

**DRAFT** Fairfax Town Council Minutes  
Regular Meeting  
Fairfax Women's Club  
Wednesday, September 2, 2009

The regular meeting was preceded by a special meeting closed session regarding labor negotiations and pending litigation.

Call to Order/Roll Call:

**COUNCILMEMBERS PRESENT:** Larry Bragman  
Susan Brandborg  
Mary Ann Maggiore  
Lew Tremaine  
David Weinsoff

**STAFF MEMBERS PRESENT:** Michael Rock, Town Manager  
Jim Moore, Planning Director  
Ken Hughes, Police Chief  
Laurie Ireland-Ashley, Finance Director  
Mark Lockaby, Building Official  
Jim Karpiak, Town Attorney  
Kathy Wilkie, Public Works Director  
Judy Anderson, Town Clerk

Mayor Weinsoff called the meeting to order at 7.40 pm.

Approval of Agenda and Affidavit of Posting

M/S, Maggiore/Tremaine, Motion to approve the agenda with the addition of an urgency item to the Consent Calendar to adopt a resolution approving the Sir Francis Drake Boulevard Pedestrian Crossing Project Notice of Completion to expedite funding for the project, and to approve the affidavit of posting.

AYES: All

Announcement of Closed Session Action

Mayor Weinsoff announced that information was received from the Town Manager and Legal Counsel on labor negotiations and pending litigation and that direction had been given.

Announcements

Mayor Weinsoff announced that grant funding had been received from the County through Supervisor Brown for the Bolinas Road sidewalk improvement project, the rehabilitation of the Pavilion and for landscaping in the Parkade. He also announced that a brass band would be playing in the park on Saturday; the annual Car Show downtown on Sunday, September 13<sup>th</sup>, and the Town-wide picnic at the ballfield on September 20<sup>th</sup>.

Open Time for Public Expression

Mike Hazel 10 Canyon Road, reported that the bulb-out in front of the Scoop on Broadway had been installed incorrectly; described his background in construction that provided his expertise; asked why the job had been allowed to go forward when it wasn't ADA compliant; stated that it would cost \$40,000 to do it right; that it was privately funded work done in the public right-of-way; that no engineering or plans with a cross-section were used for the project; that the Town had been notified of the deficiencies; and asked that the matter be placed on the October Town Council meeting agenda for discussion.

Pam Meigs, Planning Commissioner; stated that some applicants had come before them requesting small additions, some as small as 150 square feet, and that the Fire Department had required sprinklers and upgrades to fire hydrants, requirements that seemed overly costly and cumbersome; that she knew that some of the requirements were a result of the Wildland Fire Ordinance recently adopted by the Town; and suggested that the issue be addressed by the Council.

Mallory Geithem, Willow Avenue, proposed that Fairfax become a Fair Trade Community, to be sustainable and market based and to spend taxpayer dollars to support fair labor practices and to protect the environment. She stated that "Fair Trade San Francisco" welcomed new members and suggested that Fairfax become a member of that group.

Mark Bell, 63 Dominga, described an experience he had when he was extorted into paying for a fire hydrant as a requirement for permission to do a minor remodel and that he had been able to negotiate the cost down to \$450 from \$750, with a bill from MMWD for another \$89.

Councilmember Brandborg expressed disappointment that the Town budget wasn't on the agenda for review as had been previously stated and recorded in the minutes.

Interview and appointment of candidate(s) to fill a vacancy on the Volunteer Board for a full 3-year term to September 30, 2012

M/S, Tremaine/Weinsoff, Motion to appoint David Johansen to fill the vacancy on the Volunteer Board for a full three-year term to September 30, 2012.

AYES: Brandborg, Maggiore, Tremaine, Weinsoff  
NOES: Bragman

Interview and appointment of candidates to fill two vacancies on the Parks and Recreation Commission for full four-year terms to September 30, 2013

M/S, Maggiore/Bragman, Motion to appoint Sisi Parry-Hansen to serve on the Parks and Recreation Commission for a full four-year term to September 30, 2013.

AYES: All

Presentation of Open Space Committee Annual Report - Mimi Newton

Mimi Newton, Chair of the Open Space Committee, presented the annual report.

**CONSENT CALENDAR**

**Approval of Town Council minutes of August 5, 2009 – Town Clerk**

**Approval of amended Joint Exercise of Powers Agreement for the Marin County Major Crimes Task Force – Police Department**

**Proclamation declaring September, 2009, as Prostate Cancer Awareness Month in Fairfax**

**Review and accept bid results for Sir Francis Drake Overlay and Glen Drive Culvert Projects – Public Works**

**Adoption of a Resolution of the Town Council of the Town of Fairfax in support of Extended Producer Responsibility, a policy to hold product manufacturers responsible for the management of waste disposal – Bragman**

**Adoption of a Resolution Approving the Sir Francis Drake Boulevard Pedestrian Crossing Project Notice of Completion – Public Works (added as an urgency item)**

There was a consensus of the Council to remove the financial reports and the FEMA (Federal Emergency Management Agency) reimbursement status reports from the Consent Calendar to be heard with the item regarding an update on the State budget after the public hearings.

M/S, Tremaine/Brandborg, Motion to approve the Consent Calendar as amended.

AYES: All

Request that the Town Council determine that the keeping of livestock, fowl and a recreational vehicle on an undeveloped parcel of property in Fairfax be declared a public nuisance and direct Town Counsel to begin nuisance abatement proceedings against the property owner; Residential Single-family RS 6 Zone District; Adoption of a Resolution of the Town Council of the Town of Fairfax declaring a nuisance, Patrice Phillips, property owner

Planning Director Moore presented the staff report. He stated that the Use Permit Application was received close to the end of business, around 4 p.m., on the day of the meeting; that the application was incomplete; and recommended that the Town Council adopt the proposed resolution to start the abatement process.

Town Attorney Karpiak clarified for the Council that the staff had made a proposal and was requesting that the Council declare a nuisance; that if the nuisance wasn't abated, the Town would abate it and assess the property owner for the costs; and that the Council could set the date for the abatement in the proposed resolution.

Councilmember Bragman reported that he had met with the property owner and suggested that the owner move the animals away from the neighbors and mitigate other aspects of the nuisance.

Councilmember Brandborg stated that the animals weren't supposed to be there; that just moving the animals wouldn't negate the need for a use permit; that the property owner had received specific instructions from the Town; and that she needed a plan to remove the animals.

Planning Director Moore noted that there was no guarantee that a use permit would be granted.

Mayor Weinsoff opened the public hearing.

Patrice Phillips, property owner, Gregory Drive, referred to an email that she had sent to the Town Council wherein she had responded to the staff's letter; stated that she had submitted backup documentation to the staff and the Town Council; read from the letter from staff; stated that it was

true that she had submitted the application around 4 p.m.; that she thought she had submitted a complete application; that she was asked to submit the use permit application and to address the six points in the staff letter before the Council meeting and she had done that; that there was further damage to one of the neighbor's property since the last meeting; that she had brought her proposal describing what she intended to do; and that she had already moved some pens and some fence lines.

Councilmember Brandborg stated that the Council was not making a decision about her use permit application and that the staff letter was intended to be direction for action, not part of a discussion.

Town Attorney Karpiak clarified that the Planning Commission would deal with the Use Permit, but that it was appropriate for the property owner to submit information to the Town Council about how she wanted to proceed with the abatement process.

Councilmember Brandborg stated that it was difficult to consider all the materials from the property owner when they were submitted at the meeting.

Councilmember Maggiore stated that she would like the Council to move forward and take action; that the Council spent 1.5 hours on the matter at the last meeting and hadn't had time to spend on the other matters before them.

Michael Mackintosh, 60 Pastori Avenue, stated that he had used goats on his property two years previous, that a lawsuit against the owner of the goats had ensued, and he believed it was determined at that time that property owners could use animals to reduce fuel on their property.

Mayor Weinsoff closed the public hearing.

Councilmember Bragman stated that the question was what to do about the situation and how to do it; that he would like to have the animals moved away from the neighbors; proposed that the mitigation measures be done incrementally with the owner making changes in stages; that the Council had some discretion about how to proceed with the abatement; that the 50 acres probably needed to be grazed to reduce the fire hazard; but that the situation was creating a nuisance for the neighbors.

Councilmember Maggiore stated that the Council should follow the staff recommendation and declare a nuisance and continue to work with the property owner.

Councilmember Brandborg stated that she agreed that the Council should abate the nuisance and that water for the animals was a critical issue.

Vice Mayor Tremaine stated that the property owner had made a good faith effort to comply with the Town's request; that she had done what was asked of her; that he would like to let it go through the process and let the Planning Commission hear the use permit application.

Mayor Weinsoff asked what interim steps could be taken to assure that the neighbors were not going to continue to suffer from the nuisance and led a discussion of the possible courses of action to be taken.

M/S, Maggiore/Brandborg, Motion to adopt the Resolution declaring a nuisance as presented with the understanding that the staff would work with the property owner.

No vote on the motion was taken.

There was a discussion about the length of time to be included in the resolution for the property owner to comply. Building Official Lockaby recommended providing the property owner with sixty to ninety days to comply. The discussion included a suggestion by Councilmember Bragman to impose mitigation measures to extend the nuisance by providing 30 days to move the fence to the other side of the road, to move the chicken coop to reduce the noise for the neighbors, and to have the Humane Society visit the site to make certain that the animals were receiving sufficient water.

Town Attorney Karpiak suggested that the resolution include Councilmember Bragman's recommended language with a deadline and another paragraph of the resolution to include the date for abatement of the rest of the nuisance.

Mayor Weinssoff adjourned the meeting for a break from 8:45 to 9:05 p.m.

M/S, Maggiore/Brandborg, Motion to adopt the resolution declaring a nuisance at the subject property with 60 days to remove the animals and abate the nuisance.

Roll Call Vote:

Bragman: NO; Brandborg: AYE; Maggiore: AYE; Tremaine: NO; Weinssoff: AYE

Motion passed, 3 to 2.

#### Second Reading and Adoption of Ordinance No. 742, 50% Remodel Ordinance

Planning and Building Services Director Moore presented the staff report.

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

M/S, Brandborg/Tremaine, Motion to waive further reading of Ordinance No. 742 and to read the title only.

AYES: All

M/S, Brandborg/Tremaine, Motion to adopt Ordinance No. 742.

AYES: All

#### Report on status of State Budget and impact on the Town of Fairfax – Town Manager

Town Manager Rock presented the report and described the State borrowing of 8% of Fairfax property taxes, about \$212,000 to \$250,000; stated that the State was also considering taking Gas Tax (HUTA) revenue; that the payment of the gas taxes had been delayed; explained the State Budget deficit and the challenges it posed for the Town of Fairfax; reported that legislation (securitization) was being worked on to allow cities to borrow against the amount the State was going to take from the cities; and that the Town was having trouble securing the transitional loan usually obtained to cover the cash flow shortfall between property tax payments because nobody wanted to loan money to California cities.

Mayor Weinssoff opened the discussion to the public.

Michael Mackintosh, Pastori Ave., stated that he saw his property as a way to save the Town; that he and the Town could work together to get something done to generate income on his property;

that the Town could borrow on future earnings with a Redevelopment Agency; and that something could be created that would benefit everyone.

Councilmember Bragman stated that the Town needed to save itself; that the passage of Measure I would provide the Town with \$450,000 per year; that the taxpayers needed to do it; and that no single property could save the town.

Mark Bell, Dominga Avenue, expressed his support for the early release of inmates incarcerated for marijuana violations; stated that the prison guards had a powerful union and were overpaid with incredible pension benefits; suggested that the governor or the Legislature should look at reducing guards' salaries and releasing people with non-violent offences; and stated that the prison system was draining the State.

Councilmember Bragman handed out tee shirts to the other members of Council in support of the passage of Measure I.

#### Accept and File Monthly Finance Reports for June and July, 2009 – Finance

Finance Director Ireland-Ashley presented the report and responded to questions and requests for clarification from Councilmembers Bragman and Brandborg about the reports.

#### Report on the status of FEMA projects – Finance

Finance Director Ireland-Ashland presented the report and responded to questions from Council. She explained that \$660,000 in reimbursements was still outstanding; that she projected a loss to the Town of approximately \$500,000 that would not be reimbursed by FEMA; that the cost of required ADA (Americans with Disabilities Act) upgrades done to the Fire Station and Town Hall were the major expenses that wouldn't be reimbursed; and that FEMA paid to restore facilities to their original state but did not pay for improvements.

#### Authorization for Town Manager to sign a Personal Services Agreement with Carol Golsch to revive and improve the Town's Web site – Town Manager

Town Manager Rock presented the staff report. He explained the extensive problems with the current Web site; described the services offered by Ms. Golsch to restore and re-vitalize the site; noted that Ms. Golsch had created and currently maintained the Police Department's Web site, was already under contract with the Town and did excellent work; that her fee would be approximately \$10,000, with a \$500/month fee for the initial three months; and that the restored Website would enable the staff and the public to maximize the use of the site.

M/S, Maggiore/Brandborg, Motion to authorize the Town Manager to sign a personal services agreement with Carol Golsch to revive and improve the Town's Web site.

AYES: All

#### Second Reading and Adoption of Ordinance No. 745, an Ordinance of the Town Council of the Town of Fairfax Establishing an Administrative Enforcement Mechanism for Violation of the Town Code – Building/Planning

Building Official Lockaby presented the staff report.

Michael Mackintosh, 60 Pastori Ave., reported that people in the community were very happy with

Mark Lockaby in the performance of his duties with the Town.

M/S, Brandborg/Tremaine, Motion to waive further reading of Ordinance No. 745, an Ordinance of the Town Council of the Town of Fairfax Establishing an Administrative Enforcement Mechanism for Violation of the Town Code.

AYES: All

M/S, Brandborg/Tremaine, Motion to adopt Ordinance No. 745, an Ordinance of the Town Council of the Town of Fairfax Establishing an Administrative Enforcement Mechanism for Violation of the Town Code.

AYES: All

Introduction and First Reading of Ordinance No. 746 Amending Chapters 12.36 and 12.40 of the Fairfax Municipal Code Regarding Regulations for Parks, Playgrounds, Public Tennis Courts and Central Ballfield– Chief of Police

Chief of Police Hughes presented the staff report.

M/S, Tremaine/Bragman, Motion to waive further reading and to read the title only of Ordinance No. 746.

AYES: All

M/S, Tremaine/Bragman, Motion to introduce Ordinance No. 746.

AYES: All

Report on the status of the General Plan and Specific Plan – Planning

Planning and Building Services Director Moore presented the staff report. He stated that the Planning Commission had finished their review of the Circulation Element and would begin the Safety Element review next; that a subcommittee of the Commission had been formed to help move the elements forward; that the Fair-Anselm Specific Plan was moving through the Marin Community Foundation (MCF) funding process with a possible loan forthcoming; that a public charrette, the draft plan and the environmental review of the plan could all be funded by the MCF; and that the process could provide information on what was possible on the property.

Director Moore led a discussion about the development of a Specific Plan.

Vice Mayor Tremaine suggested that the Marin Town and Country Club (MTCC) be included in the process, even though it would complicate things, because of the value of the opportunity to get input from the community on MTCC and because of its proximity to the Fair-Anselmo site.

Director Moore stated that MTCC could be part of the charrette; that it would involve a completely different scenario; and that it could also be added at a later date. He reported that two brothers and two sisters currently owned the Fair-Anselm property; that due to a tax concern, the title couldn't be transferred for another year to any potential new owner; that new building couldn't be done in the existing space; and that there had been four prospective purchasers of the property since the closure of Albertson's.

Michael Mackintosh, Pastori Avenue, stated it was true that the Friedman's tax status would be changing; that a portion of the existing brew pub was on his property; that he should be part of any discussions about Fair-Anselm; that the compromise to the creek caused by the building was agreed to by the Town when Center Boulevard was created; that there would be advantages for the Town if development was encouraged; that there were pre-existing conditions that limited looking at incurring an expense to pass on to a future developer; that the Town should be prepared to pay for the Specific Plan; that a portion of the Brew Pub was on his property; that he should be part of any discussion about the property; that there would be advantages to the Town if the site were to be developed; and that there were pre-existing conditions that had to be taken into consideration.

Adoption of a Resolution of the Town Council of the Town of Fairfax adopting Guidelines regarding Town Council appointed Commissions, Committees and Boards – Town Manager

Town Manager Rock presented the staff report. At the request of the Open Space Committee, he recommended that the item be continued to the next meeting.

There was a consensus of the Council to continue the item to the October Council meeting.

There were no reports from Town Officials or from the Town Council.

The meeting was adjourned at 10:23 p.m.

Respectfully submitted,

Judy Anderson, Town Clerk