

Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, September 5, 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 7:05 pm.

Approval of Agenda and Affidavit of Posting

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

AYES: All

Announcement of Closed Session Action

Mayor Hartwell-Herrero announced that direction was given to Counsel.

Announcements

Mayor Hartwell-Herrero made the announcements as they appeared on the agenda.

Open Time:

Michael Mackintosh, 60 Pastori Ave., asked what direction was given to Counsel during Closed Session.

Mayor Hartwell-Herrero stated that the Council was not required to comment on the details of a Closed Session.

Mr. MackIntosh stated they could reveal the category of the subject matter.

Town Attorney Karpiak stated that what happened in Closed Session was subject to Attorney/Client privilege which could be waived by the Council.

Mayor Hartwell-Herrero stated that the Council did not choose to waive that privilege.

Mr. Mackintosh stated that the Town was out of compliance with his records request and that the documentation he received was incomplete. Interim Town Manager Anderson stated Mr. Mackintosh received everything that was in the file and asked him to call her to discuss the matter.

Cindy Ross, Lansdale Avenue, stated there were numerous unsafe sidewalks, roads, curbs, and crosswalks in Town. She asked the Council to come up with the funding to repair these items. Councilmember Weinsoff thanked Ms. Ross for bringing this to the Council's attention. He mentioned there were some instances where the sidewalk was the responsibility of the property owner. Interim Town Manager Anderson stated that the Council had budgeted \$10,000 for sidewalk repair for the current year and that staff tried to repair the most critical areas first. She reiterated that some sidewalks were the responsibility of the adjacent property owners.

Andy Peri, representing the Marin County Bicycle Coalition (MCBC), stated that the MCBC was currently undertaking efforts to remedy issues of concern regarding cyclists. He briefly discussed the Share the Road program and noted the MCBC worked with local law enforcement. He stated Marin County had seen a 159% increase in cycling on weekdays and a 172% increase on weekends since 1999; that Fairfax had seen a 422% increase since 1999; and that MCBC was committed to safety and urges a level of tolerance and to resist stereotyping cyclists.

Status report from the General Plan Implementation Committee (GPIC)- *Bruce Ackerman, GPIC Chair*

Mr. Bruce Ackerman, GPIC Chair, distributed the Draft General Plan to the Council. He gave a report on the history of the General Plan process and stated the GPIC would report to the Council quarterly. He stated the role of the GPIC was to recommend priorities included in the General Plan; briefly discussed the categories of tasks and prioritization criteria identified to date; stated that the GPIC would also open lines of communication with other bodies having General Plan responsibilities; and noted it was a 20-year General Plan.

Councilmember O'Neil stated that the GPIC report represented an amazing amount of work and that he would like to see an "implementation thermometer" posted on the Town Website in order to engage the public in the process.

Councilmember Weinsoff encouraged the committee to come to the Council if they ran into any type of roadblock and that the Council should be used as a resource.

Vice Mayor Reed stated the document contained an incredible amount of detail and he encouraged residents to become familiar with it. He stated there were already some "thermometer" types of things in place relative to sustainability, reducing the carbon footprint, etc.

Councilmember Bragman stated the Community Media Center could certainly be folded into the educational component of the General Plan. He noted the Amnesty Program for Second Units and the Pedestrian Master Plan were long overdue and recommended that the Bicycle/Pedestrian Advisory Committee be reactivated.

Mayor Hartwell-Herrero stated the matrix was very helpful and that she would like it to be sorted according to entity responsibilities. Mr. Ackerman responded that it could easily be sorted.

The Council thanked Mr. Ackerman and the committee for the good work.

Update on Bike Spine Project, overview of bicycle routes to school to be marked and anticipated schedule for implementation- Reed

Vice Mayor Reed made a Powerpoint presentation that included the following: 1) School Bike Route Project; 2) What is the Bike Route Project?; 3) The Route; 4) Signs and Pavement Markings; 5) Traffic and Parking; 6) Other Traffic Measures. He noted Councilmember Bragman had been very involved in the project and helped secure the funding.

Councilmember Bragman stated the conflict between bicyclists and vehicles was partly due to the out-of-date infrastructure; that finding the funding was a struggle; that they needed to keep lobbying representatives to prioritize the money; that this was the type of project that local governments loved to do; and that this was a "first step" for Fairfax.

Mayor Hartwell-Herrero opened the discussion to the public.

Andy Peri, MCBC, thanked Councilmembers Reed and Bragman for their efforts on the project.

Vice Mayor Reed stated that the west end of Olema Road was heavily used as a bike route but was outside of the scope of the project.

Mayor Hartwell-Herrero asked when the work would begin.

Vice Mayor Reed stated they would go out to bid soon. Interim Town Manager Anderson stated staff was working on the specifications for the project.

Interview and appointment of candidate to the Volunteer Board for a full three-year term to September 30, 2015- Town Clerk

Mr. Ted Pugh stated he would be happy to continue to serve on the Volunteer Board.

M/S, Weinsoff/Reed, Motion to re-appoint Mr. Ted Pugh to the Volunteer Board for a full three-year term to September 30, 2015.

AYES: All

Council Reports and Comments

Councilmember O'Neil reported that the Youth Commission had met and that they planned to hold three events per year and that he had nothing to report about the Tree Committee or the Ross Valley School Board.

Councilmember Bragman reported he attended several Community Media Center Board meetings; that the Marin Telecommunications Agency did not meet; that the Marin Energy Authority had been meeting and that there have been some dynamic developments including the inclusion of the City of Richmond; and that he had a meeting at the California Public Utilities Commission (CPUC) regarding several incidents of PG&E representatives infiltrating and spying on activist groups..

Vice Mayor Reed reported that he and Councilmember Bragman had recently performed some trail maintenance; that he had attended the GPIC meeting; that the Transportation Authority of Marin (TAM) had not met; that he had met with representatives of the Trolley Committee; that he had attended the Volunteer Board meeting; announced that Chipper Days had been

scheduled for October with the announcement to be included in an upcoming garbage bill; and commented that the Streets for People Event had been fabulous.

Councilmember Weinsoff reported he attended the Chamber of Commerce meeting and the Flood Zone 9 meeting where they had discussed the 10-year flood prevention plan.

Mayor Hartwell-Herrero thanked staff for their efforts in making the Streets for People Event a huge success. She reported on her attendance at the Chamber of Commerce Mixer and a Marin Sanitary Service Zero Waste Committee meeting. She announced that a "Take Back Day" would be scheduled for October and to give residents the opportunity to recycle paper and some medical and electronic waste.

Discussion/Consideration of Proposal from CSW Engineering for approval of alternative plan of action for Pastori Pipe project- *Interim Town Manager*

Interim Town Manager Anderson introduced Ms. Georgia McDaniel, representing CSW Engineering. Ms. McDaniel stated there were four tasks in completing a feasibility study: 1) Additional surveying; 2) Meeting resource agencies to determine whether new permits would be require; 3) Develop a conceptual sketch; and 4) Discussion with CalEMA/FEMA about extending funding.

Councilmember Weinsoff referred to Stetson Engineering and asked if their hydrologic analysis would be of some assistance. Ms. McDaniel stated she would get in touch with Stetson Engineering. She noted she is in touch with Mr. Jack Curley.

Councilmember Bragman asked about a timeframe for this phase and stated he did not want to get thwarted by the October 15th deadline. Ms. McDaniel stated the task that would take the longest involved discussions with CalEMA/FEMA. The others would be a matter of only weeks with next summer as the target date for beginning the project. She stated she would email a more definitive timeline to the Council.

Mayor Hartwell-Herrero opened the discussion to the public.

Mr. Michael MacIntosh stated he had requested copies of the billing and correspondence between the Town and CSW Engineering about his property. Town Attorney Karpiak stated he had no knowledge of the request and recommended that Mr. MackIntosh speak to the Town Clerk. He referred to the request for documents related to a Closed Session and stated he would refer to the statute.

M/S, Weinsoff/Bragman, Motion to approve the alternative plan of action for the Pastori Pipe project.

AYES: All

Councilmember Bragman asked if there was money in the budget for the project. Interim Town Manager Anderson stated "yes".

Consent Calendar

Approval of Financial reports for June, 2012 – Finance

Adoption of Resolution 12-55, a Resolution of the Town Council of the Town of Fairfax making certain findings and determinations in compliance with Section XIIB of the California Constitution (Gann Initiative) and Setting the Appropriation Limit for Fiscal Year 2012/13- Finance

Adoption of Resolution No. 12-56, a Resolution of the Town Council of the Town of Fairfax adopting the Police Department plan to Allocate Funds for the Community Oriented Policing Services (COPS) program- Chief of Police

Approval of the renewal of contract with LAK, Planning Consultants for work on the implementation of the General Plan and other Planning related items- Planning Director

Approval of Notice of Completion for Streetlight Retrofit Project- Interim Town Manager

Adoption of Proclamation declaring September as “Prostate Cancer Awareness Month” in Fairfax- Town Clerk

Adoption of Proclamation declaring September as “Prostate Cancer Awareness Month” in Fairfax- Town Clerk

Adoption of Proclamation declaring the month of September as ”Get a Library Card Month in Fairfax- Town Clerk

Adoption of Resolution No. 12-57, A Resolution of the Town Council of the Town of Fairfax authorizing the release of Plans and Specifications: Pastori Avenue Sidewalk Improvement Project- Interim Town Manager

Adoption of Resolution No. 12-61, a Resolution of the Town Council of the Town of Fairfax urging a shutdown of San Onofre Nuclear Power Plant and Diversion of ratepayer funds towards a secure renewable energy source- Bragman

Adoption of Resolution No. 12-62, a Resolution of the Town Council of the Town of Fairfax authorizing the Mayor to execute an Agreement with the Marin County Flood Control and Water Conservation District to share creek maintenance responsibilities for specific creek reaches with the Town of Fairfax- Weinsoff

M/S, Bragman/Reed, Motion to approve the Consent Calendar with the removal for discussion of items #6, #10, #17, #18, #19; the Minutes, the Web site contract, the Bike Lane Striping, the Homeless Bill of Rights and the Entryway Sign.

AYES: All

Mr. Michael Mackintosh asked that the item regarding the flood control agreement be pulled for discussion. Councilmember Weinsoff stated that the Flood District allocated \$5,000 per member jurisdiction for creek maintenance. Mr. Mackintosh stated the Town might be able to get additional funding from the California Conservation Resource Board.

Mr. Andy Peri referred to the item about the Bike Lane Striping and he urged the Council to hold special meetings if necessary to get these projects moving.

Approval of Town Council minutes for the August 1 and 13, 2012 meeting

Vice Mayor Reed referred to the August 1st minutes, page 6, third paragraph from the bottom of

the page and made the following correction: "Vice Mayor Reed stated Shemran Court was a dead-end street...that there would be signage but *not street markings* added to the street."

M/S, O'Neil/Bragman Motion to approve the minutes of August 1st as corrected and August 13th as submitted.

AYES: All

Approval of the renewal of contract with Carol Golsch for Town website maintenance for an amount not to exceed \$15,000 per year- *Interim Town Manager*

Councilmember O'Neil stated he would like to review this contract and had an individual in mind that might be able to save money; that the individual thought he would be able to change the "code" of the Website in order to reduce the amount of time spent on maintenance; and suggested that the Council hear a presentation from this consultant.

Interim Town Manager Anderson stated it was always good to examine how the Town spends money. She spoke in support of the contract and stated Ms. Golsch performed tasks on a daily basis and that the Town was getting a bargain and that it was money well spent.

Councilmember Bragman stated it would be interesting to hear a presentation from another consultant, that the Town's Website would become more important in the future and was essentially the Town's "brand".

Vice Mayor Reed stated they needed to get a comprehensive idea of where they were going in the future and that he would like to look at a task list of what the current contractor was doing.

M/S, O'Neil/Reed, Motion to approve the renewal of a contract with Ms. Carol Golsch for Town website maintenance for an amount not to exceed \$15,000 per year provided the contract included a 30-day cancellation clause.

AYES: All

Mark Bell, Dominga Avenue, suggested the Town look at a Content Management System (CMS).

Cindy Ross, Lansdale Ave., stated she was concerned about discussing this issue without Ms. Golsch being present.

Adoption of Resolution No. 12-58, a Resolution of the Town Council of the Town of Fairfax authorizing release of Plans and Specifications for the Sir Francis Drake Bike Lane Striping Project- Town Council of the Town of Fairfax authorizing release of Plans and Specifications for the Sir Francis Drake Bike Lane Striping Project- *Interim Town Manager*

Vice Mayor Reed discussed the following adjustments and clarifications to the plans: 1) addition of a red curb adjacent to the driveway on Sir Francis Drake Boulevard (in front of the shopping center between St. Rita and the Fairfax Market); 2) that the project should extend out of the right-of-way directly in front of St. Rita Church; 3) suggested the addition of a sign at the east end of the project (Claus Circle) indicating there was a bike lane on Broadway.

Councilmember Bragman asked if the crosswalks were getting re-striped. Interim Town Manager Anderson stated the project involved just the bike lanes.

Cindy Ross, Lansdale Ave., asked if there was a Town ordinance that regulated the riding of bicycles on sidewalks. Police Chief Morin stated bicycle riding was not allowed on sidewalks.

M/S, Reed/Bragman, Motion to adopt Resolution No. 12-58, a Resolution of the Town Council of the Town of Fairfax authorizing release of Plans and Specifications for the Sir Francis Drake Bike Lane Striping Project noting the recommendations of Vice Mayor Reed.

AYES: All

Adoption of Resolution No. 12-59, a Resolution of the Town Council of the Town of Fairfax Requesting the California State Legislature Enact a "California Homeless Bill of Rights"-Weinsoff/Hartwell-Herrero

Vice Mayor Reed stated this was an admirable resolution however it seemed city oriented since it talked about sleeping on the streets and did not refer to sleeping in vehicles or open space areas.

Councilmember Weinsoff stated he did not think they wanted to recognize the right to live in open space areas. He noted that the language was national and did not address the constitutional right to sleep in a car or open space.

Vice Mayor Reed stated sleeping in a car was sometimes a "safety net" similar to sleeping in a homeless shelter. Councilmember Weinsoff stated the community would need to weigh in on that issue and expanding that right.

Councilmember Bragman stated it was a good idea to protect the rights of any "suspect" class and to a certain extent the homeless had become a "class". He stated that he was bothered by the recognition that homelessness was a given fact instead of addressing it and trying to eliminate it.

Councilmember O'Neil stated the first item of the resolution addressed his concerns and made sure that the homeless were treated like everybody else.

M/S, Weinsoff/O'Neil, Motion to adopt Resolution No. 12-59, a Resolution of the Town Council of the Town of Fairfax Requesting the California State Legislature Enact a "California Homeless Bill of Rights" and to encourage other cities to adopt a similar resolution.

AYES: All

Accept report on the re-location of the Town of Fairfax entryway sign on Sir Francis Drake near Good Earth- Interim Town Manager

Vice Mayor Reed asked for clarification about the proposal. Councilmember Weinsoff stated the proposal included moving the sign and incorporating it with the Town of Fairfax sign at the east end of the Parkade. He stated that moving the sign would enable staff to continue to include notices of Town meetings but that the sign at the Parkade was not built to accommodate the meeting announcements and would have to be modified.

Vice Mayor Reed suggested repairing the sign by the Good Earth.

Councilmember O'Neil stated he was in favor of a natural, "log cabin" style sign.

Ms. Cindy Ross asked about the cost to remove the sign. Interim Town Manager Anderson

stated the work would be done by the Public Works Department at a minimal cost (bolts, etc.)

M/S, Weinsoff/O'Neil, Motion to remove the sign currently located by the Good Earth and adjust the iconic Fairfax sign to accommodate the Town meeting notices.

AYES: Hartwell-Herrero, Bragman, O'Neil, Weinsoff ABSTAIN: Reed

Mayor Hartwell-Herrero adjourned the meeting for a break from 9:20 to 9:30 p.m.

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 July 11, 2012)- *Planning*

Planning Director Moore presented a staff report.

Councilmember Weinsoff asked Planning Director Moore if an eight-foot high fence would be sufficient enough to block out noise, etc. Planning Director Moore stated he thought so, but that they did not want to create a "fortress-like" appearance. Councilmember Weinsoff asked if staff would waive all fees. Planning Director Moore stated that they could at Council's direction.

Councilmember Bragman stated he filed a Directed Appeal from the first decision and that the fee for the appeal should also be waived.

Mayor Hartwell-Herrero opened the public hearing.

Ms. Misty Moreno, appellant, stated Exhibit D in the packet contained signatures that were mostly from residents who did not live on Park Road. She stated that she had signatures from her neighbors in opposition to the proposal; that there was another market in Town that was open 24-hours and was not located near residential properties; that she recently refinanced her property and was told she would lose up to 20% of her property value if the proposal went through; that she was not sure what the Town would gain from granting the proposal; that when she purchased the property it was with the understanding that the store was open from 7:00 a.m. to 11:00 p.m.; and she asked the Council to protect her property values and quality of life.

Mayor Hartwell-Herrero asked Ms. Moreno to address the mitigations suggested by Planning Director Moore. Mr. Moreno stated people were slamming doors and standing outside the store talking loudly; that it was a party atmosphere; and that she did not think the store should be open all night long.

Mayor Hartwell-Herrero closed the public hearing.

Councilmember Weinsoff stated he had not changed his opinion; that the store was not open all night long when Ms. Moreno purchased the property; that the Council struggled to maintain and improve the quality of life for its residents; that Ms. Moreno's arguments were logical; and that he would vote to uphold the appeal.

Councilmember Bragman stated that it was a tough call; that the proposal would create some benefits to the community since it would enable some residents to get supplies late at night; that Ms. Moreno's concerns were well taken; that the expanded hours could cause more of a disturbance; ascertained from Ms. Moreno that she had double-paned windows; and noted that 7-11 had gone through the process and seemed to want to work with the neighborhood.

Mr. Rajiv Uppal, business owner, stated they had done everything possible to accommodate the neighbor and that they had two 24-hour video cameras and did not allow people to hang out in the parking lot. In response questions from Councilmember Bragman, he stated that the videos were saved to a hard drive and kept for thirty days; that they had been asked by customers to stay open all night; that they had approximately ten to fifteen customers from midnight to 6:00 a.m.; and that he would be willing to share the cost of a sound wall. Mr. Uppal stated that they did not sell alcohol after midnight.

Vice Mayor Reed stated it was difficult to find a balance and he would like to find a win-win solution. He asked Ms. Moreno what she thought about the sound wall. Ms. Moreno stated she did not want the business open 24 hours and she should not have to pay for a sound wall.

Councilmember O'Neil stated he believed that Ms. Moreno was inconvenienced and impacted by the 7-11; stated that he tried to weigh the evidence; that there were fewer noise complaints during the two six-month review periods; that Ms. Moreno had purchased a home next to a commercial business which could be a noisy environment; that there were a lot of residents who said they would use the store during the early morning; that there had been no other public testimony that the expanded hours were a bad idea; and he suggested the store be allowed to sell alcohol until 2:00 a.m. and close at that time as a compromise.

Town Attorney Karpiak stated there were property rights at stake, both the appellant's and the business owner's, and that the public hearing wasn't the proper forum for negotiations that should be deferred to staff.

Vice Mayor Reed stated that it was not about the business of making money but rather how the business could be useful to the community; that it sounded like the noise levels had subsided; and that a sound barrier made sense since it would be noisy one way or the other.

Councilmember Weinsoff reiterated that when Ms. Moreno purchased the property the business was open from 7:00 a.m. to 11:00 p.m., that he was concerned about the decline in property values and the disruption to Ms. Moreno through no fault of her own, and noted that the proposal would diminish a resident's quality of life.

Councilmember O'Neil stated that the reports indicated there were fewer complaints and that the facts did not support Councilmember Weinsoff's argument.

Councilmember Bragman stated they needed to find out if the business owner was willing to pay for the sound wall since they had the responsibility to mitigate the burden they were creating and that there should be some discussion concerning a hiatus of business hours from 2:00 a.m. to 6:00 a.m., etc.

M/S, Weinsoff/Bragman, Motion to continue this item to the October meeting.

AYES: All

Request by the Open Space Committee for authorization to negotiate for the purchase of property on Upper Ridgeway- Planning/Open Space Committee

Mr. Jack Judkins, Co-Chair of the Fairfax Open Space Committee, asked the Council to authorize the committee to initiate negotiations for the purchase of these three parcels. He stated that the price was reasonable; that there was no cost involved but there could be expenditures of already budgeted Open Space Committee Funds for surveying, appraisals, etc.; and that any potential deal would be subject to Town Council approval.

Councilmember Bragman asked if they had gone through the vetting process in terms of land stability, liability issues, etc. Mr. Judkins stated that they had but noted that open space did come with some risk. Councilmember Bragman ascertained from Planning Director Moore that the zoning designation was RD 5.5-7 (5,500 to 7,000 square-foot lots).

Vice Mayor Reed stated he walked the property and did not see any trees that looked to be in imminent danger of falling or any obvious evidence of landslides.

M/S, Weinsoff/O'Neil, Motion to authorize the Open Space Committee to begin negotiations on behalf of the Town for three parcels- Assessor's Parcel Nos. 001-193-07, 001-193-09, and 001-193-03.

AYES: All

Adoption of Resolution No. 12-60, a Resolution of the Town Council of the Town of Fairfax accepting the donation of property of Upper Scenic Road, Assessor's Parcel No. 001-222-04, as recommended by the Open Space Committee- Planning/Open Space Committee

Mr. Judkins asked the Council to accept the donation of property on Upper Scenic Road. He stated that there were no direct costs associated with the acceptance of this property; that the taxes had been brought current by the property owner; and that there were no encumbrances that might adversely affect the ownership of the property.

Councilmember Bragman stated that it was a quality of life issue; that it was important to preserve infill lots to keep the density of development down; and stated that he supported the resolution and hoped it was a continuation of a trend.

M/S, O'Neil/Reed, Motion to adopt Resolution No.12-60, a Resolution of the Town Council of the Town of Fairfax accepting the donation of real property on Upper Scenic Road, Assessor's Parcel No. 001-222-04.

AYES: All

Discussion/Consideration of Recruitment for Town Manager and desirable qualifications for the position – Transition Committee

Interim Town Manager Anderson presented a staff report. She stated the committee, comprised of herself, Finance Director Vivrette, Mayor Hartwell-Herrero and Vice Mayor Reed had looked at several different scenarios and presented the cost analysis of each of them.

Councilmember Bragman stated they would save a similar amount of money by combining any department head position with the Town Manager position, that he didn't want to get "boxed in" due to the current vacancies, and he wanted to remain flexible.

Councilmember Weinsoff stated he was reluctant to spend \$10,000 on a headhunting firm and he asked if the sub-committee could obtain the expertise from other department heads in the County. Mayor Hartwell-Herrero stated that was part of the committee's strategy.

Interim Manager Anderson agreed and stated the committee wanted to conduct a small, focused search with a lot of the work to be done in-house.

Councilmember Weinsoff suggested they narrow the focus and get the best person available. Councilmember O'Neil agreed.

Discussion/Consideration of the Draft Vegetation Management Plan for the Marin Municipal Water District- *Bragman*

It was the consensus of the Council to continue this item.

Interim Town Manager Anderson stated the Council would not be meeting on September 10th as indicated on the agenda.

M/S, O'Neil/Reed, Motion to adjourn the meeting at 11:10 p.m. in honor of Bill Parker and Michael Kenyon.

AYES: All

Respectfully submitted,

Toni DeFrancis
Recording Secretary