the pipe was not the project that the Town originally wanted to alleviate the flooding in the area.

Councilmember Reed stated that the Council was trying to solve the flooding problem and suggested that it might be better to redesign the whole project to move the pipe off the wing wall and completely into the Town's right-of-way.

Councilmember Weinsoff asked if it was the right project at the right time for the right price, and stated that he had hoped to stabilize the bank and prevent flooding in the Belle neighborhood.

The Council discussed the possibility of doing the project in stages with the bank stabilization first and the pipe replacement later.

Councilmember Bragman asked if amended applications could be submitted to the Federal agencies with modified plans.

Mayor Hartwell-Herrero opened the discussion to the public.

Wendy Orear, Pastori Avenue, stated that the pipe was the Town's responsibility and was doing damage; that she would have to have legal representation if a new project was undertaken; that she wanted to work with the Town, but didn't want to delay the bank stabilization; and asked if there were any other options. Ms. Orear asked how much work it would be to modify the CEQA document for the tree trimming and urged the Council to move the project forward.

Michael Mackintosh, Pastori Ave., stated that the Town had liability from dropping rocks into the creek after the flood of 2005/06; that he didn't believe the Town could modify the permits for the project; and noted that Alice Rich had reduced her fee for the fish work. He further stated that the work could be done by replacing the bridge; that boulders could be removed and replaced so the bank stabilization work wouldn't be wasted; that there were different kinds of cranes that could be used; that the contractor voided the contract by asking for the removal of the tree; and that it was outside the scope of the bid to remove the tree.

Jennifer Wolf, Lansdale Avenue, expressed concern about the lack of parking during the paving project beginning in her neighborhood.

Councilmember Bragman stated that it would have been nice to do the project the Town wanted to do at the site; that the property owner didn't want the pipe replacement portion of the project; that there were risks going forward with the project and risks not going forward; that there wasn't time to do the project with a different contractor; that he was concerned about going forward with

the project and having to redo it; that if there was room in the right-of-way to realign the pipe, that would be the best all of the project objectives, rather than doing it piecemeal.

Vice Mayor Reed stated that there were risks on both sides; that the logical thing to do was to move the pipe so it didn't damage the bank, the bridge or the flow; that a short length of pipe was destroyed in the '05 flood; suggested that perhaps the extension of the pipe could be replaced as a stop-gap measure; that the Town needed to address the pipe in the right way and the bank in the right way; and that the FEMA project had to include the pipe. He further stated that the Council needed to look at the overall picture and that a stop-gap measure was his preference.

Planning Director Moore stated that the original project had completed its CEQA review and then was stopped by opposition from the adjacent property owner.

Michael Mackintosh, Pastori Ave., stated that the categorical exemption did not allow for the expansion of the pipe.

Councilmember Weinsoff stated that the Council Members were the guardians of the people's money and that before they doubled the investment, the project needed to be re-engineered.

Councilmember Bragman stated that if the project were stopped at that point, there would be some money left to go forward; that the current project scope didn't accomplish the original intent; that he was not comfortable with the project; that the project was ready to go in 2006 and was stopped by Michael Mackintosh; and that it was time to get the whole thing done. He further stated that it was a complicated intersection of outfall, bridge, bank and stream.

Mayor Hartwell-Herrero stated that the Council was looking at \$174,000 to stabilize the bank.

Wendy Orear, Pastori Ave., stated that she was shocked by the Town Council's change of opinion.

M/S, Weinsoff/Bragman, Motion to direct staff to work to redesign the project to address the pipe and the original concern of the flooding problem, to defer going forward with the project as designed and explore other alternatives, and to amend the current permits for the project.

Roll Call Vote:

Bragman: AYE; Reed: AYE; Weinsoff: AYE; Hartwell-Herrero: AYE
O'Neil: Absent

M/S, Bragman/Reed, Motion to adjourn the meeting at 10:05 a.m.

AYES: Bragman, Hartwell-Herrero, Reed, Weinsoff
NOES: None
ABSENT: O'Neil

Respectfully submitted,

Judy Anderson, Town Clerk