

Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, July 13, 2011

The regular meeting was preceded by a special meeting closed session regarding labor negotiations with Agency designated representatives Larry Bragman, Mayor, Pam Hartwell-Herrero, Vice Mayor and Michael Rock, Town Manager; Employee Organizations: SEIU, POA, and Management employees; Public Employee Appointment, Finance Director; and Conference with Legal Counsel on pending litigation in two cases.

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
Jim Karpiak, Town Attorney
Laurie Ireland-Ashley, Finance Director
Chris Morin, Chief of Police
Mark Lockaby, Building Official
Roger Meagor, Ross Valley Fire Chief
Linda Neal, Senior Planner
Judy Anderson, Town Clerk

Mayor Bragman called the meeting to order at 7:15 pm.

Approval of Agenda and Affidavit of Posting

M/S, Weinsoff/Hartwell-Herrero, Motion to approve the agenda.

AYES: All

Announcement of Closed Session Action

Mayor Bragman announced that the Council had interviewed two candidates for Finance Director and had directed staff accordingly; that they had met with the labor negotiators, Michael Rock, Town Manager and the Mayor and Vice Mayor, for all the labor groups and had given direction; that they had received updates from legal counsel on two pending legal cases, Town of Fairfax v. Berg and Sipple v. County of Alameda, and that direction had been given.

Announcements

Mayor Bragman made the announcements as printed on the agenda.

Open Time

Valeri Hood, Dominga Ave., reported on the profits made at the recent showing of a film entitled "Gas Net;" described three other films that she hoped to show; asked for Town sponsorship of the screenings; and announced a speech to be given on Smart Meters at the Commonwealth

Club on July 30th.

Garry Graham, 19 Broadway proprietor for 31 years; stated that he was speaking for a committee of concerned citizens; that he had met with staff for almost three hours to help the Town close the deficit; advised that the Council needed to show taxpayers that they would go forward without all the benefits for new employees with the hiring of the new Finance Director; suggested that the Town not make promises they couldn't keep; and stated that the Committee was trying to help the Town.

Yvette Wakefield, Main Court, stated that Marin Sky Watch was staging the second annual awareness day on Sunday from 1-3 p.m. in Bolinas Park; asked for a resolution in support of the campaign to form a 9/11 Commission campaign to find out what really happened; related that a Senator from Alaska was calling for a citizens effort to find out what really happened on 9/11 through initiatives in various states; that nine states were needed to go forward; and she gave related information to the Clerk for distribution to the Council.

Mayor Bragman presented acknowledgments to Linda Neal, Senior Planner, for her many contributions to the Town as an employee of the Town for 25 years.

Presentation by Maze and Associates of the Fiscal Year 2009/10 Financial Statements (Audit) and acceptance by the Town Council

Katherine Yuen of Maze and Associates presented the Fiscal Year 2009/10 Audit.

Mayor Bragman noted that the decrease in revenue and the increase in expenses for the Town had been occurring for several years; that the Marin County Auditor had acknowledged that 27% of real property in Marin had been reduced in value through re-assessments; and he explained that the auditor also advised the Town on ways to improve the internal process for financial transactions.

Councilmember Tremaine pointed out that the Town revenues had decreased \$384,000 since the last audit and that it was a huge gap to bridge.

Council Reports and Comments

Councilmember Weinsoff reported on his attendance at a Flood Zone 9 meeting and stated that their capital improvement plan was extensive. He announced that the Friends of the Corte Madera Creek had put together a clear summation of the plans of the Flood Zone and referred those interested to refer to that summary.

Vice Mayor Hartwell-Herrero reported that she had met with the Finance Committee; with the labor groups as one of the negotiators; and that the Youth Commission meeting had been cancelled.

Mayor Bragman reported that he had also attended the labor negotiation meetings; the Transportation Authority of Marin (TAM) meetings including those that included a controversial item regarding funding for SMART and that involved a difficult vote for the widening of Highway 101.

Councilmember Tremaine reported on his attendance at the Ross Valley Fire Board meeting and at the Marin Energy Authority (MEA) meeting. Regarding MEA, Councilmember Tremaine reported that they had just contracted for the creation of 31 megawatts of solar energy; had agreed to offer membership to the four Marin cities that had not yet joined MEA for no fee; were pursuing whether or not to bring the City of Richmond into the MEA; and stated that MEA was a

huge success and that he was proud of Fairfax's contributions.

Councilmember Reed stated that he had attended FAIRBUCK meetings and that he had been approached to show the "Economics of Happiness" film in August if it could be sponsored.

There was a consensus of the Council to sponsor the film as requested.

Town Manager's Report

No report was given.

Consent Calendar

Approval of Town Council minutes for the April 6, 14 and June 22, 2011 meeting - Town Clerk

Adoption of Resolution 11-37 of the Town Council of the Town of Fairfax authorizing the issuance of a private placement tax and revenue anticipation note (TRAN) for the 2011-12 fiscal year – Finance

Tremaine/Weinsoff, Motion to adopt the Consent Calendar.

AYES: All

9 Scenic Road; Application # 10-30 - Appeal of Planning Commission approval of a Use Permit to legalize an unpermitted conversion of an accessory structure from a storage/workshop (u occupancy) to living space (R-3 occupancy). Specifically a request that the Town Council eliminate the requirement that the converted accessory structure be retrofitted with a sprinkler system; Assessor's Parcel No. 001-146-04 – Planning

Councilmember Reed recused himself because of the proximity of his home to the appellant's property.

Planning Director Moore presented the staff report.

Roger Meagor, Ross Valley Fire Chief, stated that the issue was whether or not there had been a change in use that would require the owner to bring the property up to current standards which would include the installation of wired smoke detectors.

Dolores Cordell, Appellant, stated that the accessory structure building was a residential unit when she moved in; that it never really changed use except for a brief time when it fell into disrepair; that she objected to the recusal of Councilmember Reed because it meant that she had to get agreement from a larger percentage of the Council; that there were certain inconsistencies in the way the code had been interpreted; that a loss of the appeal would mean that she would have to bring the entire building up to code; that the Town Council was seeking a just and equitable result but they were shooting a gnat with a cannon; that her neighbor, Del Grossman, had been attending all the meetings to testify that it had always been a residence but he wasn't available to attend the current Council meeting; that one of the conditions imposed by the Planning Commission was that there be a vegetative management plan for the property; asked for consideration of the return of her appeal fee; and stated that she was being asked to do something very expensive that would have negligible effect when it had always been a residence.

Mayor Bragman noted that a permit hadn't been obtained when a new bathroom was added but that penalties had been paid.

Vice Mayor Hartwell-Herrero ascertained that the appellant had battery operated smoke detectors.

Mayor Bragman opened the Public Hearing.

Ken Damont, the current owner of the property, stated that he used the unit as a master bedroom.

Mayor Bragman closed the public hearing with the proviso that the appellant would be able to respond to comments made.

Councilmember Tremaine stated that he had received some confidential legal information that bolstered his opinion that there had not been a change in use.

Councilmember Weinsoff stated that he didn't usually go against a public safety requirement recommended by the Fire Chief, but that the Council had been given legal advice that convinced him to support the appeal. He recommended that the safety provisions recommended by the Fire Chief be considered.

M/S, Tremaine/Bragman, Motion to grant the appeal with the determination that there had been no change in use and no use permit required with the balance of the fees charged for the use permit and penalties weighed against the building permit fees and penalties for the illegal bathroom and either a refund made to the appellant or a balance paid to the Town once that determination was made.

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

Mayor Bragman adjourned the meeting for a break from 8:30 p.m. to 8:45

Review of Proposed Draft Budget for 2011-2012 – Town Manager

Town Manager Rock presented the staff report. He stated that the structural deficit was greater than the employee benefit costs; that more revenue was needed; that property taxes had been flat or had gone down for the last four years and were expected to remain flat; that we would still have a deficit, even with concessions from the employees and the passage of a half-cent sales tax; and that all the financial factors weren't yet known going forward.

Mayor Bragman stated that he was not comfortable with the assumption that the property tax revenue would remain the same and that he believed that it was likely to decrease. He ascertained from Finance Director Ireland-Ashley that the information from the Tax Assessor's office was not yet available, that the Town lost 1.6% of sales tax revenue the previous year as a result of re-assessments, and that the impact of foreclosures and the slow real estate market was not known.

Mayor Bragman reported on a recent meeting held with a citizen formed "Sustainable Budget Committee."

Mayor Bragman opened the Public Hearing.

Garry Graham, 19 Broadway, Sustainable Budget Committee, stated that the Committee

wanted to look under the hood of the budget; that they wanted to examine the Town contracts; that there was more tightening to be done; that they didn't have the accurate numbers; and that they would make suggestions after the next meeting with staff.

Mayor Bragman closed the public hearing

Adoption of Resolution No. 11-38, a Resolution of the Town Council of the Town of Fairfax, California, Calling for the Holding of a General Municipal Election on November 8, 2011, for the Election of Certain Officers, requesting the Marin County Board of Supervisors to Consolidate with any other Election Conducted on that Date, and Requesting Election Services of the County Clerk

Town Clerk Anderson presented the staff report.

M/S, Reed/Weinsoff, Motion to adopt Resolution No. 11-38, a Resolution of the Town Council of the Town of Fairfax, California, Calling for the Holding of a General Municipal Election on November 8, 2011, for the Election of Certain Officers, requesting the Marin County Board of Supervisors to Consolidate with any other Election Conducted on that Date, and Requesting Election Services of the County Clerk.

AYES: All

Adoption of Resolution No. 11-39, and for the Submission to the Voters of a Question Relating to a Local Sales Tax for Five (5) years, requesting the Marin County Board of Supervisors to Consolidate with any other Election Conducted on that Date, and Requesting Election Services of the County Clerk, and Setting the Ballot Language – Town Clerk

Town Attorney Karpiak presented the staff report.

Councilmember Weinsoff stated that if the State had extended the 1 percent sales tax, he would have recommended that Fairfax propose a half-cent sales tax; that a one percent tax would extend the old tax rate in Fairfax; that one-cent on the dollar would generate about \$300,000; that the money would stay in Fairfax; and he recommended the full one cent sales tax

Councilmember Reed stated that he advocated for safe routes to school, for bike lanes and to fill the Public Works Director position. He noted that a grant opportunity had been lost because of the lack of a Public Works Director and that the tax would allow the Town to hire a Public Works Director and to keep the community safe.

Councilmember Weinsoff stated that the proposed sales tax revenue would be more of a band-aid and wouldn't provide funding for the items that Councilmember Reed described.

Vice Mayor Hartwell-Herrero stated that she supported a one-cent tax; stated that the Council's intention was not to burden businesses but to reduce the taxpayers' burden; that much of the tax would be paid by non-residents who visited Fairfax; that she hoped business owners like Garry Graham could find a way to pass it on to customers; that she was looking at the future with COPS money to be taken away; and that the sales tax would provide an opportunity to patch up the finances and to hopefully make the Town whole.

Garry Graham, 19 Broadway owner, confirmed that the Town Council was considering a full cent sales tax and called it a money grab; stated that up to the current meeting, the Council had been talking about a ½ cent sales tax; that it would impose a tax on a business community that was in a recession; that it would prompt opposition from the merchants; and that it wasn't wise especially when the actual numbers weren't yet available.

Ryan O'Neil, Madrone Road, reviewed some of the comments made by the Town Council, including descriptions of the dedicated and underpaid Town employees, that would justify the tax increase and urged the Council to educate the public about all the reasons it was necessary.

Wendy Baker, Scenic Road, Executive Director of the Chamber of Commerce, stated that businesses were suffering, laying off people, and making less; that most merchants didn't offer health coverage or retirement benefits; that the Chamber had talked about the ½ cent sales tax; that the tax would be in effect for six years; that there was a negative reaction to a proposal for a whole cent rather than a half-cent tax; reported on a survey that the Chamber had conducted about a proposed half-cent sales tax with about 30 people responding, 59% in favor and 41% against; that the Chamber didn't want to get into an adversarial relationship with the Town; that concern had been expressed about a cumulative sales tax that would result if the State restored the 1% sales tax; that Town employees should contribute more to their retirement costs; that taxes weren't always passed on to the consumer; and that she would have liked an opportunity to do a survey regarding a possible one cent sales tax.

Mayor Bragman closed the discussion to the public.

Mayor Bragman stated that he was not comfortable making the decision without more time for discussion. He suggested that a special meeting be held on the subject to allow the community to hear more about it; that the staff report had discussed both a half-cent and a full cent as possible in light of the lapse of the State 1% tax; that he would like to get some more information regarding the Town's property tax revenue before he made the commitment; and that there were other ways to raise revenue, but the sales tax provided an opportunity to go to another segment of the community, not just the homeowners.

There was a consensus of the Council to continue the item to the July 27th meeting already scheduled.

Discussion/Consideration of Town Council compensation - Bragman

There was a consensus of the Council to hear the item regarding Town Council compensation next instead of last on the agenda.

Finance Director Ireland-Ashley explained that the \$2.00/month paid was a survivor benefit and that \$24/month was paid by the Town for each Council Member's retirement. The Council asked that a resolution be placed on the next Council agenda to allow the members of the Council to pay their own retirement expense.

Mayor Bragman adjourned the meeting for a break from 10:20 to 10:30 p.m.

Second Reading and adoption of Ordinance No. 762, An Ordinance of the Town Council of the Town of Fairfax Amending Section 5.16.130 of the Fairfax Town Code to Remove Real Estate Agents from Business License Fee Obligations – Town Clerk

Town Clerk Anderson presented the staff report.

M/S, Tremaine/Hartwell-Herrero, Motion to waive further reading and to read the title only of Ordinance No. 762, An Ordinance of the Town Council of the Town of Fairfax Amending Section 5.16.130 of the Fairfax Town Code to Remove Real Estate Agents from Business License Fee Obligations.

AYES: All

M/S, Tremaine/Hartwell-Herrero, Motion to adopt Ordinance No. 762, An Ordinance of the Town Council of the Town of Fairfax Amending Section 5.16.130 of the Fairfax Town Code to Remove Real Estate Agents from Business License Fee Obligations.

AYES: All

Discussion/Consideration of natural gas fracking – *Bragman and Reed*

Councilmember Reed presented the report on natural gas fracking, a method of expanding production and lowering the cost of natural gas extraction that poisoned aquifers and water wells, released very large quantities of greenhouse gasses into the atmosphere, and created toxic waste. He described the progress of legislation to ban fracking in California and noted that France was considering taking action on the issue.

Councilmember Weinsoff suggested that the Council support the two pieces of legislation pending.

Mayor Bragman requested that two resolutions be drafted for the next Council agenda to support the pertinent legislation and stated that he would draft a letter to Kamala Harris, California Attorney General, on the issue.

Discussion/Consideration of extension of building and variance permits for an additional year – *Bragman*

Mayor Bragman presented a report on the subject and noted that San Anselmo had removed the automatic sunset of building permits from its Municipal Code and suggested that perhaps the two year limit could be extended to three years to prevent land banking where people purchased property with entitlements and held onto the property.

Planning Director Moore stated that not many Fairfax residents would benefit from such a change.

After a short discussion, Mayor Bragman withdrew the suggestion.

Discussion/Consideration of voting on behalf of the Town as Council representatives to outside agencies – *Bragman*

Councilmember Weinsoff requested that the Council consider how a member should vote on controversial issues when serving as a representative on a countywide agency. He asked whether the Council Member was free to vote his/her own conscience or should get the approval of the entire Council before voting.

Councilmember Tremaine stated that the Council Members shared core values and would vote in alliance with those values and, if the appointed representative voted against the wishes of the whole Council, that appointment could be revoked.

Councilmember Weinsoff suggested that an appointed representative could agendize the item to get Council input if unsure of how to vote.

Councilmember Tremaine suggested that it be could be done during Council reports.

Town Attorney Karpiak cautioned the Council to be careful making decisions without agendizing

the item.

Mayor Bragman noted that the entities involved were created by statute so the representatives could act independently without direction from their Council; that representatives could be replaced by the Council; that if it was a matter of public interest, the representative should bring it to the Council for discussion.

The meeting was adjourned at 10:45 p.m.

Respectfully submitted,

Judy Anderson, Town Clerk

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