

Fairfax Town Council Minutes  
Regular Meeting  
Fairfax Women's Club  
Wednesday, May 2, 2012

The regular meeting was preceded by a Closed Session from 6:30 p.m. to 7:00 p.m. for a Public Employee Performance Evaluation (Town Manager) pursuant to Govt. Code Section 54957.

Call to Order/Roll Call:

**COUNCILMEMBERS PRESENT:**

Larry Bragman  
Pam Hartwell-Herrero  
Ryan O'Neil  
John Reed  
David Weinsoff

**STAFF MEMBERS PRESENT:**

Michael Rock, Town Manager  
Jim Karpiak, Town Attorney  
Jim Moore, Planning Director  
Mike Vivrette, Finance Director  
Chris Morin, Chief of Police  
Roger Meagor, Ross Valley Fire Chief  
Mark Lockaby, Building Official  
Judy Anderson, Town Clerk

Mayor Hartwell-Herrero called the meeting to order at 7:08 pm.

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 the Council had taken no action on an evaluation of a public employee but had given direction to staff.

Open Time:

Mrs. Bell, Dominga Ave., reported that the passage from Acacia to Bay was about to be closed at the Bay end and that it shouldn't be because of its convenience. She also reported that car alarms were going off so frequently that the birds were starting to sing like them and suggested that "fix-it" tickets be issued for errant car alarms.

Vice Mayor Reed stated that the passage closure on Bay was a public right of way and shouldn't be closed. Building Official Lockaby agreed to investigate the situation.

Lindy Novy, Cascade Drive, stated that Fairfax hosted lots of bikes and that the bikes created hazardous situations on sidewalks in Town. She asked that education and enforcement be used to address the problem and suggested that perhaps police officers on bikes downtown would allow the department to experience the problem.

Interview and appointment of candidate to serve on the Volunteer Board for a full three-year term to May 31, 2015 – Town Clerk

M/S, Reed/O'Neil, Motion to appoint Holly Bragman to serve on the Volunteer Board for a full three-year term to May 31, 2015.

AYES: All

Presentation and Discussion of the status of the Proposed Draft FEMA Flood Map for the Ross Valley and Public Outreach Meetings – James Reilly, Stetson Engineering

Town Manager Rock presented the staff report and introduced James Reilly of Stetson Engineering.

James Reilly, Stetson Engineers, explained his company's role working with the County to develop the flood program for the Ross Valley. He stated that Stetson Engineers had developed the computer models used to test the water flow in the Ross Valley; that the Federal Emergency Management Agency (FEMA) had used the models to reconfigure the flood maps for the Ross Valley; that FEMA had last revised the flood maps in 2009; and that the newly developed hydraulic levels had changed the flood zones in Fairfax. He reviewed the proposed changes in the maps; noted that flood insurance had to be acquired by homeowners with federal loans with property in the newly defined floodway zone; and that the floodway zone prohibited any further obstructions in that zone. He noted that they were in general agreement with the maps generated from their models, that they had documented the changes that they thought should be made and that a letter had been sent on the Town's behalf outlining the requested changes. He advised that the new map should be incorporated into the local flood plain ordinance; that there were going to be quite a few additional homeowners who would be required to purchase flood insurance; that new structures could not be built nor existing buildings increased in size in the newly designated area; that FEMA was in the outreach mode working with the Towns and the County to review their revised maps; that the technical work by FEMA would be completed in May followed by community meetings; that after the community meetings, the revised maps would be issued for public review; and that the maps would become effective after a year. He explained that FEMA was part of the National Flood Insurance Program and that the goal of the County Flood Prevention program was to create a system and to build structures to prevent a 100-year flood.

In response to a question from Mayor Hartwell-Herrero about the ban on future encroachment into the floodway zone, Mr. Reilly clarified that any project that would involve lateral development into the floodway zone would have to go through the Town and would require an application to FEMA to ensure that it would not obstruct the flow.

Mr. Reilly led a discussion about the cost of flood insurance; about how information about the process could be clarified and made available to the public; about requests made to FEMA on the Town's behalf for modification of the maps; and the meaning of "no encroachment" in reference to the newly defined floodway. Mr. Reilly announced a flood zone meeting at Drake High School the following weekend designed to provide the public with a forum on the subject and to describe the ten-year plan of projects to reduce the flood danger in Fairfax.

Mayor Hartwell-Herrero opened the discussion to the public;

Mark Bell, Dominga Ave., thanked the Council for their efforts to educate the public on the issues and how to proceed; described the runaround he received trying to deal with FEMA; asked how the planned flood prevention projects would be prioritized; and stated that widening

the culvert at Sherman wouldn't be enough to solve the flooding problem downtown.

Councilmember Weinsoff stated that there was a matrix of ideas for up and down the watershed to address the flooding problems; that detention basins were higher on the priority list than expanding the culvert on Sherman; and that the goal was to get the Ross Valley to "sand bag" status during storms and to avoid heavy flooding.

Michael Mackintosh, 60 Pastori Ave., stated that he paid \$6,000/year in flood fees and that he thought the proposed solutions were inadequate. He suggested using smaller retentions areas, and lowering Center Blvd. to have it serve as a channel for water. He stated his opinion that expanding the culvert would result in lawsuits against the Town from inverse condemnations.

Councilmember O'Neil stated that sending notices in the mail and a link on the Town's Web site wouldn't be enough to inform the citizens and suggested that the Council knock on all the doors to let the affected homeowners know about the changes to the flood map.

There was a consensus of the Council to send letters about the informational meeting two or three weeks ahead of time with door-to-door contact by the Council the week before the meeting.

Building Official Lockaby noted that there would be more than one meeting on the subject and that staff had already prepared a draft letter and a list of the affected property owners.

#### Change in Order of Agenda

M/S, Weinsoff/Bragman, Motion to hear the item on 6 San Gabriel next in order on the agenda.

AYES: All

#### Adoption of Resolution 12-28, a Resolution of the Town Council of the Town of Fairfax declaring the conditions at 6 San Gabriel Drive a Public Nuisance and ordering the Town Manager to abate the Nuisance – Building Official

Building Official Lockaby presented the staff report.

Councilmember Weinsoff ascertained what work needed to be done.

Carl Shapiro, Attorney for the property owner, asked for the matter to be continued for a couple of months because he had a jury trial on a different matter on June 20 in the Marin County Superior Court; that he believed the matters to be addressed were not substantial except for the chain link fence; that the procedure the Town had adopted did not meet the administrative standards set by the State; that it wasn't the legislative body in other jurisdictions that made the determinations in such matters; that he didn't want to be confrontational; but asked that the public hearing be continued to a date in July.

Councilmember Bragman stated that the construction was done as part of an insurance settlement and didn't understand why construction had stopped.

Mr. Shapiro responded that the proceeds of the insurance policy had been used to build the home with a second story and that the funds had dried up; that the homeowner had funds that were being held by the County until after his trial; and that he couldn't finish the house and make it presentable until the release of those funds.

Councilmember Bragman noted that some of the actions to be taken were inexpensive and asked if he was willing to begin the work.

Mr. Shapiro stated that he wasn't satisfied that the chain link fence was in violation of requirements; that one of the vehicles was for sale; and that the property owner was immobilized by his pending trial.

Councilmember Bragman suggested that the homeowner be required to remove the construction material, the vehicles, and the landscaping and bamboo fencing in a period not to exceed thirty days.

Mr. McDonald, Property Owner, stated that he wanted time to put up a permanent fence before he removed the other fence; that he didn't want to open up the property with no fence; and that he had the signatures of 39 neighbors who had signed a petition asking that he be given more time to do the required work.

There was a Council discussion about the minimum amount of work required to clean up the property and how that could be accomplished.

Councilmember Weinsoff stated that the actions being requested wouldn't cost a lot of money; that the Town and the neighbors had waited for many years for the work to be done; and that thirty days seemed reasonable to remove the construction debris and the unattractive fence and to park one car in the garage and sell the other.

Mayor Hartwell-Herrero opened the discussion to the public

Linda Bevilacqua, 78 San Gabriel, stated that Mr. McDonald had taken time over the weekend to talk to the neighborhood and was at the site on a regular basis. Because of his presence on site, she believed he had the time to do the work; that the cars were covered with tarps so couldn't make the residence look occupied as Mr. McDonald claimed; questioned the artistic quality of the rocks in the yard; and stated that the property was an eyesore and detracted from the neighborhood.

Karen Brumell, 16 San Gabriel, read from a letter she had submitted that related her experience as the next door neighbor with nine years of little or no progress on the property and asked for the support of the Council to abate the nuisance.

Mike Ambrosini, 17 San Gabriel Drive, stated that he had lived in his house his entire life; that he had never seen a property allowed to be in such poor condition for so many years; that the owner had years to fix the property; that the owner was at the property every single day with no electrical or plumbing; that he was tired of looking at the house; that the neighbors were fed up about it; and asked the Council to take care of it.

Rob Helbig, 108 San Gabriel, stated that the property had been an eyesore for over 20 years; that it was a storage site for Mr. McDonald; that it sat on the property as a large hole after the fire hfor about 3 years; that the grace period was over, that they needed to move forward; and stated that the neighborhood was tired of the situation.

Guido Costello, 115 San Gabriel Drive, stated that he had been in front of the Council about seven years previous; that he had been reluctant to speak because he felt intimidated by Mr. McDonald; that Mr. McDonald was unwilling to do anything about the situation; that he had been a firefighter for many years in San Francisco and thought the 6 San Gabriel house was a fire hazard.

Mayor Hartwell-Herrero closed the public hearing.

M/S, Weinsoff/Bragman, Motion to adopt 12-28, a Resolution of the Town Council of the Town of Fairfax declaring the conditions at 6 San Gabriel Drive a Public Nuisance and ordering the Town Manager to abate the Nuisance in thirty days as recommended.

AYES: All

Mayor Hartwell-Herrero adjourned the meeting for a break from 8:55 to 9:10 p.m.

Consent Calendar

**Approval of Town Council minutes for the April 4, 2012 meeting - Town Clerk**

**Approval of Financial reports for February, 2012 – Finance**

**Approval of the award of bid for the Oak Manor Sidewalk Project – Town Manager**

**Authorization for the Town Manager to sign a lease agreement with Ford Motor Credit for two vehicles as approved in the 2011/12 Adopted Town Budget – Police Chief**

**Adoption of Resolution 12-24 authorizing the Town Manager to sign a revised Joint Powers Agreement with the County of Marin and other participating municipalities for the Major Crimes Task Force - Town Manager**

**Adoption of Resolution No. 12-25, a Resolution of the Town Council of the Town of Fairfax authorizing street closures for the Fairfax Festival and Parade – Town Clerk**

**Approval of a letter from the Mayor to Assembly Member Huffman supporting AJR 20, the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act – Hartwell Herrero**

**Adoption of Resolution No. 12-26, a Resolution of the Town Council of the Town of Fairfax Declaring a Building Department Vehicle as Surplus to the needs of the Town, and Authorizing Sale of Same by Public Auction – Police Chief**

**Adoption of a Proclamation declaring National Bike Month in Fairfax and Bike to Work Day on Thursday, May 10, 2012 – Town Clerk**

M/S, Reed/O'Neil, Motion to approve the Consent Calendar with the removal for discussion of the item regarding Resolution No. 12-27 urging the CPUC to adopt a community opt-out possibility for the Smart Meter.

AYES: All

**Adoption of Resolution No. 12-27, A Resolution of the Town Council of the Town of Fairfax in Support of Adoption by the California Public Utilities Commission of Community Opt Out for Wireless Smart Meters – Bragman (Removed from the Consent Calendar for discussion)**

Councilmember Bragman presented a report.

Alexander Binik, Meadow Way, Detox Institute, noted that the earlier Smart Meter ordinance

was passed as an urgency ordinance and didn't require a second reading; expressed concern about the issue of streetside antennae/collectors not addressed in the ordinance; asked that language be added to the third "Whereas" in the current draft to include these devices; and described the almost 100% of his neighborhood opting out of Smart Meter installations. He asked how PG&E's promise to install antennae in areas with poor reception might defeat the purpose of opting out in his area where three streetside antennae had already been installed; asked when the CPUC hearing on community opt-out would be held; and suggested that the Council address the issue of antennae and strengthen the current ordinance to better defend against lawsuits and to impose penalties for non-compliance.

Sierra Salin, Cascade Drive, asked what had been done about PG&E installing antennae on our poles.

Councilmember Bragman stated that it was his understanding that they were installed but not powered up and hadn't been abated to avoid litigation.

Diane Hoffman, Porteous Ave., stated that she was glad that Mr. Binik had brought up the transmitters and stated that she had heard that transmitters could be installed in other places, like on people's houses.

Councilmember Bragman stated that it was all part of the wireless mesh network so that all Smart meters were also transmitters; that he and others were trying to pursue the community opt-out; and that they had filed a motion for a stay with the CPUC until that was decided.

Mark Bell, Dominga Ave., asked if it would be legal to set up an escrow account with the fees charged for opting out by PG&E to withhold them in that account.

Mayor Hartwell-Herrero closed the public comment.

M/S, Bragman/O'Neil, Motion to adopt Resolution No. 12-27, A Resolution of the Town Council of the Town of Fairfax in Support of Adoption by the California Public Utilities Commission of Community Opt Out for Wireless Smart Meters and with the suggested wording change.

Sierra Salin, Cascade Drive, stated that the Fairfax Police Department was on the ball and that he wouldn't mind if the Town Council wrote to his friends in El Dorado County about what a good citizen he was and that he thought his signature should be his signature.

Mayor Hartwell-Herrero asked that Mr. Salin give the contact information to the Council Members to do with as they wished.

M/S, Bragman/O'Neil, Motion to adjourn the current meeting to Wednesday, May 16<sup>th</sup>, so that the Council could abide by the State statutes for probable introduction of a new ordinance regarding smart meters consistent with the prior ordinance with the addition of the suggested language.

AYES: All

#### Council Reports and Comments

Councilmember Weinsoff questioned the Town Attorney about a request a resident who wanted to hand out flyers about a Town sponsored "Poetry Slam" at the Farmers Market, and was told that she was welcome to do it in the free speech area of the park. He asked Town Attorney Karpiak if this would have abridged her First Amendment rights.

Councilmember Weinsoff reported on his attendance at the MCCMC Legislative Committee and at the annual dinner of the Marin Conservation League where two youth awards were given for environmental leadership to Eli Greenberg and Willa Murphy, both Drake students.

Vice Mayor Reed reported on a meeting of the Measure "K" Committee where recommendations were made about the use of the money from the refinancing of the bond for sidewalks and ADA improvements; on a Volunteer Board meeting; on a Safe Routes to School meeting where the critical need for maintenance of the trees along SFD in front of Canon Village was discussed; on the first General Plan Implementation (GPIC) meeting; and also reported on his attendance at a Transportation Authority of Marin (TAM) meeting.

Councilmember Bragman reported on his attendance at a Marin Telecommunications Agency meeting and explained the resolution of a dispute with Comcast over PEG fees. He also reported on the Joint Powers oversight meeting he had attended and noted that Marin Emergency Radio Authority (MERA) was coming up for a complete rebuild that would very likely increase the Town's \$60,000/year contribution.

Councilmember O'Neil stated that he had nothing to report from the Tree Committee meeting; that the Ross Valley School District was working to get groups together to support Measure "A" to make up for the loss of funding from the State; that the Youth Commission was planning a rock show in the park with a bouncy house; and on the Major Crimes Task Force.

Mayor Hartwell-Herrero reported on a meeting of the Marin Energy Authority that she attended as the alternate; on a meeting of the Zero Waste Committee; on a meeting with the Chamber of Commerce about the proposed Streets for People event; and on the first meeting of the Cittaslow Committee.

#### Town Manager Report

Town Manager Rock, as a MERA Board member representing Ross Valley, reported on the proposed revamping and operation of MERA at an estimated cost of fifty million dollars; that a countywide tax to raise the capital funding needed was being discussed; and that the issue would be before all the Councils in the coming months.

#### Consideration of approval of amendments to the Ross Valley Fire Joint Powers Authority (JPA) Agreement to expand the JPA to include the Town of Ross – Fire Chief Meagor

Ross Valley Fire Chief Meagor presented the staff report.

Councilmember Bragman expressed concern about assuming pension costs going forward and asked for clarification of how those costs would be handled.

Chief Meagor explained that agencies of less than 100 employees were in a pooled risk group; that both agencies were already in the same risk pool with side funds for pension costs for the members; that the responsibility for those side funds would remain with each agency; that the side fund would be paid off in five years for Ross Valley; and that there was unfunded liability for the risk pool. He stated that the goal was to get to the point where the costs would be paid for employees before they retired.

Town Attorney Karpiak asked for corrections to the proposed agreement including a change to the wording in Paragraph 11 of Section 24.1 to read "in this section 24" instead of "in the section" and the deletion of treadmills in Exhibit B, Section 3.3.

Mayor Hartwell-Herrero opened and closed the public hearing when no speakers came forward.

M/S, Weinsoff/Reed, Motion to approve the amendments to the Ross Valley Fire Joint Powers Authority (JPA) Agreement to expand the JPA to include the Town of Ross.

AYES: All

Set schedule for public hearings on the proposed budget for Fiscal Year 2012-13, suggested dates of June 20, July 11 and August 1, 2012 - Finance

There was a consensus of the Council to schedule the public hearings on the proposed budget for Fiscal Year 2012-13 on the dates suggested.

M/S, Hartwell-Herrero/Bragman, Motion to adjourn the meeting to May 16<sup>th</sup> for consideration of the introduction of an ordinance to extend the moratorium on Smart Meters.

AYES: All

Respectfully submitted,

Judy Anderson, Town Clerk

DRAFT