

Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, September 7, 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 Karpiak, Town Attorney
Mike Vivrette, Finance Director
Chris Morin, Chief of Police
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 and the affidavit of posting.

AYES: All

Announcement of Closed Session Action

Town Attorney Karpiak reported from the Closed Session at the August 17th meeting that the Town Council had authorized a settlement of \$10,000 to be dismissed from the case entitled Sipple v. City of Alameda; that the Council gave direction to staff to execute such an agreement; that the dismissal with prejudice would save the Town money; and that it would be a public document once it was signed and submitted.

Announcements

Mayor Bragman made the announcements as they appeared on the agenda.

Councilmember Reed explained the details of the Chipper Day set for September 12th.

Open Time

Victoria Caruthers, Bennett House resident, stated that she supported the Terrapin Crossroads project in a different location; that it was not a good idea for the planned location; that she had attended many concerts in her day, including Grateful Dead concerts; that drugs and alcohol were part of the experience; that some attendees came to concerts already high on drugs and alcohol; that they could be leaving the concerts in an impaired state and driving; that the project should be in a commercial area in San Rafael like the empty Borders location; that she had lost two loved ones to drunk driving and a friend to a stoned driver; and that Fairfax didn't have a large enough police force to handle the impaired people.

Valeri Hood, Dominga Avenue, thanked Councilmember Reed for starting the chipper program

and for all his work on the chipper projects.

Yvette Wakefield, Main Court, asked the Council to help save her honor; stated that Town Manager Rock had lied about her to the press; related her story of how a PG&E employee assaulted her and then how she interacted with that employee and Manager Rock at a subsequent incident in the Parkade; and stated that she would picket Town Hall until she received an apology from MKR for lying about her.

David Kroll, Claus Circle, thanked Jim Moore, Mark Lockaby, Tom Bruce and Town Manager Rock for putting together the informational meeting about the Terrapin Crossroads project at the Pavilion.

Mark Bell, Dominga Ave., reported that the crosswalk at Drake and Claus switched from "Walk" to "Don't Walk" very quickly and suggested that the timing of the sign be reviewed.

Diane Hoffman, Realtor, Porteous Avenue, stated that she was surprised that flyers posted on telephone poles had become an issue; that a lot of people didn't read the Marin Independent Journal; that not everyone got information off the computer; that flyers were a good way to get the word out; and she shared a flyer that she had received about the Terrapin Crossroads project that she thought was excellent.

Councilmember Tremaine reminded the audience that flyers were prohibited on poles and street signs.

Interview and appointment of candidates to the Volunteer Board to complete an unexpired term to September 30, 2012 and for one full three-year term to August 31, 2014 – Town Clerk

M/S, Tremaine/Weinsoff, Motion to appoint Ted Pugh to serve on the Volunteer Board to complete an unexpired term to September 30, 2012.

Councilmember Reed noted that Helen Fauss, another applicant for the position, was not present.

AYES: All

Interview and appointment of candidates to the Design Review Board for a three-year term to July 31, 2014 – Town Clerk

M/S, Bragman/Weinsoff, Motion to appoint Jonathan Bornstein to the Design Review Board for a three-year term to July 31, 2014.

Mayor Bragman explained to the applicant that the Design Review Board might be combined with the Planning Commission.

AYES: All

Council Reports and Comments

Councilmember Weinsoff reported that he had attended the Chamber of Commerce-sponsored meeting on the Terrapin Crossroads project.

Vice Mayor Hartwell-Herrero reported that she had attended a Zero Waste Committee meeting with Marin Sanitary and that they were moving in a positive direction and making progress. She

also reported that she had met with a indigenous peoples coalition.

Mayor Bragman reported that he had attended the Zero Waste meeting and that they hoped to have a franchise agreement proposal for the Council's consideration by October.

Councilmember Tremaine reported that he had attended the Energy Authority meeting and had been appointed to a committee looking at the expansion of the Authority. He further reported that a meeting had been scheduled for the 12th of September for the committee to make recommendations to add Larkspur, Ross and Novato and possibly Richmond to the Authority.

Councilmember Reed reported that he had attended the end of the Terrapin Crossroads informational meeting, Fairbuck meetings, Chipper Day meetings, and had met with the Volunteers about the Town Picnic.

Town Manager Report

Town Manager Rock thanked the Chamber for hosting the meeting on Terrapin Crossroads and thanked the staff for setting up for the meeting and for attending.

CONSENT CALENDAR

Approval of Town Council minutes for the July 13 and 27, 2011 meetings - Town Clerk

Approval of Financial Statements for June, 2011 - Finance

Approval of Proclamation declaring September 2011 as Prostate Cancer Awareness Month in Fairfax – Hartwell-Herrero

Adoption of Resolution No. 11-50, a Resolution of the Town Council of the Town of Fairfax to Extend the Marin County Abandoned Vehicle Authority Vehicle Registration Fee until April of 2022 – Chief of Police

Adoption of Resolution No. 11-51, a Resolution of the Town Council of the Town of Fairfax setting the Living Wage pursuant to the annual review requirements of Section 8.56.020 of the Town Code – Town Clerk

Adoption Resolution No. 11-52, a Resolution of the Town Council of the Town of Fairfax adopting the Police Department Plan to Allocate Funds for the Community Oriented Police Services (COPS) – Chief of Police

Mayor Bragman requested corrections to two items in the July 13th minutes; one to correct the name of the film mentioned on page one and the other to request language to clarify correctly his comments on page seven of the same minutes in the discussion of the request for an extension of the expiration date of permits.

Vice Mayor Hartwell-Herrero stated that her father had died from prostate cancer, that prostate Cancer was as common as breast cancer, that she wanted to increase awareness of the disease, and that those were the reasons she asked to have the Proclamation on the agenda.

M/S, Tremaine/Weinsoff, Motion to approve the Consent Calendar with the corrections to the minutes as proposed by Mayor Bragman.

AYES: All

Adoption of Resolution No. 11-48, a Resolution of the Town Council of the Town of Fairfax amending the Master Fee Schedule – Town Manager

Town Manager Rock presented the staff report and reviewed the proposed changes including the reduction of the banner fee from \$456 to \$250.

Councilmember Reed related an incident involving the removal of a large oak tree in the Willow neighborhood and suggested that, for some property owners, the illegal tree cutting fine of \$500 was seen as part of the cost of removing a tree.

Councilmember Tremaine stated that he would support increasing the fine for illegal tree cutting.

Town Attorney Karpiak stated that it was listed as a fee, not a fine.

Mayor Bragman stated that the fine had been discussed by the Tree Committee; that it was not high enough to deter tree removal; and that the tree ordinance might need to be amended.

There was a consensus of the Council to discuss the tree cutting fine at a future meeting.

Mayor Bragman opened the public hearing and closed the public hearing when no speakers came forward.

M/S, Tremaine/Weinsoff, Motion to adopt Resolution No. 11-48, a Resolution of the Town Council of the Town of Fairfax amending the Master Fee schedule with the fees to be effective November 6, 2011.

AYES: All

Discussion/Consideration of the Adoption of Resolution No. 11-54, a Resolution of the Town Council of the Town of Fairfax adopting Criteria for Protecting Open Space – Open Space Committee

Mimi Newton, Chair of the Open Space Committee, presented an overview of the criteria and recommended approval.

Town Manager Rock stated that the Public Works Department had expressed concern about purchasing property without any evaluation regarding potential liability exposure; that the list of criteria was a good start on evaluating properties for purchase; and he thanked the Open Space Committee for preparing the document and for all their work on the criteria.

There was a consensus of the Council to have any future changes to the criteria established approved by the Council.

M/S, Tremaine/Weinsoff, Motion to adopt Resolution 11-54, a Resolution of the Town Council of the Town of Fairfax adopting Criteria for Protecting Open Space.

AYES: All

Mayor Bragman adjourned the meeting for a break from 7:52 to 8:05 p.m.

Marin General Hospital, a presentation of the plans for the hospital for the next three to five years – Jon Friedenber

Mr. Friedenbergr provided a Power Point presentation about Marin General Hospital since the transfer of ownership in June of 2010 and the plans for the next five years that included new buildings and seismic, safety and parking improvements. He described all the programs offered at the hospital and the planned expansion of services provided. He explained the State legislation (SB 1953) that required hospitals to stay open during disasters and the upgrades necessary to meet the terms of the legislation. He presented the plans for the new buildings that would be built after a bond measure was passed in November of 2013 for a general obligation bond. He noted that the buildings would be designed to meet the seismic guidelines included in SB 1953 and would include an expanded emergency area and larger operating rooms.

Mr. Friedenbergr introduced Jennifer Renks, a hospital board member and Fairfax resident.

Councilmember Tremaine asked if the project would use green building techniques, whether or not the hospital belonged to the Marin Energy Authority, and what would be done with the current hospital.

Mr. Friedenbergr stated that the hospital board was committed to building green, that they hadn't yet had an opportunity to join Marin Energy Authority, and that the old buildings could be used for administration or for some outpatient services.

Councilmember Weinsoff asked when the community would get an idea of the cost to the taxpayers for the improvements.

Mr. Friedenbergr stated that \$500 million was the anticipated cost of the proposed improvements and that the taxpayers, if the bond measure were to be approved, would pay approximately \$20 per \$100,000 of assessed valuation

Councilmember Reed stated that he was impressed with the amount of waste that arrived at Marin Sanitary from the prison and from the hospital and asked about their plans for reducing waste and for using green health care practices.

Mr. Friedenbergr stated that some hospitals were greener than others; that they used a lot of energy, lots of water and produced lots of waste. He further stated that they had a lot of work to do in that area but that they had a hospital board and administration interested in following green health care practices.

Councilmember Reed stated that his wife was a nurse at Marin General Hospital and couldn't ride her bike to work because there wasn't any secure bike parking.

Mr. Friedenbergr stated that he would check on bike parking and let Councilmember Reed know.

Mayor Bragman stated that he had visited the mental health facility at Marin General; that there was a need for a drug and alcohol treatment center in Marin; and asked if there was any possibility that such services would be made available, perhaps in partnership with others like UCSF.

Mr. Friedenbergr stated that there were no such plans at that time and that the buildings were extremely expensive and were focused on trauma, cancer, heart care, etc. He further stated that they had a great relationship with UCSF, that they were exploring other opportunities for collaboration besides neurosurgery and neo-natal care; that a close relationship with UCSF would allow it to become seamless to have patients get their services from both hospitals. He spoke about possible alliances with other hospitals as well.

Diane Hoffman, Porteous Avenue, asked about the lawsuit against Sutter and the chances of recovering any of the money lost to Sutter.

Mr. Friedenbergs responded that their attorney assured them that they had a great case but the other side also said they had a great case and that he was looking forward to having the issue behind them and looking to the future.

Mark Bell, Dominga Ave., asked why there was only a 50-year life on a hospital building and stated that they should last longer than 50 years.

Mr. Friedenbergs explained why the hospitals built in the 1950's didn't meet the current standards for medical care nor the new earthquake standards and that he hoped that the new structures could be built with enough flexibility to last longer than fifty years. In response to a question about hospital standards in other countries, Mr. Friedenbergs described Marin General's sister hospital relationship with a hospital in Northern Japan where they had strict building codes and enforcement and that they were hoping to learn from their earthquake experience.

Jennifer Renks, member of the Health Care District board stated that she was interested in looking at data about drugs and alcohol treatment.

Mayor Bragman stated that he would try to get information from the courts to her.

Discussion/Consideration of the Adoption of Resolution No. 11-55, a Resolution of the Town Council of the Town of Fairfax promoting civility and ensuring respect for the rights of permit applicants to be free from acts of intimidation – Weinsoff

Councilmember Weinsoff presented the resolution for consideration. He stated that the Town Attorney had reviewed the resolution to be sure they weren't infringing on anyone's rights; noted that the Council had been a model of civility since he had been elected; that the Council invited the public to speak their opinions to help them formulate their decisions; that from the expansion of the movie theater to the Good Earth project, there had been contentious issues but they had been handled with respect; that he wanted to nip the incivility trend in the bud. He reviewed the language of the resolution.

The Council discussed the wording of the proposed resolution, the necessity for such a resolution, and whether or not the specific project should be referred to in the resolution.

Open to the public:

Valeri Hood, Dominga Ave., stated that she would like to know what the posted flyers that prompted the resolution actually said, that it was all heresay, and there was nothing to base an opinion on.

Diane Hoffman, Porteous Ave., stated that she didn't like the project but felt like she was being blamed for the flyers placed in the applicant's neighborhood; that she didn't feel like the Town Council was remaining neutral about the project; and that she didn't know who posted the flyers in Ross, but suggested that it might not have been a Fairfax person.

Adrienne Peixotto, Claus Circle, stated that she had personally been called by the applicant at work and yelled at for 45 minutes; thanked Vice Mayor Hartwell-Herrero for answering her email; stated that she had met with the applicants for coffee before the five signs were posted when they had agreed to disagree; that they had subsequently thrown the signs at her; that the

signs read, "Stop Terrapin Crossroads Please;" that she supported the resolution with the deletion of specific names because their inclusion showed that the opinions of the applicant mattered and their opinions didn't matter; and that she had been intimidated by the applicants and hadn't spoken out before.

Alice Ducayet, asked to read her statement into the record and stated the resolution had to say that there were intimidating tactics used by the applicant, that the applicant had phoned three Claus Circle resident who she did not know and yelled at them and threatened them with job interference and loss of city services; that one of the residents had been silenced by the threats until this meeting and another had considered legal action against her aggressive threats; and that the aggressive behavior of the applicant had to be acknowledged in the resolution or the resolution shouldn't be passed.

Freddie Bloom, Claus Circle, stated that recognizing and encouraging civility was very important, but that singling out the intimidation against the applicants was terrible; that it was ironic that people who had that much power in the world would be intimidated by such a small act; that the applicant had done something politically dumb; that too much was being made of the flyers; and that there should be a resolution congratulating Fairfax for being civil and treating all applicants with respect but the resolution under consideration shouldn't be passed.

Lisa Hunt, Claus Circle, stated that no names should be included in the resolution; that it seemed very one-sided to mention the intimidation of the applicant without mentioning the others being intimidated; asked if there was specific proof that the flyers were posted in the applicant's neighborhood; and stated that the resolution should be open, fair and equal.

Ed Tilton, Claus Circle, asked about how intimidating the flyers that stated "No Terrapin Crossroads Please" were compared to other flyers including one about SmartMeters that had been posted around town. He stated that any resolution about the flyer incident should have come from the Ross Town Council, not from Fairfax.

Mimi Newton, Mono Ave., stated that the difference between saying "please" on a poster and figuring out where a celebrity applicant lived and walked was serious; that the people who took it upon themselves to act out against the civil political discourse had made it into a non-proposal; that she felt like an opportunity to participate in the process had been stolen from her and others; and that she supported a generic statement about civility and thanked Councilmember Weinsoff for bringing the resolution forward.

Jack Judkins, Bolinas Road, stated that he knew something had happened; that the perception was that Fairfax intimidated applicants; that he was disappointed that the project was pulled before he heard anything about it; that civility was an important thing; that he supported the resolution with the inclusion of more generic language; and he suggested specific language that could be used.

Kathy Flores, Claus Circle, stated that she walked her dog twice a day and had seen a bumper sticker in support of the Terrapin Crossroads project before anything was known about the project; that she didn't think that the posters were intimidating; that it was intimidating to hear from the applicant with her threats; that she thought the applicants were playing the victims; that she had posted signs on her property and on her father's property against the Terrapin Crossroads project; that her sign and her father's had been vandalized; that she had asked the applicants for a written apology to the neighbors that hadn't happened; and she asked that her signs not be removed and that they be treated with respect.

David Kroll, Claus Drive, stated that the resolution was poorly worded; that the specific

references in the resolution should be deleted; that the opponents should be protected against intimidation; that the resolution should address all those involved; suggested language that would "be civil in tone and free of any intimidation; and referred people to the order of the white rose for more information.

Karen Lynn, Porteous Avenue, stated that she didn't think a resolution asking for civility was a bad thing but didn't think names should be mentioned.

Tony Motsy, Taylor Drive, stated that he didn't think any action was warranted since it was all based on heresy and because he thought the resolution would make things more divisive.

Kathy Flores, Claus Circle, asked if it would be possible to send out a bulk mailing about the project because the 300-foot noticing requirement wouldn't allow notice to reach everyone and it would impact everyone in town.

M/S, Tremaine/Weinsoff, Motion to adopt Resolution No. 11-55, a Resolution of the Town Council of the Town of Fairfax promoting civility and ensuring respect for the rights of permit applicants to be free from acts of intimidation.

Roll Call Vote:

Hartwell-Herrero; NO; Reed: NO; Tremaine: Abstain; Weinsoff: AYE; Bragman: NO

Discussion/Consideration and request for action on Delegating Authority to the Town of Fairfax to register residents on PG&E's SmartMeter Opt-Out List

Mayor Bragman presented the staff report. He stated that the SmartMeter "Opt-Out" option had not been publicized and requested that the Town Clerk maintain a list of those who wished to opt-out to create a document that could be presented to PG&E.

Councilmember Tremaine stated that the PG&E phone number to call should be publicized and that people should be encouraged to contact PG&E to opt-out, but advised against collecting account information.

Mayor Bragman modified the request and offered to help draft a notice for the home page of the Town Website providing the information and requesting that interested residents email the Town Clerk with their name and address for inclusion on the Town's opt-out list.

There was a consensus of the Council to act as requested.

Valeri Hood, Dominga Ave., cautioned that individual opt-outs could be used against the town-wide opt-out effort; stated that it would be good to encourage people to opt-out with some kind of acknowledgment from PG&E; and she described the debilitating symptoms she experienced from WiFi from her neighbors.

Mayor Bragman opened the discussion to the audience.

Diane Hoffman, Porteous Ave., thanked the Council for pursuing the SmartMeter issue in the same way they took action on second-hand smoke.

Joseph Odom, Porteous Ave., should be made clear that if a resident signs the list with the Town it must not be used for any list for the CPUC or PG&E.

Lou Vaccaro, Olema Road, stated that he disagreed with the Mayor's opinion about SmartMeters, didn't see anything wrong with them, and didn't understand why people would register with the Town; that it wasn't up to the Town, it was up to the CPUC; that before a SmartMeter was installed, residents would be notified; and he questioned the Marin Energy Authority's claims about the use of clean energy.

Matt Hartwell-Herrero, Westbrae Drive, expressed concern that the Council might be setting up an expectation for the citizens that the Town could prevent SmartMeters from being installed; that the CPUC was the final authority; that people would be calling the police to intervene; that confrontations could ensue; and that he didn't want something bad to happen as a result.

Mayor Bragman stated that the Town had been proactive with the CPUC on SmartMeters and was working with other jurisdictions representing over two million Californians to make it possible to opt-out of the SmartMeter installations without cost to the consumer.

Matt Hartwell-Herrero, Westbrae Drive, stated that it was good to provide resources and a good idea to track the requests to opt-out.

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

Respectfully submitted,

Judy Anderson, Town Clerk