

Fairfax Town Council Minutes
Adjourned Meeting
Fairfax Women's Club
Thursday, April 14, 2011

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
Judy Anderson, Town Clerk

Mayor Bragman called the meeting to order at 7:07 pm.

Approval of Agenda and Affidavit of Posting

M/S, Weinsoff/Tremaine, Motion to approve the agenda with the item regarding the Solid Waste Hauling agreement to be heard after the Consent Calendar and before the Public Hearings and with the removal of the item regarding impediments to fair housing from the Consent Calendar for discussion.

AYES: All

Announcements

Mayor Bragman announced the PARC sponsored Spring Egg Hunt on Saturday, April 23rd. Vice Mayor Hartwell-Herrero announced a Spring cleanup of the Teen Center on April 30th and training for the Food Bank on April 30th at the Community Church. Councilmember Reed announced an informational meeting about Fairbuck scheduled for April 20th from 7 to 9 p.m. at the Women's Club.

Open Time

Holly Bragman, Hickory Road, announced a Community Passover/Seder potluck with music at the Women's Club on the 22nd. She also commented on the parking spots across from the bakery that were often used during the prohibited times posted which backed up traffic.

Council Reports

Councilmember Tremaine reported that he and Councilmember Weinsoff had attended a Fire Board meeting and that the Town of Ross had approached Ross Valley Fire about joining the authority. He stated that he would have a report at the next meeting.

Vice Mayor Hartwell-Herrero reported that she had attended a Zero Waste committee meeting the previous Friday as well as a Teen Night.

Town Manager's Report

Town Manager Rock led a discussion of potential conflicts with scheduled Council meetings

during the summer months. Councilmember Tremaine stated that he would not be available on July 6th and Councilmember Reed stated that he would be out of town on August 3rd. July 13th was suggested as one alternate date and Town Manager Rock stated that he would present other dates at the next meeting.

Consent Calendar

Approval of letter from the Mayor outlining recommendations to the County and other elected officials in Marin County regarding the Analysis on the Impediments to Fair Housing Choice – Hartwell-Herrero

This item was taken off the Consent Calendar for discussion.

Vice Mayor Hartwell-Herrero reported that Dave Correy was putting together a working group with assistance from Marin Community Foundation and asked, on Mr. Correy's behalf, if either member of the Town's Affordable Housing Committee was interested in serving on the working group.

Mayor Bragman expressed a willingness to serve since he already was serving on TAM.

Mayor Bragman asked that language be added to the letter in Section #7 to read, "Cities, Towns, Counties and joint agencies should lobby to reform the regional housing needs assessment to give full credit for subsidized senior housing as opposed to the current 25% credit." There was a consensus of the Council to add the suggested wording and to approve the letter with the added language.

Report on the status of the presence of perchlorethylene (PCE) at the Fair Anselm retail center – Town Manager

M/S, Tremaine/Weinsoff, Motion to approve the Consent Calendar.

AYES: All

Discussion and Consideration of Fairfax Solid Waste Hauling Agreement – Zero Waste Committee

Mayor Bragman introduced the item and recommended that the Town hire a consultant to guide the process of negotiating a franchise agreement, someone with expertise who would facilitate the process and would help meet the time constraints. He estimated that it would cost several thousand dollars for such a consultant; that it made sense to hire a consultant because of the large financial impact of the contract; referred to a grant opportunity later on the agenda that could be used to cover the cost; that the time frame would be three months; and that it would help the largest contract that the Council would negotiate.

Vice Mayor Hartwell-Herrero stated that they had been waiting to receive a Solid Waste JPA model agreement that wasn't received until Friday and that she supported the hiring of a consultant.

Councilmember Tremaine stated that he saw the logic in hiring a consultant as long as both sides could trust the person, that it would expedite the process, and especially if there was a source of revenue to pay for the consultant.

Councilmember Weinsoff stated that a consultant wasn't necessary; that other resources could be used; that perhaps someone at the County of Marin could assist in the process and suggested that the parties sit down on a Saturday morning and hammer it out. He further stated that the Council didn't believe the consultant already hired and yet wanted to hire another consultant.

Councilmember Reed stated that one of the attorneys on the Council was saying a consultant was necessary and the other was saying it wasn't necessary; that the model agreement offered ways to address the issues; that consulting with an expert was usually a good idea; and stated that the citizens had the biggest stake in the success of the contract. He further stated that the recycling and the garbage services were two different companies and that they didn't actually know the profit/loss status of the one company and that as long as they didn't know, they couldn't move forward.

Shemasatya, Wesson Lane, stated that Mill Valley and Tiburon had higher garbage rates and offered less service; that as a ratepayer with a service that was losing money, she was willing to pay a 25% increase; and that the higher rate would still be reasonable and less than southern Marin.

Patty Garbarino, Marin Sanitary, stated that they hadn't expected to be at the meeting; apologized for the lateness of her submission; stated that the letter she provided outlined the misstatements made at the last meeting; that three years previous they had been a phrase away from an agreement; explained the information submitted; stated that Marin Resource Recovery was a dump at their site and had nothing to do with the Town of Fairfax, nor did the wood operation; that they had not been asked for the recycling information in the past; that they tried to quantify the financial information; that the value of materials fluctuated; perhaps a 2% offset to the rate in the good years and 1% in the bad years; reviewed the chronology of the meetings with the Town about the agreement; noted that Marin Sanitary was a rate regulated monopoly; that nobody else wanted to take the risk of Marin Recycling with the market fluctuations; suggested that grant money could be used for education about food waste programs to multi-unit housing and might be better than using it to hire a consultant; and recommended that three consultants be considered with the choice made together. She presented binders of information for the Council and staff.

Pam Meigs, Cypress Drive, stated that it was a long-term contract and that Fairfax should take a long view and move toward sustainability.

Mayor Bragman stated that it was tough to balance the competing interests between ratepayers, the Town and the franchisee; that it should be an arm's length negotiation; that it could move forward in a positive direction with the help of a consultant; apologized for the process at the last meeting; and stated that he believed the Town needed help to get to the best place they could with the contract. He further stated that the franchisee didn't select the Town's consultants and the Town didn't select theirs; that the consultant was not intended as a mediator but as a consultant for the Town; that help was needed with the ten-year contract; and that he was willing to consider a variety of people.

Councilmember Weinsoff stated that it had to be good for both entities; that the people at the table had to be confident about the process; and that to get to "yes" those at the table had to work together.

Vice Mayor Hartwell-Herrero suggested that they get Ms. Garbarino's feedback but that the Council make its own decision and that they look at three consultants and choose one of the three.

Councilmember Tremaine stated that it would be important to him that the Town's consultant would have credence with the other side; that he didn't understand how the process had turned adversarial; that the Town had never had an adversarial relationship with Marin Sanitary; that they had always acted as a partner; that it was fine with him to bring in somebody to negotiate

on the Town's behalf as long as it was someone they both trusted; that they needed to get back to the partnership they had always had; that he didn't hear from Marin Sanitary that they were not going to work with the Town toward Zero Waste; that the garbage contract couldn't do that; that there were contract provisions that would promote Zero Waste but the agreement couldn't accomplish Zero Waste; and that the Town was complicating the whole process.

Councilmember Reed stated that all the cards should be on the table; that there was a new paradigm, zero waste; that the Town had a good partner in the Garbarinos to move forward with that; that it was important to look at the big picture; and that agreement on a consultant would help work out the details.

Mayor Bragman made a motion to approve in principle the notion of hiring a consultant with money from the zero waste grant.

Town Manager Rock stated that the grant guidelines would not allow for payment to a consultant.

Mayor Bragman suggested that some funds could be available from green energy to pay for the consultant.

There was a consensus of the Council to work with Marin Sanitary to choose a consultant, that it could be done in the next couple of weeks, and that the appointment could be approved on the Consent Calendar at the next meeting.

M/S, Tremaine/Weinsoff, Motion to retain an agreed upon consultant to expedite negotiations.

AYES: All

Introduction and First Reading of Ordinance No. 760, An Ordinance of the Town Council of the Town of Fairfax extending Interim Ordinance No. 753, an Interim Ordinance of the Town Council of the Town of Fairfax prohibiting the establishment of new medical marijuana dispensaries in any zoning district within the Town – Planning

Mayor Bragman recused himself because of his pro bono legal services provided to Marin Alliance.

Planning Director Moore presented the staff report. He noted that wording had been added to have the ordinance in effect for six months or until adoption of the permanent ordinance, whichever came first.

Vice Mayor Hartwell-Herrero opened the public hearing.

Matthew Witmyer, stated that he strongly supported the ordinance and left a press packet with the Clerk.

M/S, Tremaine/Weinsoff, Motion to waive further reading of Ordinance No. 760, an Ordinance of the Town Council of the Town of Fairfax extending Interim Ordinance No. 753, an Interim Ordinance of the Town Council of the Town of Fairfax prohibiting the establishment of new medical marijuana dispensaries in any zoning district within the Town.

AYES: Hartwell-Herrero, Reed, Tremaine, Weinsoff
NOES: None
RECUSED: Bragman

M/S, Tremaine/Weinsoff, Motion to introduce Ordinance No. 760, An Ordinance of the Town Council of the Town of Fairfax extending Interim Ordinance No. 753, an Interim Ordinance of the Town Council of the Town of Fairfax prohibiting the establishment of new medical marijuana dispensaries in any zoning district within the Town.

AYES: Hartwell-Herrero, Reed, Tremaine, Weinsoff
NOES: None
RECUSED: Bragman

Adoption of Resolution No. 11-22 authorizing the Town Manager to submit all applications for Zero Waste Grants and to execute all necessary documents for the purposes of the grants for the period of five years to Marin County Hazardous and Solid Waste Management Joint Powers Authority – Town Manager

Town Manager Rock presented the staff report. He stated that the grants could mean \$11,847 for Fairfax; that it was a simple application; that it could be used for waste reduction ordinances; that he had met with the local representative, Renee Goddard and had talked with San Anselmo about working work with them for economy of scale for joint projects; and that it was a five year program.

Vice Mayor Hartwell-Herrero recused herself because her employer, Sustainable Fairfax, could benefit from the grant funds since Renee Goddard was a Board member of Sustainable Fairfax.

Mayor Bragman stated that he didn't see where the grant criteria limited the Town from moving forward with using the grant money to pay for a consultant.

Town Manager Rock stated that he would get clarification of the terms of the grant and noted that the hiring of a consultant wasn't specifically excluded.

Mayor Bragman asked for clarification of who would approve the awards and asked that the hiring of a consultant be added as an item to the next agenda.

M/S, Tremaine/Reed, Motion to approve adoption of Resolution No. 11-22 authorizing the Town Manager to submit all applications for Zero Waste Grants and to execute all necessary documents for the purposes of the grants for the period of five years to Marin County Hazardous and Solid Waste Management Joint Powers Authority.

AYES: Bragman, Reed, Tremaine, Weinsoff
NOES: None
RECUSED: Hartwell-Herrero

Discussion of the Smart Meter Moratorium in the Town of Fairfax – Bragman

Mayor Bragman presented the report and requested that the ordinance be renewed; described a meeting held with Commissioner Florio of the California Public Utilities Commission (CPUC); reported that Florio was receptive to their points in opposition to Smart Meters and asked that they help draft an opt-out agreement; described an open petition by PG&E for their opt-out program that would cost the ratepayers hundreds of dollars to opt out; stated that Fairfax had been asked to intervene in that petition; proposed that an all volunteer legal team be formed to intervene in PG&E's petition with CPUC; and that the CPUC might protect the Fairfax moratorium.

Councilmember Tremaine expressed support for an intervention and whatever could be done to get a volunteer legal team together. He volunteered to ask the Marin Energy Authority (MEA) to join the effort to perhaps use their legal counsel.

Mayor Bragman suggested contacting County Supervisors Susan Adams and Steve Kinsey for their support since they had a shared interest; stated that he would like Fairfax to be the lead agency; and that they could definitely work with other jurisdictions.

Councilmember Tremaine suggested that the new draft of the moratorium ordinance should include language to specifically address the opt-out plan suggested by PG&E.

Councilmember Reed stated that he totally supported the intervention and questioned the motives of PG&E regarding Smart Meters. He described the Smart Meter program as devised to help consumers track energy use but that the millions of dollars spent on the flawed program paid for by consumers was not justified. He further stated that for PG&E to charge several hundred dollars to opt out was outrageous; that the adverse symptoms that had shown up from Smart Meters needed to be brought to the CPUC; and that an existing phone line could be used instead of using wireless meters.

Vice Mayor Hartwell-Herrero asked for a timeline for when the CPUC would act on the PG&E petition.

Mayor Bragman stated that he believed there was plenty of time but that he would find out.

Mayor Bragman opened the discussion to the public.

Mark Bell, Dominga Ave., stated that the opt-out program was doing PG&E a big favor and saving them lots of money; that they told the Fairfax audience they wouldn't fire anybody because of the SmartMeters; and to be with consistent with their promise, they should be required to pay residents to read their own meters. He further stated that PG&E had an application before the CPUC to expand the use of nuclear power and referred to efforts by the Abalone Alliance to oppose such expansion.

Shomastaya, Wesson Lane, stated that a campaign to file a protest petition had been launched; that April 25th was the deadline for filing a protest to the PG&E opt-out plan; that Sandy Ross of Health and Habitat in Mill Valley was working with her to raise money to hire David Wilner to handle the protest; that Wilner was competent and qualified to do the work but that he needed to have financing to proceed; that she was working on the grassroots fund raising campaign to pay for the protest in the next couple of weeks; suggested that those wanting to get involved or to contribute to contact Ms. Ross; and asked Councilmember Tremaine to try to get the MEA on board.

Mayor Bragman stated that the CPUC had an advocacy office that could assist with the intervention.

Councilmember Tremaine asked that the Council agendize a resolution or letter to be sent to the CPUC calling for the decommissioning of the nuclear power plants on the California coast.

Mayor Bragman suggested that any such resolution or letter should also urge the Federal government to shift the 36 million dollars in loan guarantees given the nuclear industry to domestic spending.

Councilmember Reed described a practice used to extract natural gas from the ground that resulted in the pollution of ground water called "fracking." He stated that, as a result of fracking in Appalachia, the people there couldn't drink their water. He asked that the issue be placed on a future agenda for discussion.

Joseph Odom, Porteous Ave., submitted a letter that he was sending to the CPUC in opposition to the PG&E opt-out plan and read the letter aloud.

There was a consensus of the Council to go forward with an extension of the Smart Meter moratorium and to intervene in PG&E's petition for their Smart Meter opt-out program.

Discussion/Consideration of possible consolidation of the Planning Commission and the Design Review Board – Planning

Planning Director Moore presented the staff report. He stated that he had reviewed the idea with the Planning Commission and the Design Review Board (DRB); that all seven members of the Planning Commission approved the idea; noted that two of the Planning Commissioners had served on the Design Review Board; and that the three Design Review Board members present their last meeting also agreed that it would be a good idea.

Councilmember Tremaine explained that the reason the Council changed the order of review for projects to have the Planning Commission hear the item before the DRB was because of a violation of the streamlining act that allowed a project to be automatically approved when the allowed review time expired.

Councilmember Reed stated that land use was not a design concern; that the two bodies reviewed different aspects of a project; and suggested the possible use of a subcommittee of the Planning Commission to review design or a citizen committee with members with design expertise.

Planning Director Moore stated that there were two design professionals on the Planning Commission and that the proposal was made to streamline the process.

Mayor Bragman stated that when he heard "streamlining" he thought it used to be code for "let's approve it faster with less review;" that the bifurcated system was put in place on purpose; and that the Design Review Board was referenced throughout the Code and the Code would have to be adjusted to reflect the change.

Morgan Hall, Walsh Lane, stated that all of the reasons staff presented were valid and that it would reduce the amount of time to get a project approved. He described how the Design Review Board, when he was on the Board, had reviewed a plan for the expansion of the theater that the Planning Commission had already approved it where the design was poor and the Design Review Board couldn't do much about it. He further stated that combining the two made a lot of sense.

Pam Meigs, Cypress Drive, stated that she didn't like the way the issue was brought forward; that the Design Review should be first; that she had issues with the combination; that anybody could be a planning commissioner or on the DRB; and that efficiency shouldn't be the goal.

Laura Kehrlein, Bothin Road, stated that she had served seven years on the DRB; that she agreed with most of staff's comments; that the DRB mostly only approved exterior materials; that there had been times when she had disagreed with the design of projects that had already been approved by the Planning Commission; and that many other towns had already combined the two functions.

Holly Bragman, Hickory Road, suggested that if the change were to be made, that the Council should also change the way appointments were made and stated that she thought the Planning Commission had been very thorough in the review of her recent project.

Ryan O'Neil, Madrone Road, stated that it could be a great idea; that the appointment process needed to be changed; that the Council appointed the people who made the decisions and then the decisions could be appealed to the people who made the appointments; that a structured approach to the appointments was needed; and that it was very important to make the process fair.

Mayor Bragman stated that he was not comfortable with the way the Planning Commission appointments had been made; that he would like the process to be more informal; agreed that representatives from the neighborhoods were needed on the boards and commissions; that design professionals were important but that people with different opinions were also needed; that there was no assurance that combining the two bodies would produce better decisions; and that a more integrated decision could be reached by having with design features considered with the entitlements.

Councilmember Tremaine suggested that it could be a combination but with the Planning Commission meeting and then convening as the DRB for that portion of the project so that you could have two separate bodies that met at the same time. He stated that a formal review of the design of a project was needed.

Planning Director Moore stated that, if the design of a project was considered with the entitlements, the bulk and the location could be part of the design consideration.

M/S, Weinsoff/Tremaine, Motion to direct staff to draft an ordinance to combine the two and to incorporate the comments made.

Discussion:

Councilmember Tremaine stated that two separate decisions were not necessary and that he was not suggesting that the design issues be settled by a separate motion.

Councilmember Weinsoff suggested adding language so that the roles were clear.

Mayor Bragman stated that it should be a bifurcated approval process; that he agreed with Councilmember Tremaine's concept of institutionalizing a separate consideration; that a second meeting was needed to actually approve a project; and that such a process would encourage public participation.

AYES: All

Discussion/Consideration of a local sales tax in the Town of Fairfax - *Bragman*

Mayor Bragman presented the report. He stated that a local sales tax would solve the financial problem for the next couple of years; that they should have increased the \$125 in Measure I to at least cover the increased cost of things; and that there were other ideas that could be considered like the garbage franchise agreement that represented \$180,000 item in the budget. He further stated that the garbage franchise fee that the Town received was 10% whereas other communities received more, as much as 30%, and some received less.

Town Manager Rock reviewed the success of other sales tax measures in other California cities.

Councilmember Tremaine stated that he would rather increase income through the ballot rather than by raising fees; that a general ½ cent sales tax increase seemed fair; that an additional

sales tax on medical marijuana could be considered; and that they needed to do whatever they could.

Mayor Bragman stated that the Council needed to show their commitment to public service but that service wasn't free; that they had the resources to make it work but that it had to come from everybody; and that it was not fair to have the Town's bargaining units carry the entire load.

Vice Mayor Hartwell-Herrero stated that she would like to have the issue heard at the outset of the agenda to get more public input.

Pam Meigs, Cypress Drive, stated that she was not happy about another tax but could understand the need; that, as a nurse in a hospital who had gone through reorganizations, believed that everything had to be examined; that the Council should consider that water, sanitary and other costs were going up and there was a limit as to how many more taxes could be put onto the residents; and asked if some of the income could be designated for open space.

Councilmember Tremaine stated that a general tax required a simple majority vote, but, if the income were to be designated, a 2/3 vote would be required for passage; that the process they were going through with all the bargaining units included brainstorming about every possible avenue for savings; that there were sacrifices on the table so everything was being considered; that the Mayor and Vice Mayor were included in the discussions; and that the Council was doing business differently to bridge the gap and to share the load.

Morgan Hall, on behalf of the Chamber of Commerce, stated that the Chamber was neutral on a sales tax and that they were currently canvassing their members on the issue.

Mayor Bragman stated that it was the intent of the Council to capture all the stakeholders' input, and that it needed to be done intelligently and carefully.

Mayor Bragman adjourned the meeting at 9:45 p.m.

Respectfully submitted,

Judy Anderson, Town Clerk