



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

May 13, 2009

Diana Dullaghan and John Owens
177 Frustuck Avenue
Fairfax, CA. 94930

Re: 177 Live Oak Avenue; Appeal of Planning Commission decision on Residential Second Unit

Dear Mr. Owens and Ms. Dullaghan,

At the May 6, 2009 Town Council meeting the Council continued the above referenced appeal and directed you to:

Consider not constructing the previously approved garage so that the proposed Residential Second Unit will not constitute a fourth story; and

Complete the deed restriction relating to the storage area underneath the existing parking deck.

Enclosed is the deed restriction document for your signatures and notarization. It has already been signed by the Planning Director and certified by the Town Clerk. In order for the document to be valid you will need to record it at the Marin County Recorder's Office. If you have any questions contact Jim Moore, Director of Planning and Building Services.

Staff would also appreciate knowing how you intend to proceed in this matter as soon as possible but no later than May 20th when the staff reports are due for the June 2, 2009 Town Council meeting. If you have any questions, please do not hesitate to contact the Department of Planning and Building Services.

Sincerely,

Linda Neal
Senior Planner

cc. Jim Moore, Director of Planning and Building Services

John Owens and Diana Dullaghan
177 Frustuck Avenue, Fairfax CA 94930
Tel: 456-8064 / cell: 717-7621 / e-mail johnoph@aol.com

May 22, 2009

Jim Moore
Planning Director
Town of Fairfax
142 Bolinas Road
Fairfax Ca 94930

Re: Deed restriction for storage unit 177 Frustuck

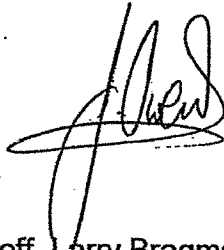
Dear Jim,

Thank you for responding so quickly to our request to modify the wording of the deed restriction to that which was actually agreed to. A change of a few words may not have seemed very important to you, however it is very important to me, especially when a planning commissioner, and members of the general public say that I am dishonest and broke a deal regarding second units with the Town. We never made any deal regarding second units legal or illegal.

Enclosed with this letter is a copy of the recorded Deed Restriction. The original copy will be returned to you directly from the recorder's office.

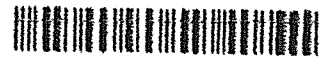
I am asking for the meeting to be continued until July. I want more time to work on the affordable aspect of the project. Even though the previous three second units approved were not questioned about affordability, the unit would certainly meet the State's standards. I will pursue the affordability issue and presentation of such at the July meeting. Thank you for your courtesy in this regard.

Yours sincerely,



John Owens

cc: David Weinsoff, Larry Bragman, Lew Tremaine, Mary Ann Maggorie, Susan Brandborg, Michael Rock



2009-002772

| | | |
|-------------------|---------|------|
| Recorded | REC FEE | 0.00 |
| Official Records | | |
| County of | | |
| Marin | | |
| JOAN C. THAYER | | |
| Assessor-Recorder | | |

10:55AM 22-May-2009 Page 1 of 4

RECORDING REQUESTED BY:
+ WHEN RECORDED, MAIL TO:

Town of Fairfax
Department of Planning and Building Services
142 Bolinas Road
Fairfax, CA. 94930

**TOWN OF FAIRFAX
DECLARATION OF RESTRICTIONS ON THE USE OF REAL PROPERTY**

The following restriction is imposed for the benefit of the Town of Fairfax, shall be binding upon the heirs, assigns and successors of the Owner, and shall not be revised, amended or revoked without the written consent of the Town of Fairfax:

We, Diana Dullaghan and John Owens, owners of all that certain real property in situate in the Town of Fairfax, County of Marin, State of California, described as follows and also designated as Assessor's Parcel Number 003-193-13;

BEGINNING at a point on the Northwesterly line of Park Avenue distant thereon South 83° 25' West 50 feet from the Southwesterly corner of the parcel secondly described in the Deed from Henry Frustuck, et ux, to Clara J. Sanborn, recorded June 19, 1945 in Book 484 of Official Records, at Page 406; running thence along Park Avenue South 83° 25' West 63.50 feet and North 63° 32' West 30.7 feet; thence leaving said line and running North 17° 36' East 133.25 feet to the Southerly line of Park Avenue; thence along the last named line South 81° 16' East 41.7 feet; thence leaving said line and running South 4° 17' East 128.7 feet to the point of beginning.

BEING LOTS 190 and 191, as shown upon the Unrecorded Map No. 2 of Fairfax Park Tract, Fairfax, Marin County, Cal.

do hereby declare that in accordance with the provisions of the Residential Single-family RS 6 Zone District regulations which govern the use of this property the following restrictions shall apply:

The RS 6 Zone allows single family residential occupancy at this time. No portion of the area underneath the parking deck may be used for purposes other than storage:

Nothing in this document prohibits the owner from making applications for, and obtaining Planning and Building permits, to have a legal second residential unit or duplex in the future. In fact, Fairfax's Housing Element expressly encourages the development of conforming second units. If the owner obtains the required permits for a legal second unit or duplex, this document shall be lifted from the title.

Diana Dullaghan

Date: 5/20/09

John Owens

Date: 5/22/09



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

AGENDA

REGULAR FAIRFAX TOWN COUNCIL MEETING

Fairfax Women's Club, 46 Park Road

Wednesday, June 3, 2009, at 7:30 p.m.

Preceded by a Special Meeting Closed Session

at 6:30 p.m. at Fairfax Town Hall, 142 Bolinas Road, Town Manager's Office

6:30 PM - Call to Order and Adjourn to Closed Session on the following matters:

CONFERENCE WITH LABOR NEGOTIATOR pursuant to Government Code Section 54957.6
Agency designated representative: Michael Rock, Town Manager; Employee Organizations:
SEIU Local 949 Miscellaneous Unit, Police Officers Association and Management Employees

CONFERENCE WITH LEGAL COUNSEL pursuant to Government Code Section 54956.9(a),
PENDING LITIGATION, Marin Superior Court No. CV 086177, Town of Fairfax v. John and
Marlia Berg

7:30 PM - PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF AGENDA AND AFFIDAVIT OF POSTING

ANNOUNCEMENT OF CLOSED SESSION ACTION

MEETING PROTOCOL

The Mayor shall maintain order at the meetings in accordance with Robert's Rules of Order and the Council has a responsibility to be a model of respectful behavior in order to encourage community participation and citizen input at Council meetings. The Council and the audience are expected to refrain from using profane language and/or ridiculing the character or motives of council members, staff, or members of the public and to maintain the standards of tolerance and civility.

The Town Council will review the agenda at 10:00 P.M. to ascertain which items will be heard that evening and which, if any, will be continued to another meeting. Any matter not started by 11:30 P.M. will be continued to an adjourned or regular council meeting unless the Council votes to suspend this rule. Please turn all cellular phones off or place in silent mode.

ANNOUNCEMENTS

New members welcome on the General Plan Advisory Committee

New members welcome on the Fairfax Youth Commission, Ages 14 to 19, Ross Valley residents

Vacancy on the Volunteer Board for a full three-year term

Vacancy on the Parks and Recreation Commission for a full four-year term

32nd Annual Fairfax Festival and EcoFest, June 13 and 14; parade on Saturday at 10 a.m.

OPEN TIME FOR PUBLIC EXPRESSION (3 minute time limit per person) - If you wish to address the Council, please approach the podium and state your name and address. Individuals have 3 minutes to speak, 5 minutes if representing a group. This is the time set

INTERVIEW AND APPOINTMENT/REPORT

1. Annual report from Representative to the Marin Commission on Aging, Diane Bright
2. Interview and appointment of candidate to serve as the Fairfax representative to the Marin Commission on Aging for a three-year term to June 30, 2012 – Town Clerk

PRESENTATIONS

3. Presentation by Ritter Center regarding their "Art Houses of Marin" project -Weinsoff
4. Presentation by Jason Dow, General Manager, Central Marin Sanitary Services on proposed Food to Energy Project

CONSENT CALENDAR (Members of the audience may address any item on the Consent Calendar at this time)

5. Approval of Town Council minutes of May 6, 2009 – Town Clerk
6. Adoption of Resolution No. 09-37, A Resolution of the Town Council of the Town of Fairfax authorizing a Notice of Completion for the Pastori Pipe Replacement Project – Public Works
7. Adoption of Resolution No. 09-38, A Resolution of the Town Council of the Town of Fairfax authorizing temporary closure of certain streets and portions thereof, and the closure of the Pavilion parking lot to the public, to allow a Town Parade on June 13, 2009 and Town Festival, including an Eco-fest, on June 13 and 14, 2009 – Town Clerk
8. Adoption of Resolution No. 09-39, A Resolution of the Town Council of the Town of Fairfax Approving the Ross Valley Paramedic Authority Tax Levy for the 2009-2010 Fiscal Year – Finance
9. Adoption of Resolution No. 09-40, A Resolution of the Town Council of the Town of Fairfax Setting the Amount of The Municipal Services Tax for The 2009-2010 Fiscal Year
10. Adoption of Resolution No. 09-41, A Resolution of the Town Council of the Town of Fairfax Setting the Amount of the Special Municipal Services Tax for the 2009-2010 Fiscal Year
11. Adoption of Resolution No. 09-42, A Resolution of the Town Council of the Town of Fairfax Setting the Amount of the Utility Users Tax for the 2009-2010 Fiscal Year
12. Adoption of Resolution No. 09-43, A Resolution of the Town Council of the Town of Fairfax Setting the Amount of the Pension Override Tax for the 2009-2010 Fiscal Year
13. Adoption of Resolution No. 09-44, A Resolution of the Town Council of the Town of Fairfax Setting A Fee For The Purpose Of Funding Local Stormwater Pollution Prevention Activities For Fiscal Year 2009-2010
14. Adoption of Resolution No. 09-45, A Resolution of the Town Council of the Town of Fairfax Setting the Tax Rate in connection with its general obligation bonds (Measure K Bond Assessment) for fiscal year 2009-2010
15. Adoption of Resolution No. 09-46, A Resolution of the Town Council of the Town of Fairfax Adopting the Marin General Services Administration (MGSA) Taxicab Regulation Program as Revised for Taxicab Permits and Regulation within the Town of Fairfax – Town Manager

16. Report on solar digital signage – Public Works
17. Adoption of Resolution No. 09-47, A Resolution of the Town Council of the Town of Fairfax finding that a severe fiscal hardship will exist if additional Town Property Tax funds are seized and additional unfunded mandates are adopted by the State of California – Town Manager

PUBLIC HEARINGS

18. Introduction and First Reading of Ordinance No. 742, 50% Remodel Ordinance – Planning (To be continued to July 1, 2009)
19. Introduction and First Reading of Ordinance No. 743, An Ordinance of the Town of Fairfax Repealing and Replacing Town Code Chapter 8.36, Regulating the Removal of Trees (Continued from May 6, 2009) – Planning
20. Adoption of a Resolution of the Town Council of the Town of Fairfax Setting New Fees for Services as a Result of a Master Fee Study – Finance/Town Manager (To be continued to July 1, 2009)
21. 177 Frustuck Avenue; Application # 09-02; Appeal of the Planning Commission's denial of a request for a setback variance, a height variance, encroachment permit and a second unit use permit in order to construct a second unit underneath an existing three story, single-family residence and to construct parking for the second unit within the required side yard setback and the adjacent public right-of-way; Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; John Owens and Diana Dullaghan, appellants/property owners; CEQA categorically exempt, § 15301(e), 15303(a) and 15305(a) and (b) – Planning (Continued from May 6, 2009; to be continued to July 1, 2009) – Planning

REGULAR AGENDA

22. Report on the status of the General Plan Update; Specific Plan Update - Planning
23. Authorization for Siren Purchase and Installation for Cascade Neighborhood – Police Department
24. Approval of contract for Capital Project Engineering Consultant Services – Public Works
25. Introduction and First Reading of Draft Ordinance No. 744, Amending Section 2.12.070 (B) (3) regarding the powers and duties of the Town Manager to appoint and remove certain officers - Town Attorney
26. Renewal of Agreement for Town Attorney services – Town Manager
27. Discussion/Consideration of amendments to the Tobacco Ordinance – Bragman
28. Adoption of Resolution No. 09-48, A Resolution of the Town Council of the Town of Fairfax adopting Mission, Vision and Core Values for the Town -Town Manager
29. Report and Discussion on Brush Clearing Project on Scenic Road – Bragman
30. Review of the Town's policies regarding contracts – Bragman
31. Discussion/Consideration of the Implementation of an Administrative Citation Policy - Planning

REPORTS FROM TOWN OFFICIALS

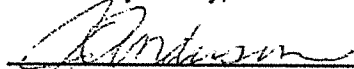
COUNCIL REPORTS AND COMMENTS (Brief announcements and reports on Councilmember activities, including reports from meetings attended at Town expense)

ADJOURNMENT in honor of Fairfax resident Carl Dern, a renowned sculptor and prominent member of the Marin Art Community, who died Monday, May 11, 2009

If any of the matters described above are challenged in court, you may be limited to raising only those issues you or someone else raised at any public hearing described on this agenda, or in written correspondence delivered at, or prior to, this Council meeting. If you need an accommodation to attend or participate in this meeting due to disability, please contact Town Hall at 453-1584.

Materials related to an item on this Agenda submitted to the Council after distribution of the agenda packet are available for public inspection on the public counter at Town Hall in a folder next to the agenda packet. Such documents are also available on the Town's website at "townoffairfax.org" subject to staff's ability to post the documents before the meeting.

I, Judy Anderson, Town Clerk of the Town of Fairfax, County of Marin, State of California, do hereby certify that I posted a copy of this Agenda at three public places in the Town of Fairfax, to wit: 1) Bulletin Board, Town Hall Offices; 2) Bulletin Board, Fairfax Post Office, and 3) Bulletin Board, Fairfax Women's Club and that each of said postings was completed on the 29th day of May, 2009



In an effort to make our agendas available in a more timely and efficient manner, we have created a noticing list for the distribution of Town Council agendas via email. If you would prefer to receive Town Council agendas via email, please provide your email address to the Town Clerk at janderson@townoffairfax.org

John Owens and Diana Dullaghan
177 Frustuck Avenue, Fairfax CA 94930
Tel: 456-8064 / cell: 717-7621 / e-mail johnoph@aol.com

May 25, 2009

Re: Second Unit Fallacy 177 Frustuck Avenue

This is a clarification of misinformation from last month's meeting.

At last month's Council meeting Lew Tremaine, Mary Ann Maggorie, Linda Neal, and the Town Attorney were all convinced that a second unit deed restriction from 2004 existed for 177 Frustuck avenue. This was based purely on gossip and misinformation not on facts, or the minutes of the 2004 Council Meeting.

Since the previous Council meeting it has been proven that no deed restriction ever existed to prevent any second unit at 177 Frustuck Avenue. It has been established from the minutes of the Council meeting of August 3rd 2004 that second units were never discussed in regards to 177 Frustuck.

It is shocking when the chairman of the affordable housing committee, Mr. Tremaine, says he recalls that his intention was to deed restrict a second unit anywhere on our property back in 2004. He is recalling a discussion or conversation that just never happened. His recollection is pure fiction. However his statements at the last meeting were absolutely clear and his intentions were absolutely clear. He does not want a second unit at 177 Frustuck Avenue. This is in direct opposition of the purpose of the affordable housing committee, and also the intent of the town's second unit ordinance.

Fairfax is being required to produce 128 affordable units. Twenty five percent of this quota can be met with second units. Fairfax has produced zero affordable housing units to date towards this quota. A rational person would assume the town would bend over backwards when someone at no cost to the town would produce one of those 128 units. If this obstructive attitude continues there will never be any affordable housing built in Fairfax.

I hope the remaining members of the Council and the Residents of Fairfax will wake up to the true situation that is happening with this second unit application. I am giving the Town Clerk a copy of this document along with a copy of the 2004 minutes and a transcript of the May 2009 meeting for the record.

Thank You.

John Owens

Minutes from The August 5, 2004 Town Council Meeting

Annual report from Fairfax representative to the Marin Commission on Aging, Nancy Peters-Janover

Nancy Peters-Janover presented the annual report of the activities of the Marin Commission on Aging. She stated in her report that Marin County's population was aging faster than the rest of the nation; that there were over 34,000 citizens over 65 in Marin and almost 10% of the population of Fairfax; that informative workshops on a variety of topics of interest to seniors had been conducted throughout the County; that the annual Senior Information Faire would be held; and that the mission of the Division of Aging was to promote the quality of life and independence of disabled and older adults in Marin County.

Interview and appointment of candidate for full three-year term to July 31, 2007 on the Volunteer Board

Sonya Stanley appeared before the Council and stated that she had been the treasurer of the Board for the last six months, that it had been a pleasure to be on the Board, and that she looked forward to continuing to serve.

M/S, Tremaine/Brandborg, Motion to appoint Sonya Stanley to serve on the Volunteer Board for a full three-year term to July 31, 2007.

AYES: Bragman, Brandborg, Tremaine, Egger
NOES: None
ABSENT: Ghiringhelli

PUBLIC HEARINGS

190 Frustuck Avenue (address changed to 177 Frustuck Avenue); continued consideration of an appeal of the Planning Commission denial of a request for a Hill Area Residential Development Permit to construct a 2,093 s.f. single-family residence with an attached 430 s.f. garage; John Owens and Diana Dullaghan, applicants; John Wickham, owner; application # 04-14; Assessor's Parcel No. 3-193-02; Residential Single-family RS 6 Zone; CEQA categorically exempt per sections 15303(a) and 15305(b)

Councilmember Bragman recused himself and stated that it was because he was in a contract with a party at 50 Hickory Road that was within 500 feet of the property at 190 Frustuck.

Planning and Building Services Director Kirkey presented the staff report and noted that the applicants had produced a revised submittal for the project based on the requested changes which included changing the proposed 430 sf garage to a 400 sf carport; reducing the size of the storage area beneath the carport from 430 sf to 400 sf; moving the proposed stairway to the westerly side as requested by a neighbor; with alternative designs for the roof of the parking structure; with the deck on the easterly side of the parking structure to be shifted 8 feet to the west and reduced in size; and with the proposal for additional planting of vegetation on the easterly side of the property to provide more screening for the adjacent property.

Mayor Egger opened the public hearing.

John Owens, 6 June Court, stated that he had submitted revised plans to the Town by July 23rd and had subsequently met with Joan, the next door neighbor at 175 Frustuck. As a result of the meeting, they had saved two more trees; agreed to plant six 15-foot trees; reduced the size of the decks; provided extra screening; agreed to install a carport rather than a garage; and had moved the parking structure over eight feet.

Art Chartock, Architect representing Joan Mirah, 175 Frustuck, stated that his role was to work to reduce the impact of the new structure. This had been accomplished by moving the stairs to the West side, saving and adding trees, moving the deck 15 feet from the property line, and adding screen lattice.

20

Daniel Tey, representing John Owens, asked that the points enumerated in a letter distributed and authored by Art Chartock be added as conditions of approval for the project. He referred to an arborist's report indicating that all the trees between the properties were healthy and that four mature oaks were to be saved.

Niccolo Caldararo, 165 Frustuck Ave., stated that the neighborhood had expressed concerns about the size of the structure and the coverage of the proposed building; that an exception for required parking should not be made; that the blind curve was not taken into consideration for the location of the parking structure; suggested a deed restriction to prohibit building over the parking structure; stated that the property owners planned to build two structures on the property; and that parking could have been provided down below to be safer.

Stan Schriebman, 51 Hickory, stated that the size of the house wasn't a factor, that there were bigger houses on the street, some bigger and some smaller.

Martin Copell, 215 Frustuck, stated that there was no guarantee that the 400 square foot parking structure would remain as a parking structure and no guarantee that many people wouldn't live in the large house with many cars; that the parking structure on a blind curve was a bad idea; and that there was still going to be a large structure close to the neighbor.

Bruce Burnell, 170 Frustuck, stated that Joan had worked with the Owens, but that nobody had talked to him and he and his wife lived across the street from the project; stated that the project would stick up and stick out; that he was pleased that they had tried to amend the plans for the project; that Joan was willing to offer an easement on her property to allow them to place the driveway at the bottom of the property; that how the house would be built was of concern to him; and that he would like to hear from the owner.

Steve Kesten, attorney for the applicants, stated that Mr. Burnell had stated early on that he wanted to keep the lot undeveloped and that he wanted to derail the project. He reviewed the testimony given in support of the project, noted that four parking spaces were being provided when only three were required, and stated that the plans had been with the Town for six months and available to all the neighbors to review during that time. He further stated that every effort would be made to keep the trees, that changes had been made to the project to protect the trees, and that trees increased the value of property as well as providing privacy.

Dan Tey for Joan Moriah, stated that an arborist would be retained and would guarantee the survival of the trees as a condition of approval; that her arborist stated that the trees were healthy, and that the term "every effort" to retain the trees was not good enough.

Bill Miles, 189 Frustuck, stated that the owner's phone number was not listed making it difficult to contact them; that he had put an in-law unit in his house 10 years previous and that tandem parking was not counted to meet the required parking; that the proposed parking was on a town right-of-way; that it was a very busy street, like Cascade Drive, that to back out onto the street was dangerous; that he had a storage area under his carport and was required to record a deed restriction so the applicant should have to do the same; that parking should be built at the bottom of the hill and that trees had died on his property and could also die on the applicant's property.

Lisa Rigsby, Joan's daughter, stated that her mother was willing to offer an easement on the lower part of her property for parking.

Mayor Egger closed the public hearing.

Councilmember Ghiringhelli stated that he was impressed with how the neighbors had worked together; that the Council had given direction to the applicants and that they had responded to that direction; that the neighbor had hired a local architect to help resolve the remaining issues, and that they had done a great job of working together to reach solutions.

(21)

Vice Mayor Tremaine asked if there was a document that outlined the terms of the agreement, was referred to the letter from Mr. Chartock that outlined suggested conditions of approval, and was told that the listed conditions were perhaps not specific enough regarding the trees.

Vice Mayor Tremaine stated that the applicant had followed the direction of the Town Council and had worked with the immediate neighbor to resolve their differences; that if construction were to harm the trees, the trees would be replaced; that a deed restriction was not unreasonable; and that there wouldn't be a roof on the carport.

Councilmember Brandborg stated that there were many carports on Frustuck that hadn't been converted and that, without a roof on the car deck, conversion wouldn't be a problem.

Mayor Egger stated that the overall height of the structure was his concern; that if the cover on the structure were removed to reduce the height, he would agree with Vice Mayor Tremaine.

M/S, Ghiringhelli/Brandborg, Motion to uphold the appeal overturning the Planning Commission's denial of the project and to approve the project based on the revised submittal and with the following conditions: 1) the parking structure to be an uncovered parking deck; 2) with a deed restriction to be recorded to prevent conversion of the storage area beneath the parking structure into living space; 3) with any tree(s) identified for retention and subsequently harmed during construction to be replaced with suitably mature tree(s); 4) All trees identified in the June 18 and August 2, 2004 plans to be retained; 5) with six 15-foot trees to be planted as proposed; 6) conditions 2-10 outlined in the April 15, 2004 Staff Report; and 7) conditions 1,2,3 and 5 acknowledged as part of the accepted revisions to the development plan outlined in a letter from Architect Art Chartock to the appellant and submitted to the Town Council.

Roll Call Vote:

Brandborg: AYE; Ghiringhelli, AYE; Tremaine: AYE; Egger: AYE (Bragman, recused)

Mayor Egger adjourned the meeting for a break from 9:15 to 9:25 p.m.

Adoption of Resolution No. 2335, A Resolution of the Town Council of the Town of Fairfax declaring a fiscal emergency

Town Administrator Bengyel presented a report and stated that the tax proposed to go before the voters would be a special tax, not a general tax, and would therefore require a 2/3 majority and would not require a declaration of fiscal emergency.

Councilmember Brandborg asked why no numbers were presented to indicate how much money would be raised by such a tax and stated that, since the proposed ballot wording listed all the departments, it didn't seem like a special tax.

Town Administrator Bengyel, stated that, although at first all the areas to be impacted were listed, that, on further consideration, he thought it would be better to just use it for public safety and emergency services.

Councilmember Ghiringhelli stated his opposition to any new tax.

Mayor Egger determined that it was the consensus of the Council to not adopt a resolution declaring a fiscal emergency.

Adoption of Resolution No. 2337, A Resolution of the Town Council of the Town of Fairfax calling for an election

Vice Mayor Tremaine stated that they shouldn't declare a fiscal emergency; that they should go with a special tax that required a 2/3 vote; that the Town was in a fiscal emergency because of the State take-aways; and that they had to convince 2/3 of the voters that the tax was necessary.

Condition of approval on the original house that the storage would be restricted from living space.

Deed never followed through on .

Maggiore: It seems like we're not getting a recommendation from any of our planning professionals here.

Linda explains that they have not changed their recommendation for approval.

Linda Neal: 3 to 2. One abstention.

John introduces Petition to all council and staff - 126 signatures in favor of the unit.

John reads his statement.

Public comment:

Shane Deal - supports unit.

Mike McIntosh - supports infill housing ...

MISSING from CD: - all public comments including Caldarraro when he accuses John of harassing the neighbors, knocking on their doors with an attorney, etc.

Tremaine: I'm very concerned about the precedent we would set for allowing this fourth story We Mary Ann - a decision as council that we weren't going to allow 4th stories and I think that we need to abide by that. And there's a consistency to that in the way that we have taken the entire approach that we've taken to adding affordable housing to this community. We've been very deliberate about that. We've ensured that in the pursuit of affordable housing in creating a favorable atmosphere for it that we haven't changed height limits we haven't increased numbers of stories, we've been very careful about how we have approached density and I can't in good conscience allow a fourth story. I cannot support a fourth story to create a second unit. I just don't think in the long run its in the best interest of the community. The next thing you know we're going to wind up with a bunch of these you know, technical fourth stories, and its going to become very difficult with new construction to be able to say no to fourth stories. And I don't want to open that barn door. So, um, and the other thing is I mean we don't have any evidence before us that this is going to be an affordable unit. We have words that say it will be affordable but second units, we don't know what the rent's going to be. We haven't had an offer of percentage of market rate to make sure that its an affordable unit. I'm not seeing any of that, I'm just hearing it called affordable. And the trade off to add a second unit in the community and to open the barn door for fourth stories it isn't worth it to me.

Maggiore: When I said I wasn't going to run this is one of the things I'm never going to miss. I'm very disturbed by the fact that the conflict around the garage for Mr. Owens, sir, was predicated on the very fact that there was a deed restriction promised then. I can't vote - I will get to the height limit in a minute, but I can't vote for something which from the last time was all this storm and drama in this room and I voted for you to have the garage the way you wanted to have it was one of the predicates that there was absolutely going to be a deed restriction, and it's not happening. So to say that yes, you can have it if you do the deed restriction, we already went through that, yes you can have it, if you do the deed restriction. So that's really heavy on my mind. I just feel like what the heck, you know we made an agreement with you publicly and then that didn't happen. Second thing is, yeah, I see this as I ran on a

ticket of I don't want more than 3 stories I don't want more than 28 feet, and I have to stick with it. I understand that yeah, Lew and I started the co-founded the affordable housing committee, and I do want to see that happen, but this doesn't sit right with me, it doesn't feel right with me, I don't feel good about changing a new restriction, I don't feel adequately convinced that this is the truth. There's something about this that's just not the truth. So I'm voting against it.

Tremaine: David, can I add one other thing. If memory serves, and it's not what it used to be, I was the one who asked for the deed restriction, on what was then the parking deck, I'm pretty sure that I was the one who wanted that in there, and the reason for that was because at the time looking at it that was the only place I could think of where one would put a second unit. And, my intent was that there not be a second unit, given that location on that street with the level of, and I recognize that the fact that he's been very creative with what he's done to mitigate parking and in this particular incident but in my intent, initially, was to not put another second unit, legal or otherwise, in that neighborhood, in that location, for what that's worth.

Brandborg: Well I'm having a hard time in that I know we have these rules and regs but that's why we have variances and when I went out and looked at the space, I didn't see an increase to the footprint at all. It already exists there now, and do we pretend it's not there? But if you develop it it becomes a fourth story? I mean the space is already there, it's already covered in, so the creation of that space to become a second unit to help us with our problems of affordable housing and it would be guaranteed that it would be built green, I mean it would have solar panels, on the roof (garage roof) ..I support this project going forward, upholding the appeal.

John Owens: On the issue of deed restriction, right from the get-go in 2004, I said I had no problem with a deed restriction on the storage unit, and I still don't. No one has written up a deed restriction at the town or ever presented me with a document. I don't think it's my responsibility to restrict my own property, and I've got no problem with it, and never have, if somebody came to me tomorrow with a document I would sign it, I have never been presented with a document. The other item I would like to address is the item of bullying, I've never bullied anyone in my life, and I never will. And, I've never knocked on anyone's door with an attorney, and I never will. I've never threatened to sue the town, I never will, and the last time I came to the planning commission, I had 19 signatures from surrounding neighbors, I have great relationships with all my neighbors. And those are the issues that came up and I never ever had a problem with a deed restriction.

Maggiore: there's a confusion here, but that's not the town's responsibility, is it? Can our town attorney - I mean are we supposed to arrange for deed restrictions for property owners?

Attorney: I think it would be in our interest to do so. I'm a little confused as to what the deed restriction would say. If it would in fact restrict a second unit, that would conflict with what is now being requested. If there was a condition of approval of the prior project that there be such a restriction that never got recorded, that Mary Anny or Mary Anny not be some responsibility of the town in that. It still means that the property is going to be out of compliance with the old use permit now, it's very difficult to revoke a use permit and I'm not suggesting you go there, but I mean if indeed the deed restriction the purpose of the deed restriction is to prevent a second unit, it doesn't make sense to talk about us doing it now, when you're approving a second unit. If you're approving a second unit, that means that the deed restriction in effect would be waived.

Maggiore: Well I recall that that was what the conversation was. That Mr. Owens could build a garage with a deed restriction about a second unit.

JOHN OWENS: The deed restriction was to prevent us from using the storage room for residential use. That's what it asked. It had nothing to do with second units.

Attorney: It is my understanding that the deed restriction was on the storage building under the carport to prevent that from being a second unit, and one reason I think it's important to consider this tonight is because if you were to uphold the appeal, and allow the new second unit, under the existing residential structure, then it would be even more important to go forward with the deed restriction on the storage space so you preclude a third unit coming onto the site.

Maggiore: Ok, got it.

Weinsoff: Was the deed restriction agreed to prevent a second unit on the property? Certainly there, but was it broadly considered ...

Linda Neal: I pulled the letter of action and it states: A deed restriction shall be applied to the storage area beneath the uncovered parking deck restricting conversion of the storage area to a residential use and/or an accessory dwelling unit.

Weinsoff: I'm putting you on the spot I realize, but was it contemplated at the time that this would restrict second units in its entirety, or was it just that it would go there and no second unit there.

Linda Neal: I DIDN'T attend this meeting but I READ THROUGH THE minutes and I'm afraid you're going to have to rely on your council members recollection because there's really not much discussion - I'm not finding anywhere in here where it specifically stated that there never be a second unit anywhere on this property.

Tremaine: No, its not and I will stipulate that that's not what was said. But in asking for the deed restriction and probably it reflected my lack of imagination at the time or ongoing, I saw that as the place where a second unit would logically go if there was going to be a second unit. And so I was specific to that space, because in my mind if you were going to do a second unit, it would be in that storage area. Not contemplating that there could be a second unit inside the lower depths of you know bowels of the home. So um but I mean that was my intent at the time was that.

Maggiore: Okay, well I feel like I owe Mr. Owens an apology because I thought it was for, that that was the stipulation, not that the stipulation was for

John Owens: Well the stipulation is clear, its in writing, it says storage unit not to be used for residential use. And someone came and inspected it last year to see that it wasn't used for residential use. We've upheld the letter of the terms of the agreement.

Weinsoff: Could you address concern about the affordability of a second unit? How does one guarantee the second unit is affordable?

John Owens: I will address that - but I think that its a little unfair to us, when the three previous applicants that have been approved with second units that that question didn't come up. But I do know quite a lot about affordable housing. And affordable housing in the county is usually , the county of Marin I think the town of , city of San Rafael, they use the section 8 voucher or index as their way of capping the price of affordable housing. And the town of Fairfax doesn't have an affordable housing policy so it's a little bit difficult to set the price of the unit.

Planning Director:(?) ... I'd just like to point something out, the permit for the parking garage was granted after the house but the garage is actually not been constructed. Just for the record, if the garage was not constructed this would be a three story house, with the second unit in the under story.

Maggiore: That's not something you're proposing Mr. Owens? As a trade ..

John Owens: I never thought of that.

Weinsoff: Would you like to think about it? (audience laughing) I don't want to put you - I didn't mean for it to - would you like to consider that option and have a month or so to consider? Let me just add additional, Would you like an additional month or so to consider that option to bring you into the three and I might say use that time profitably to clear up this deed restriction issue.

John Owens: Yeah, I have no problem with doing that.

Weinsoff: Then I'll entertain the opportunity to continue this matter for a month or two at your election, please work diligently with the town Manager. Let's move it to the June council meeting, of course if you cannot ..

JOHN: Oh, I can do it by then.

Weinsoff: Ok. Good.

Maggiore: Can I just say one thing? The planning commission has seven members and its really important that the planning commissioners, that you all be there for things of this grave import. To have a vote of five people that is kind of half and half, puts us in a position of, yes, we can overrule what you say but I would always be advised by what you say and when there's not 7 people there makes it very complicated for me. And must make it very complicated for the appellant.

FAX

John Owens

177 Frustuck Ave, Fairfax, CA 94930

Tel: (415) 456-2906 Fax: (415) 456-9017

| | | | |
|------|-----------|-------|---------------|
| TO: | Jim Moore | FROM: | John Owens |
| FAX: | 453 1618 | DATE: | June 19, 2009 |

Hi Jim,

I believe it is your responsibility to bring the Housing Element up to compliance standard with the HCD. Could you find the document from the HCD which rejected the Town's Housing Element back in 2006. This document must surely be topical right now, as the deadline of compliance with the State is only 11 days away. I need to see the document next week to prepare for our appeal on July 1st 2009. I don't have your email. E mail is fine - mine is johnoph@aol.com

It was very nice chatting with you yesterday regarding affordable housing. I read the Housing Element last night and sure enough the Town adopted an affordability policy back in 2006 identical to most jurisdictions in the County. A Second unit according to the Element is Low Income Housing (very low, low, moderate, above moderate). The Town uses the HUD index which in 2009 sets the cap of income for a one bedroom at \$63,350. They use the not to exceed 30% of income for housing, and utilities that currently sets the not to exceed cap on a one bedroom at \$1247 per month. This also coincides with the Section 8 voucher system.

John Owens

HP Officejet J5700 All-in-One series

Fax Log for
JOHN OWENS
4154569017
Jun 19 2009 8:03AM

Last Transaction

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| Jun 19 | 7:46AM | Fax Sent | 4531618 | 0:33 | 1 | OK |

FAX

John Owens
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| | | | |
|---|-----------|-------|---------------|
| TO: | Jim Moore | FROM: | John Owens |
| | | | |
| FAX: | 453 1618 | DATE: | June 24, 2009 |
| | | | |
| Hi Jim, I understand from our conversation Monday that you had not found the 2006 rejection letter from the Housing and Community Development Department regarding the Town's Housing Element. You did find Ann Welsh's response to their letter. Could you please forward that to me via email johnoph@aol.com . It's important I review the status the Town has in regards to affordable housing before the July 1 st meeting. Let me know if you found the original also. John | | | |

HP Officejet J5700 All-in-One series

Fax Log for
JOHN OWENS
4154569017
Jun 24 2009 9:28AM

Last Transaction

| Date | Time | Type | Station ID | Duration | Pages | Result |
|--------|--------|----------|------------|----------|-------|--------|
| Jun 24 | 9:27AM | Fax Sent | 4531618 | 0:59 | 1 | OK |



TOWN OF FAIRFAX
142 Bolinas Road, Fairfax, California 94930
(415) 453-1584 Fax (415) 453-1618

Ms. Cathy E. Creswell
Deputy Director Division of Housing Policy
Department of Housing and Community Development
1800 Third Street
P.O. Box 952053
Sacramento, CA 94252

January 14, 2008

RE: Town of Fairfax Housing Element

Dear Ms. Creswell:

This letter is a response to the memorandum received from your office on October 18, 2006 regarding the Fairfax Housing Element. In that letter, a number of items were identified as in need of revision before the Housing Element is certified by the Department of Housing and Community Development (HCD). Over the past year the Planning Commission has been working diligently on trying to reach consensus on the various aspects of the Housing Element that are still unresolved.

The progress that Fairfax has made over the past year in the realm of affordable housing is identified below. Each numbered section in **bold** refers to the bullet points provided in the HCD letter of October 18, 2006. The paragraph following the bold print identifies the actions that Fairfax has taken to address each issue.

1. Detail specific implementation actions and timelines of the mixed use overlay zone outlined in Program H4.C

In terms of specific implementation actions and timelines for adoption, the Mixed Use Overlay Zone Ordinance is currently in draft form. The Planning Commission has held approximately 10 public hearing workshops over the past year where the mixed use overlay zone was discussed. The outcome of these meetings is a partial draft ordinance. Implementation of this ordinance will proceed according to the following timeline. Upon HCD's determination that the provisions of the Mixed Use Overlay Zone are consistent with State guidelines, the Mixed Use Overlay Ordinance will be advertised and scheduled for Town Council public hearing and consideration.

2. Provide information on the development standards within the Commercial Highway (CH) and Limited Commercial (CL) zones and how these standards

impact the suitability and feasibility of the numerous small sites located within these zones to accommodate the remaining residential development need as mentioned in the Department's previous review. For example, the element should analyze whether the proposed parking requirement reduction of 20 percent and the height limitation of buildings no greater than two stories are adequate to facilitate the development of housing affordable to lower income households.

The development standards of the Mixed Use Overlay Zone encourage provision of affordable housing by allowing a density of 20 dwelling units per acre in conjunction with a wide range of commercial uses. The bonus of this added residential density creates a financial incentive for a developer and thus encourages mixed use development. The Mixed Use Overlay Zone also allows reduced parking standards, requiring one off-street parking space per studio or one bedroom unit and one and a half spaces for two or more bedroom units. The Mixed Use Overlay Zone also encourages shared, tandem, elevator/lift parking arrangements to facilitate space saving and reduce impervious surfaces.

These reduced parking requirements encourage development of small sites because the parking required for the proposed housing units is minimized with further potential reductions if the unit has proximity to public transportation.

This significant reduction in both residential and commercial parking requirements and increased flexibility in the parking lot design standards facilitates the development of affordable housing by allowing increased building coverage and the resultant increased floor area for parcels that are built under the Mixed Use Overlay Zone. Since the Mixed Use Overlay Zone allows a FAR of 2.0 the added design flexibility and reduced number of parking spaces for both residential and commercial development promotes the development of Mixed Use sites both small and large.

One example of the impact of the adopted Housing Element which allows for 20 dwelling units per acre in Mixed Use Overlay Areas, is a mixed use project proposed soon after adoption of the Housing Element. This project will create 10 additional rental housing units with 4,000 square feet of commercial space on the first floor. The applicant is moving forward on the basis of the 20 dwelling unit per acre provision in the adopted Housing Element. This application is a direct outcome of the Mixed Use Overlay District as proposed in the Housing Element.

Another example of the impact of the Mixed Use Overlay Zone is the conceptual plan proposed by a property owner who would create eight condominium units on a property that currently houses a Nursery and Garden Business. This applicant intends to file an application soon after adoption of the ordinance.

These two examples of Fairfax's progress in providing affordable housing demonstrate that the proposed Mixed Use Overlay Ordinance does in fact encourage provision of affordable housing on both small sites and large.

3. Describe any policies and incentives to facilitate the consolidation of small sites and the promotion of additional residential development through the use of the proposed mixed-use overlay zone.

Consolidation of small sites is encouraged by elimination of side setbacks that would be required if the parcels were not consolidated. The economies of scale that are fostered by combining lots also serve to induce lot consolidation. The Planning Commission may consider further reduction in parking requirements to encourage consolidation of smaller lots.

The Mixed Use Overlay Zone encourages additional residential development by increasing density to 20 dwelling units per acre and by promoting greater flexibility in parking lot design and reduced parking requirements.

4. Allow owner-occupied and rental multi-family development by right at the increased density of 20 units per acre on sites used to provide adequate sites to meet the Town's remaining RHNA pursuant to Government Code Section 65583.2(h).

As recommended in the HCD letter, Fairfax's Mixed Use Overlay Zone will encourage both rental and owner occupied housing units. As is indicated by the two proposed developments identified above, which are rental and owner occupied developments respectively, the Mixed Use Overlay Zone will encourage both rental and owner occupied units.

Implementation of Second Unit Amnesty Program

Other efforts that Fairfax has made to encourage creation of affordable housing include the adoption of the Second Unit Amnesty Ordinance, effective August 11, 2007 (Attachment A). This ordinance reduces both the parking requirements and the fees for approval of amnesty second units. The amnesty period is one year. In terms of outreach, the program has been publicly noticed at approximately eight public hearings. The Town's web site's home page announces the Second Unit Amnesty Program. A brochure has been created for distribution at the Planning Counter and is available at the Town Council meetings. In addition, a public informational meeting is planned for February 4, 2008. The response to the Second Unit Amnesty ordinance is that two applications are in progress and another application is pending.

Conclusion

The Fairfax Planning Commission has labored intensively over the past year to arrive at a response to HCD which respects Fairfax's unique character and scale. If you consider the changes made over the past year, adopting the Second Unit Amnesty Ordinance and developing a draft Mixed Use Overlay Ordinance; I trust that you will conclude that the Fairfax Housing Element meets the threshold required for State certification. With the Housing Element certified by the State, the Fairfax Planning Commission will be able to

move beyond policy development and into implementation in their efforts to provide affordable housing for the community.

Please review this letter and provide response as to whether these changes are sufficient to warrant certification of Fairfax's Housing Element.

If you have any questions about this letter please contact me at 415-458-2346.

Best Regards,

Ann Welsh
Director of Planning and Building Services

John Owens and Diana Dullaghan
177 Frustuck Avenue, Fairfax CA 94930
Tel: 456-8064 / Cell: 717-7621 / E-mail johnoph@aol.com

June 20, 2009

Information for Town Council Meeting on July 1, 2009

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2. The "drama" surrounding 177 Frustuck Avenue
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7. The Precedent has already been set by the approval of the three second units to date and the adoption of the Housing Element in 2006
8. Support for the project
9. Sustainability aspects of project
10. Our Passion

1. Introduction

This document outlines our logical and reasonable argument with the intent and hope of receiving approval for a second unit at 177 Frustuck Avenue.

It is very important that you read the entire document in order to understand our argument and supporting facts in each category.

We have attended many Planning Commission meetings and Town Council meetings where statements and exaggerations were made without any supporting evidence. A classic example of happened regarding a second unit deed restriction on our property - one that did not exist. Yet two Council members, two Staff members, and the Town Attorney focused much of the first appeal meeting discussing an item that inaccurate and hearsay.

Our argument is strongly based on the Housing Element created and written by the Town Planning Commission, and adopted by the Town in June 2006, the Town Second Unit Ordinance, and additional verified facts.

The Town of Fairfax was mandated by ABAG to produce 64 housing units between 1999 and 2006. Many of these units were to be low income, and very low income. The Town produced no affordable housing during this time period. The Housing Element covering this time period was only completed in June 2006, and was not accepted as compliant by the State Housing and Community Development Department . The Town is now mandated by ABAG to produce 108 housing units from 2007 to 2014. The Housing Element is not in compliance with the State of California. The re-working of the 2006 Housing Element has not started, and the deadline for re-submittal is June 30th 2009. This Town, which has produced zero affordable housing units under the ABAG quota, is now the most likely candidate in Marin County to be sued by a public advocacy group. This is exactly what happened in Corte Madera at great expense.

It is fiscally irresponsible to the citizens of Fairfax for the Council members to even consider denying a legal second unit application in the Town's current situation of zero compliance with the State of California.

This sustainable unit is, in fact, the "dream" of the Affordable Housing Committee and potential renters, come true.

2. The "Drama" surrounding 177 Frustuck Avenue.

We did not create the drama surrounding any approvals or denials for our property. We simply wanted to build a 2100 square foot house for our family that was well within the guidelines and building ordinances of the Town.

Here is a chronology of the drama we have had to endure since April of 2004.

We did not create or circulate the neighborhood petition that falsely claimed:

1. The lot is substantially smaller than the surrounding lots (untrue);
2. 2953 square foot house was to be built (the house was/is 2100 square feet);

3. The lot was Screech Owl habitat (no evidence/supporting data);
4. There is a survey dispute on property line locations (untrue).

The majority of the Planning Commissioners gave credence to all the untruths of the petition, and voted against the fully conforming project without a legal finding.

We did not ask the Planning Commissioners to leave the stage during the meeting to shake hands, laugh, and congratulate an ex-Council Member (and future neighbor) directly in front of the reporter from the Ross Valley Reporter when our project was denied. Neither did we ask a Planning Commissioner to attempt to alter the minutes of the meeting to insert a recess, when no recess had occurred. We did not prompt Councilman Tremaine to say he did not give a damn about what happened at the Planning Commission meeting.

At the first appeal at Council, Councilman Egger tried to throw out the project - claiming that Planning Director Mr. Kirkey did not know what he was doing - and the project did not conform to the set-back rules. He also yelled at the Town Manager and Town Attorney that they did not know what they were talking about. Mr. Egger's next claim was that the building was 60 feet tall, and exceeded the height limit. Again, the Planning Director Kirkey was told he did not know what he is talking about in regards to the Town Ordinances.

The next outrageous claim was that if we were allowed covered parking we would convert it into illegal living space. That's how we were denied our covered parking, even though 80% of the surrounding houses already had covered parking.

In 2008, we reapplied for our garage. We were not responsible for the garage suddenly becoming "detached" after it was deemed "attached" in 2004. After 10 months and a lot of attorney expense incurred, the garage was re-"attached" at the advice of the Town Attorney, and subsequently approved.

In 2009, I am now enduring the false claims of bullying and being dishonest. We've also endured representations and recollections of a second unit deed restriction that did not exist, and was never before discussed.

All of this drama about a 2100 square foot sustainable house, and a 550 square foot sustainable second unit. None of this drama has any relevance to this project.

3. Height Variance (technical fourth story), and the Myth of Setting a Precedent

The granting of a height variance for an infill second unit will not set a precedent. The unit will have minimal impact on the neighborhood. It is a valuable asset to the community, and to the Town in its requirement to comply with the 108 units that must be built before 2014, to satisfy ABAG, HCD. This unit has support from the neighbors, and the people of Fairfax.

177 Frustuck already exists. It is a down slope house built at the 35 foot height limit to look over the tree tops and take advantage of a gorgeous Mount Tam view. Granting of the height variance will not alter the height of the building, or the footprint of the existing building. The variance is not to expand the existing house. It is a variance to enable a valuable second unit to be in-filled under an existing house.

If the precedent to be set is that other homeowners with existing spaces under or over their houses would like to convert them into legal second units with off-street parking, then that precedent would indeed be in keeping with the intent of the Town's Second Unit Ordinance, ABAG, the Housing Element, and The Green Party philosophy of in-fill development before new development.

"The flood gates will open, and we will be wall-to wall-houses," as quoted in the Ross valley Reporter being said by Commissioner Meigs. In reality, there are no "flood gates" to open. In-fill development within existing buildings does not increase the number of houses, or visually change the Town at all.

Housing Element Page 7

"Within the existing boundaries, Fairfax is very limited in terms of development land. The Town is nearly built out with all the remaining undeveloped land being either very steeply sloped or constrained from development for other reasons."

Fourth Story new and remodeled individual residences can still be denied by the Planning Commission and the Town Council in the future. The allowance in this case is being made for a valuable second unit within an existing structure. The application should be described as a three story residence with a one story low income second unit under it.

Very few homes have space within the existing building envelope for a legal in-fill unit, and even fewer could provide off street parking. Second units are only viable if the existing infrastructure can support the construction. It's not economically viable to reconstruct an entire house and it's foundations to current codes to construct a second unit. Unfortunately for the Town, the flood gates (if any there were) won't open for legal in-fill second units.

There are no "flood gates" to open, and a precedent will not be set.

4. Minimal Impact.

This is what the Town of Fairfax Planning Strategy is all about. Don't build on the ridge lines, lower the roof lines, provide screening, and minimize everything.

This 550 square foot unit tucked under an existing building has minimal impact. View the existing, and after photographs on the next pages. Once the landscape screening has grown, the unit will not be visible from the street.

The unit will have twice the required off street parking spaces. This can be achieved by widening an existing parking deck 5 feet into a dead space next to a fire engine turn out. The addition is so minimal. It will probably not be discernable after the deck is complete.

Remember, 25% of the ABAG housing quota can be achieved with second units. It's time to encourage more in-fill units to be built, and get out there and get some of the 300 – 400 illegal units into compliance.

In-fill development always has less impact than new development

5. The Deed Restriction, and the Character Defamation

Deed Restriction

After the May 2009 Council meeting the deed restriction was promptly filed to restrict using the storage area under the existing parking structure to any other use.

At the May Council meeting Lew Tremaine, Mary Ann Maggiore, Linda Neal, and the Town Attorney, were all convinced that a second unit deed restriction from 2004 existed for 177 Frustuck. This was based purely on gossip and mis-information, not on facts or the minutes of the 2004 Council Meeting.

Since the May Council meeting it has been established that no deed restriction was ever discussed or proposed to prevent any second unit at 177 Frustuck Avenue whatsoever. This was proven after reviewing the minutes of the Council meeting of August 3rd 2004.

Character Defamation.

I was naively caught off guard by the character defamation from Mr. Caldararo and Mr. John Reed (whom I have never met). I was also caught off guard by the indication that I was a dishonest person, when Caldararo and Larry Bragman synchronistically insisted that the Town uphold the Letter of the Law.

As I said at the meeting, nineteen of my surrounding neighbors would not have signed in support of the garage in 2008 if I had bullied them. I have included notes here from my neighbors to prove the bullying accusations were false. These tactics were, and still are, typical unconscionable behavior of certain individuals in regards to any development in the Town.

Our adversaries had to think of something. They couldn't very well speak against affordable housing and sustainability! So, they attacked my character instead. It worked. For one, it changed Council Member Maggiore's opinion of me, and the purpose of the application at hand. I can only hope it was a temporary change of opinion, and that the truth will prevail.

6. Affordability of the Proposed Second Unit

We were challenged at the Planning Commission, and again at the Council, as to what rent we would charge for the rental unit. Councilman Tremaine asked us to make an offer of percentage of market rate to determine if the unit was affordable.

The three previous approved second units were not challenged as to what rent they would charge, and, affordable rental housing is not based on "making an offer of market rate". The

John Owens and Diana Dullaghan
177 Frustuck Avenue, Fairfax CA 94930
Tel: 456-8064 / Cell: 717-7621 / johnoph@aol.com

June 21, 2009

Dear Neighbors,

At the May 6th Council meeting hearing, our appeal for permission to create a second unit underneath our existing house was heard. Ugly allegations were made by Niccolo Caldararo, and also John Reed, whom I have never met. This was an attempt to slur my character, which certainly influenced at least one Council Member at the meeting. You may have read a recent article in the Ross Valley Report, which confirm the comments made and which are recorded in the Council meeting minutes.

Some comments were:

Mr. Owens bullied his neighbors ... Mr. Owens threatened to sue his neighbors ... Mr. Owens knocked on neighbors' doors with his attorney ... Mr. Owens threatened to sue the Town ... If we let someone get away with this type of behavior it means no one really needs to follow the law ... Mr. Owens made false accusations against Council members and Planning Commissioners ... Mr. Owens broke an agreement with the Town regarding a deed restriction for a second unit....

I and my family have lived on Frustuck Ave for three years and have good relations with our neighbors. I have never bullied anyone in my life, and have never gone to anyone's house with an attorney. There never has been any agreement with the Town regarding not having a second unit. I am deeply saddened and disturbed because of the false allegations against me.

My family needs your help. We would be immensely grateful if you would write a comment regarding my character if you know me; simply say I never bullied you if we have not met; write in support of the unit, call us, come visit, or best of all, come to the appeal at the Council meeting on July 1st at 7.30pm at the Women's Club. We have personally met many of you. The ugliness displayed at the Council meeting by one or two individuals is not a true representation of our neighborhood.

Thank you.

Very truly yours,

John Owens

| |
|-----------------|
| Name & Address: |
| Comments: |

John Owens and Diana Dullaghan
177 Frustuck Avenue, Fairfax CA 94930
Tel: 456-8064 / Cell: 717-7621 / E-mail johnoph@aol.com

June 27, 2009

Appeal of second unit application at the Town Council Meeting on July 1, 2009

We would appreciate your support at the Council meeting next Wednesday the 1st of July, at 7:30 p.m.

We are second item on the agenda after approval of the budget. You can find the agenda online at the www.townoffairfax.org website.

Read our appeal documentation. We gathered 140 signatures in support of this unit, out on the streets of Fairfax. No neighbors are in opposition. Our argument is thorough.

After researching the subject of affordable housing, I am very concerned that the Town has adopted an affordable housing policy that has failed to date, and probably will continue to fail in the future. Unfortunately, it was created by a very restrictive Planning Commission. The Housing Element was adopted by the Council in June, 2006. The Element is non-conforming with the State of California Housing and Community Development. Fairfax has not built any affordable housing between 1999 and 2006, when they were supposed to produce 64 housing units. The new quota of housing is 108 units, of which more than half need to be affordable. They are required to be built before 2014. A small faction of Fairfax leadership is promoting a limited density, limited height restriction to its Housing Element, which will probably prove to be uneconomically impossible to produce. This was the main reason for non-acceptance from HCD in 2006.

We have two planning staff in town. The Senior Planner is supposed to deal with the day to day reviews, Planning Commission agendas etc. The Planning Director is mainly responsible for the General Plan and Policy. We currently pay approximately \$130,000 a year plus benefits for a Planning Director (the new Director has great potential). The Housing Element took years to produce, along with the costs of outside consultants. It does not meet State Guidelines. The Housing Element was rejected three years ago, and the deadline for re-submittal is June 30th 2009. The re-writing of the Housing Element has not begun. Recently at a meeting of Town Planners, a Lawyer for public advocates said lawsuits would be coming down to those who were non-compliant. I believe Fairfax to have produced the least affordable housing in Marin County (zero), and is very exposed to future problems. Corte Madera was sued over non-compliance.

Of course, the Planning Director has to do other duties in a small town. But the hand is out for measure F again. Do you want your tax dollars wasted on the same plan that will fail again? Of the quota of 108 units, 27 can be satisfied by second units. 300 plus illegal units already exist in Town. The Second Unit Amnesty in its second year and has been a failure (it had too many costs associated with it, and no penalties for non compliance). Mill Valley produced 44 legal units under its amnesty program in two years. The Second Unit Amnesty program needs to be quickly revamped to get some legal affordable housing on the books. At this point of non-compliance and zero units produced to date, it is outrageous that Council Members are considering rejecting a legal, affordable, sustainable second unit such as ours.

Thanks for your support, John and Diana

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Town of Fairfax
Planning Department
142 Bolinas Road
Fairfax, CA 94930

APN: 003-193-02

AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT ("Agreement") is entered into on July 1, 2009, between the Town of Fairfax and John Owens and Diana Dullaghan, property owners ("Owner") of 177 Frustuck Avenue, Fairfax, CA, 94930 ("Property").

WHEREAS, the Town of Fairfax encourages the development and maintenance of affordable housing, and

WHEREAS, the Owner has established a second unit on the Property, and

WHEREAS, the purpose of this Agreement is to regulate and restrict the occupancy of the Property for the benefit of the occupants and the people of the Town of Fairfax.


NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

Owner must occupy one of the two units on the Property as their principal place of residence. One of the two units on the Property shall be occupied by a person or family of a Low Income Household, as defined in the Town of Fairfax Housing Element 2006.

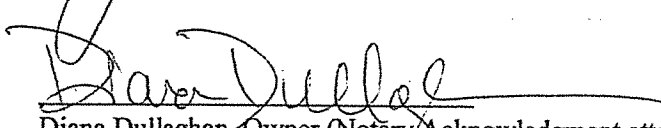
Owner further covenants and agrees that the above-referenced occupancy and affordability requirements shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof and be enforceable against the Property for a period of thirty (30) years commencing with the date of this Agreement unless terminated earlier by Town of Fairfax in writing or extended by the mutual consent of the parties. The covenants in this Agreement will run with the land for the benefit of the Town of Fairfax and be binding on Owner and Owner's heirs, assigns and successors for the full term of this Agreement.

IN WITNESS HEREOF, the Town of Fairfax and Owner have executed this Agreement as of the date set forth above.

Dated: 7.1.09.


John Owens, Owner (Notary Acknowledgment attached)

Dated: 7/1/09


Diana Dullaghan, Owner (Notary Acknowledgment attached)

Dated: _____

Jim Moore, Director of Planning and Building Services
Town of Fairfax

ALL-PURPOSE ACKNOWLEDGMENT

State of California

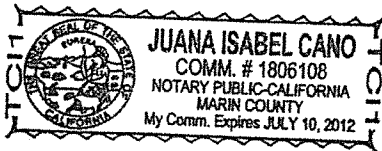
County of Marin } SS.

On 7/1/09, before me, Juana Isabel Cano, Notary Public,

personally appeared Diana Dullaghan, John Owens who proved to me on the

basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

Juana Isabel Cano
NOTARY'S SIGNATURE

PLACE NOTARY SEAL IN ABOVE SPACE

OPTIONAL INFORMATION

The information below is optional. However, it may prove valuable and could prevent fraudulent attachment of this form to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- INDIVIDUAL
- CORPORATE OFFICER _____ TITLE(S)
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Affordable housing assee.
TITLE OR TYPE OF DOCUMENT

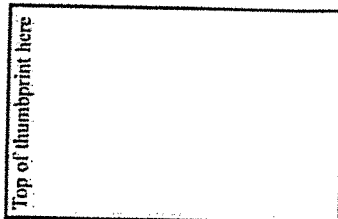
NUMBER OF PAGES _____

DATE OF DOCUMENT _____

SIGNER (PRINCIPAL) IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

RIGHT
THUMBPRINT
OF
SIGNER

OTHER





TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

AGENDA

REGULAR FAIRFAX TOWN COUNCIL MEETING

Fairfax Women's Club, 46 Park Road

Wednesday, August 5, 2009, at 7:30 p.m.

Preceded by a Special Meeting Closed Session at 6:30 p.m. in the
Town Manager's Office, 142 Bolinas Road

6:30 PM – Call to Order and Adjourn to Closed Session on the following matters:

CONFERENCE WITH LABOR NEGOTIATOR pursuant to Government Code Section 54957.6
Agency designated representative: Michael Rock, Town Manager; Employee Organizations: SEIU Local 949
Miscellaneous Unit, Police Officers Association and Management Employees

CONFERENCE WITH LEGAL COUNSEL pursuant to Government Code Section 54956.9(a), PENDING
LITIGATION, Marin Superior Court No. CV 086177, Town of Fairfax v. John and Marlia Berg

CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to Government Code 54956.8: Property:
210 Sir Francis Drake Blvd., Fairfax Town Negotiators: Michael Rock, Town Manager and Jim Moore, Planning
and Building Services Director; Negotiating Party: Joe Wahnsiedler; Under Negotiation: Price and terms of
payment

7:30 PM – PLEDGE OF ALLEGIANCE

POLL CALL

APPROVAL OF AGENDA AND AFFIDAVIT OF POSTING

ANNOUNCEMENT OF CLOSED SESSION ACTION

MEETING PROTOCOL

The Mayor shall maintain order at the meetings in accordance with Robert's Rules of Order and the Council has a responsibility to be a model of respectful behavior in order to encourage community participation and citizen input at Council meetings. The Council and the audience are expected to refrain from using profane language and/or ridiculing the character or motives of council members, staff, or members of the public and to maintain the standards of tolerance and civility.

ANNOUNCEMENTS

New members welcome on the General Plan Advisory Committee

New members welcome on the Fairfax Youth Commission, Ages 14 to 19, Ross Valley Residents

Vacancy on the Volunteer Board for a full three-year term

Two vacancies on the Parks and Recreation Commission for full four-year terms

"Camp Earth" for children 5 – 10, sustainable summer camp, August 17 – 21, 2009

Final performances of Sam Parry's musical Relativity – the Musical! will be playing at the Fairfax Pavilion on
August 6, 7 and 8

The Good Festival to be held on Saturday, August 8th, 11:00 a.m. to 6:00 p.m., Bolinas Park

OPEN TIME FOR PUBLIC EXPRESSION (3 minute time limit per person) – If you wish to address the Council, please approach the podium and state your name and address. Individuals have 3 minutes to speak, 5 minutes if representing a group. This is the time set aside for individuals wishing to address the Council on matters not listed on the agenda. State law (Government Code Section 54954.2) provides that Council is not

18. Acceptance of the Town of Fairfax 2005 Greenhouse Gas Emissions Inventory and setting of an emissions reduction target for 2020 of 15% below 2005 levels – Town Manager
19. Discussion/Consideration of endorsement of Pilot Low Income Elderly and Disabled Cable Discount - Bragman
20. Discussion/Consideration of traffic issues on Mono Lane – Tremaine
21. Adoption of a Revised Resolution of the Town Council of the Town of Fairfax, California, Calling for the Holding of a General Municipal Election to be Held on November 3, 2009, for the Election of Certain Officers and for the Submission to the Voters of a Question Relating to the Renewal of a Special Municipal Services 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
22. Introduction and First 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 – Building/Planning
23. Discussion of contract for solid waste and recycling services with Marin Sanitary Service – Solid Waste Subcommittee; Bragman, Brandborg
24. Adoption of a Resolution of the Town Council of the Town of Fairfax Adopting Mission, Vision and Core Values for the Town – Town Manager
25. Designation of Voting Delegates and Alternates for the League of California Cities Annual Conference, September 16-18, 2009, San Jose – Town Clerk
26. Authorization for Town Manager to execute a Memorandum of Understanding with the Town of San Anselmo for Jointly Sponsored Recreation Programs – Town Manager
27. Authorization for Mayor Weinsoff to sign a letter to Marin County Supervisor Brown requesting funding for various projects in Fairfax – Town Manager

PORTS FROM TOWN OFFICIALS

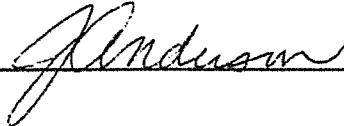
COUNCIL REPORTS AND COMMENTS (Brief announcements and reports on Councilmember activities, including reports from meetings attended at Town expense)

ADJOURNMENT in memory of Alex Forman, MMWD Board Member

If any of the matters described above are challenged in court, you may be limited to raising only those issues you or someone else raised at any public hearing described on this agenda, or in written correspondence delivered at, or prior to, this Council meeting. If you need an accommodation to attend or participate in this meeting due to disability, please contact Town Hall at 453-1584

Materials related to an item on this Agenda submitted to the Council after distribution of the agenda packet are available for public inspection on the public counter at Town Hall in a folder next to the agenda packet. Such documents are also available on the Town's Web site at "townoffairfax.org" subject to staff's ability to post the documents before the meeting.

I, Judy Anderson, Town Clerk of the Town of Fairfax, County of Marin, State of California, do hereby certify that I posted a copy of this Agenda at three public places in the Town of Fairfax, to wit: 1) Bulletin Board, Town Hall Offices; 2) Bulletin Board, Fairfax Post Office, and 3) Bulletin Board, Fairfax Women's Club and that each of said postings was completed on July 31, 2009.



In an effort to make our agendas available in a more timely and efficient manner, we have created a mailing list for the distribution of Town Council agendas via email. If you would prefer to receive Town Council agendas via email, please provide your email address to the Town Clerk at janderson@townoffairfax.org

Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, July 1, 2009

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

Call to Order/Roll Call:

COUNCIL MEMBERS 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
Kathy Wilkie, Public Works Director
Laurie Ireland-Ashley, Finance
Mark Lockaby, Building Official
Jim Karpik, Town Attorney
Yvonne Roberts, Management Analyst
Judy Anderson, Town Clerk

Mayor Weinsoff called the meeting to order at 7.35 pm.

Approval of Agenda and Affidavit of Posting

M/S, Maggiore/Brandborg, Motion to approve the agenda and 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, pending litigation and property negotiations and that direction had been given.

Announcements

Mayor Weinsoff stated that vacancy announcements were posted on the Town's Website and introduced Dan Pesaturo, an intern in the Planning Department who was present at the meeting.

Open Time for Public Expression

David Kroll, Claus Drive, requested that the Public Works Department assume the maintenance of Jolly Hill behind the Bennett House for weed abatement at the site at least once a year.

Public Works Director Wilkie responded that the property was on the work schedule in the next few weeks.

Lou Vaccaro, Olema Road, presented copies to the Clerk and the Town Council of an opinion piece written by Jean Bonander, Larkspur Town Manager, about the high cost of joining Marin Clean Energy; expressed his opinion that Fairfax should reconsider their membership in light of the current budget problems; and listed some of the Bay Area cities that had dropped out of similar groups.

CONSENT CALENDAR (Members of the audience may address any item on the Consent Calendar at this time)

Approval of Town Council minutes of June 3, 2009 – Town Clerk

Accept and File Monthly Finance Report for April, May 2009 – Finance (continued to 8-5-09)

Approval of the filing of a Notice of Completion for Measure K Phase II Proposition 1B Pavement Resurfacing Project – Public Works

Approval of the Pavilion Photovoltaic System Design & Installation Project Notice of Completion (Solar Project) – Public Works

Renewal of Artists-in-Residence Contract for one year to June 30, 2010 – Town Manager

Adoption of a Resolution of The Town Council of The Town of Fairfax Making Certain Findings and Determinations In Compliance With Section XIII B of The California Constitution (Gann Initiative) and Setting the Appropriations Limit Fiscal Year 2009-10 – Finance

Request from the Affordable Housing Task Force to apply for a Workforce Housing Grant - Planning

Adoption of a Resolution of the Town Council of the Town of Fairfax authorizing the Town Attorney to cooperate with the League of California Cities, as well as other cities and counties, in litigation challenging the constitutionality of any seizure by State government Local Street Maintenance funds (Gas Tax Funds) – Brandborg

Adoption of a Resolution of the Town Council of the Town of Fairfax Authorizing the Town Manager to sign a Licensing Agreement for Temporary Art Installations with the Ritter Center for Art Houses of Marin Project – Town Manager

Adoption of a Resolution of the Town Council of the Town of Fairfax approving the Finance Director position and establishing salary range and adding the position to the management classification and deleting the Senior Accountant position – Town Manager

Adoption of a Resolution of the Town Council of the Town of Fairfax in Support of the Food-to-Energy Program as a Renewable Energy Project – Town Manager

Approval of Extension of contract for Youth Services with Community Action Marin for a Summer Program in Fairfax – Town Manager

Mayor Weinssoff confirmed with Town Manager Rock that the item accepting a portion of Upper Scenic Road as a town-maintained would be continued to the August meeting.

M/S, Tremaine/Bragman, Motion to adopt the Consent Calendar with the removal of the item regarding Upper Scenic and the continuance of the monthly financial reports.

Roll Call Vote:

Bragman: AYE; Brandborg: AYE on all but the two notices of completion because of the omission of the cost of the projects; Maggiore: AYE; Tremaine: AYE; Weinssoff: AYE

Councilmember Brandborg stated that she was voting "No" on the two Notice of Completions on the agenda because she had asked at a previous meeting that the total cost of the projects be included on the notices and had been assured that the amounts would be included.

Adoption of a Resolution of the Town Council of the Town of Fairfax adopting the Final Budget of the Town of Fairfax for the Fiscal Year July 1, 2009 through June 30, 2010, providing for the appropriations and expenditures of all sums set forth in said budget and repealing all resolutions in conflict herewith - Finance

Finance Director Ireland-Ashley presented the staff report.

Youth Services

Councilmember Maggiore asked about the status of the budget for the Youth and Alcohol Task Force.

Town Manager Rock explained that Community Action Marin would no longer be providing a youth program in the Fall and reported that approximately \$12,000 would then be available for other programs. He further stated that there was \$1,000 in the Parks and Recreation budget for youth services but that it was not designated for the Task Force. He suggested that the Council discuss youth programs at the August meeting.

Councilmember Bragman suggested that the \$12,000 left over from the Measure "F" funding of the afterschool program be designated for a youth program.

Vice Mayor Tremaine suggested that the Town issue a request for proposals to the community to determine whether or not someone in the community was interested in providing youth services.

Mayor Weinssoff noted, as a board member of Community Action Marin, that the service provider needed to have deep pockets.

(Government Accounting Standards Board) GASB 45

Councilmember Bragman asked about the \$77,000 in the budget for the GASB 45 mandate and Finance Director Ireland-Ashley explained that \$54,000 was for future retiree health care obligations, the 30-year amortized unfunded liability portion and that \$13,000 was the current year expenditure (pay-as-you-go) amount.

Defibrillator Purchase

Councilmember Brandborg asked about the status of the budgeted purchase of a defibrillator and Town Manager Rock explained that money was in the 2008-09 budget and that the purchase would be made and charged to the previous year's budget.

Councilmember Bragman suggested that the Town check with the Paramedic Authority because they were making a similar purchase and might be able to offer the Town a discount or to donate one to Fairfax.

Health Care Costs

In response to a question from Councilmember Brandborg, Finance Director Ireland-Ashley stated that \$70,000 to be saved on employee health care was reflected in the proposed budget.

Other Budget Discussion

Councilmember Brandborg noted some typographical errors in the proposed budget and asked that they be corrected in the final printed version. She also requested that the outside consulting costs and contracts be listed with the related amounts and that the budget be brought to the Council one more time with the requested information and corrections.

Mayor Weinsoff opened the public hearing.

Rob Whitelock, Maple Ave., stated that the budget reflected unrealistic policies; that the Town needed to increase revenues; that the installation of paid parking downtown should be considered; and that the Town shouldn't pass Measure "F" until police dispatch was consolidated.

Niccolo Caldararo, Frustuck Ave., stated that historically citizens were willing to pay for their towns; that Fairfax residents had to pay more taxes; and that responsible citizens wanted a beautiful community with services provided.

Mayor Weinsoff closed the public hearing.

M/S, Tremaine/Maggiore, Motion to adopt the resolution to approve of the budget incorporating Councilmember Brandborg's corrections.

Town Manager Rock noted that the Council would review the budget again in September.

Mayor Weinsoff stated that the Council would have to hear from the Town Manager and the Finance Director about the budget on a regular basis.

Roll Call Vote:

Bragman: AYE; Brandborg: ABSTAIN; Maggiore: AYE; Tremaine: AYE; Weinsoff: AYE

177 Frustuck Avenue; Application # 09-02; Appeal of the Planning Commission's denial of a request for a setback variance, a height variance, encroachment permit and a second unit use permit in order to construct a second unit underneath an existing three story, single-family residence and to construct parking for the second unit within the required side yard setback and the adjacent public right-of-way; Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; John Owens and Diana Dullaghan, appellants/ property owners; CEQA categorically exempt, § 15301(e), 15303(a) and 15305(a) and (b) – Planning (Continued from May 6, 2009 and June 3, 2009)

Planning and Building Services Director Moore presented the staff report.

Alan Mayer, attorney for the appellants, stated that the envelope of the building remained the same; that the Town needed more affordable housing and green building; that it wouldn't change the character of the neighborhood; that there was overwhelming neighborhood support for the project; the issue of "precedence" was brought up but that the current project would not set a precedent; and that the Housing Element and other Town documents supported green building and affordable housing, both a part of the project.

Paul Fitzgerald, Corree Lane, noted that the appellant had 130 signatures on a petition in support of the project, that they were not altering the footprint of the existing structure, and that there was already a four-story house with a car deck next to his house in the neighborhood.

Niccolo Caldararo, Frustuck Ave., stated that the four-story precedent was important to avoid; that affordable housing was not the same as low income housing; that there was no guarantee that the unit would be low income; that it would set a bad precedent because the Town allowed the applicant to submit one plan to the community at the beginning of the process and received permission for it and then increased the size with the garage and then applied again to include a second unit. He stated that allowing the garage was a change in the neighborhood because no garages were at the top of properties like the one proposed.

Peter Ramsay, Mono Ave., Planning Commissioner, stated that he worked for Marin Housing as his day job; that small one-bedroom second units were in high demand in the rental market; that Marin Housing had opened the Section 8 housing list recently and had received 12,000 applications in one week; that there was great demand for the type of unit the appellant proposed to create; that a variance had been necessary for the fourth story of the house; that a similar application had been reviewed on Acacia and that neither application changed the size of the building; and that he supported the project as an opportunity for the Town to provide an affordable housing unit.

Pam Meigs, Cypress Drive, Planning Commissioner, stated that she had come to Fairfax for the character and didn't want to see the proposed type of development in town.

Shane Deal, Belle Avenue, expressed his support for the project; stated that he had also moved to Fairfax for the community; that he supported infill development; that the structure of the house wasn't changing; that the appellant was providing the necessary parking; and that it wasn't setting a precedent except for the installation of affordable housing in an existing structure.

J.A. Wanasel, Madrone Road, stated his support for the project and that the Town of Fairfax needed more diversity.

Bill Madsen, Porteous Ave., spoke in support of the project.

Kelly Dunleavy, Ross Valley Reporter newspaper, asked for clarification of the garage issue.

Ryan O'Neil, Open Space Committee, stated that he knew the footprint wasn't changing but that the Open Space Committee was concerned about a proliferation of homes with four stories; that it wasn't this application that he opposed, but the precedent that it would set for four-story homes.

John Owens, appellant, stated that the fourth story was not setting a precedent because it was not their living space but was for an affordable unit so it was actually a three-story residence with a one-story unit.

Mayor Weinsoff closed the public hearing.

Councilmember Brandborg, in response to comments about the structure overcrowding the lot, described the setbacks for the project and noted that they were well within the requirements.

Vice Mayor Tremaine stated that granting the appeal would be setting a precedent for four-story

homes; that affordable housing should be near public transit, not auto-centric; and that the Council had adopted a three-story limit for a reason.

Councilmember Brandborg quoted the Town's Housing Element to show that the Town had already acknowledged limitations on creating affordable housing, "The Town is nearly built-out with all remaining undeveloped land being either very steeply sloped or constrained from development for other reasons."

Councilmember Maggiore stated that she was having difficulty making a decision and acknowledged that the unit would be created in a space that already existed in the structure and asked if the appellants would be willing to trade the garage for the unit.

Alan Mayer, attorney for the appellants, stated that the Owens were willing to sign a deed restriction to guarantee that the second unit would be dedicated to affordable housing; that they were not willing to trade; and that their home was lower than the buildings on either side and did not exceed the 35-foot height limit.

Town Attorney Karpiak clarified that a tie vote would be a denial of the project and recommended that the Council direct staff to prepare findings for approval or denial for presentation at the next Council meeting.

Mayor Weinsoff led a discussion about the standards for approval of a variance. He stated that the Owens had a choice of either the garage or the unit; that he couldn't support the appeal as it stood; and that he was concerned about the possible consequences of the approval of the project.

Alan Mayer, attorney for the appellants, stated that the Owens had a right to a garage, that 80% of the neighbors had garages and that to deny them the garage was to single them out for negative treatment; that he understood the use of the garage as a bargaining chip, but that it was unfair; quoted from the staff's proposed findings for approval included in the February 19th staff report, "Therefore, the development and use of property as approved under the use permit shall not cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens..." in response to comments made about the impact on the neighborhood; stated that the home was lower than the homes on either side; that there were not affordable housing projects in the Town that supported bicycle use and were near public transit as promoted by the Council; that the Town could meet 25% of its housing requirement with infill in existing housing; that the Town should approve the project because it provided affordable housing and used green building techniques as desired by the Town; that the height of the structure was not being increased; that they were willing to commit to a thirty-year deed restriction for the affordable unit; and that the house was already in existence and the height had already been approved.

M/S, Tremaine/Weinsoff, Motion to direct staff to return with findings for the denial of the appeal.

Roll Call Vote:

Bragman: Recused; Brandborg: NO; Maggiore: AYE; Tremaine: AYE; Weinsoff: AYE

Mayor Weinsoff adjourned the meeting for a break from 9:10 to 9:20 p.m.

M/S, Maggiore/Bragman, Motion to hear the item regarding the election before the item regarding the fee study.

AYES: All

Adoption of a Resolution of the Town Council of the Town of Fairfax, California, Calling for the Holding of a General Municipal Election on November 3, 2009, for the Election of Certain Officers and for the Submission to the Voters of a Question Relating to the Renewal of a Special Municipal Services 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 Manager Rock presented the staff report, and noted that he had added to the ballot language, "create a Disaster Recovery Reserve Fund."

Councilmember Maggiore stated that she thought the \$125 measure should be raised to \$150 to better meet the Town's needs and because the value of the original measure had decreased.

Councilmember Brandborg stated that when combing dispatch with San Anselmo was explored, it had to wait to happen until after Measure "F" expired because of the previous ballot language that guaranteed 24-7 dispatch and that the frozen police position should be filled to have a fully staffed police department especially since the Town had hired other positions.

Councilmember Bragman stated that the Town might be losing its COPS funding and that adding such specific language might not be helpful; that the Town was promising to provide the same level of safety services; and that they should leave the language alone since it was successful before.

Councilmember Brandborg reiterated that there was still a frozen police officer position and that sometimes the Chief had to work as a patrol officer to cover shifts.

Councilmember Bragman responded that the public probably liked seeing the Chief on the street and that it was a good example of community policing.

Councilmember Maggiore stated that the Fire Chief and the Public Works Director also performed other jobs and that it was appropriate. She stated that she was not pleased with the youth program and that more could be done.

Councilmember Bragman suggested that the language be changed to add the word "revitalize" to have the language read, "revitalize youth programs" and that the "Disaster Recovery Reserve Fund" be deleted from the ballot language.

Mayor Weinsoff opened the public hearing.

No speakers came forward.

Councilmember Brandborg stated that the vacant police officer position had been used in the advertising for the previous Measure "F" and that the position should be filled.

M/S, Maggiore/Brandborg, Motion to add "revitalize youth programs" to the ballot language and to delete the "Disaster Recovery Reserve Fund."

AYES: All

Adoption of a Resolution of the Town Council of the Town of Fairfax Setting New Fees for Services as a Result of a Master Fee Study Including Business License Fees (continued from June 3, 2009) - Finance

Katie Wilson of Wildan Financial Services, presented the report that provided an overview of the study conducted. She explained that Wildan had been hired by the Town to complete a User Fee Study to identify, through a Cost Allocation Plan, all the incurred costs for the Town to be captured

by the fees charged. She stated that, by law, towns could only charge fees based on reasonable costs of providing services and that the services offered had to be voluntary. She explained how the actual costs were determined using time and materials and fully burdened rates with one of the goals to be to make Fairfax sustainable financially.

Councilmember Maggiore left the meeting at 9:50 p.m.

Councilmember Bragman stated that he was hesitant to accept the recommended new fees while the Town was going out with a tax measure; that he was not sure that the Town should get full cost recovery on all services provided; that a recent building permit he secured for his property had cost \$2400 and would have cost \$4,000 with the new fees; that the Town should get full recovery on some fees, like a resale report; and that the methodology and intention was good, but that the Council should take its time and take a hard look at the fees before raising them.

Building Official Lockaby explained that some of the current fees weren't fair and used roofing fees as an example. He stated that the fees were the same no matter what the cost of the roof, and that the new fees would be valuation based and thus more fair.

There was a consensus of the Council to continue the consideration of the proposed fee schedule to the August 5th meeting and to do a careful review.

Jerry Peeler of Municipal Services was present to speak to the Council about having his company handle the outsourcing of the Town's business license program.

Mayor Weinsoff asked for any statistics available on improved compliance for the cities handled by Municipal Services. Mr. Peeler responded that he was not the regular representative, but that he could provide that information later.

There was a consensus of the Council to continue the presentation to the August 5th meeting.

Mayor Weinsoff and the Council reviewed the agenda to determine the items still to be heard. Vice Mayor Tremaine agreed that the item regarding traffic on Mono could be continued and Councilmember Bragman agreed that the item regarding contracts could also be continued to the next meeting.

Discussion/Consideration of Redemption of Tax Delinquent Properties with Open Space Fund - Bragman

Councilmember Bragman introduced Ryan O'Neil of the Open Space Committee (OSC). Mr. O'Neil reported that the OSC had voted unanimously to request that the Council authorize the purchase of two tax defaulted properties near the Ross property (Parcels numbered 003-071-28 and 003-161-07); stated that the properties wouldn't involve maintenance or liability exposure; that the properties were available for a total of \$15,300 with the Town having the right of first refusal for purchase if the taxes weren't paid; and that the OSC had about \$29,000 in their account that they were willing to spend on the acquisition.

M/S, Bragman/Brandborg, Motion to direct staff to assist the Open Space Committee in purchasing the property.

AYES: Bragman, Brandborg, Tremaine, Weinsoff
NOES: None

ABSENT: Maggiore

Introduction and First Reading of Ordinance No. 742, 50% Remodel Ordinance (continued from June 3, 2009) – Planning

Planning and Building Services Director Moore presented the staff report and noted that the proposed ordinance would change the criteria for the determination of a 50% remodel from a value based definition to a square footage determination.

Councilmember Brandborg stated that her property would be directly affected by the ordinance because it was non-conforming; that there were many non-conforming properties in Fairfax; and that the ordinance would prohibit those properties from adding a bedroom.

Town Attorney Karpiak clarified that a bedroom could be added if all the conditions were met or if the application went through the Planning Commission for a discretionary permit.

Shelley Hamilton, Planning Commissioner, stated that the Commission had addressed the lack of parking in the hillsides and other neighborhoods where added bedrooms could increase the need for parking and that having the 50% remodel determination based on valuation didn't seem as fair as basing it on square footage.

Councilmember Brandborg agreed with the valuation approach but wasn't clear on the reasoning for the exclusion of bedroom additions.

Vice Mayor Tremaine stated that he didn't see the sense of addressing the addition of bedrooms.

Mayor Weinsoff suggested that the Planning Commission work with the Planning Director to address the questions raised by the Council.

There was a consensus of the Council to continue the item to receive clarification from the Planning Commission.

Second Reading and Adoption of Ordinance No. 743, An Ordinance of the Town of Fairfax Repealing and Replacing Town Code Chapter 8.36, Regulating the Removal of Trees – Planning

Mayor Weinsoff suggested that some of the wording in section 8.36.040 of the proposed ordinance was redundant, and the Town Attorney agreed.

Councilmember Brandborg stated that the Town already had a tree ordinance that was working; that the new ordinance was burdensome; that fees shouldn't be charged; that the language in Section 836.060 allowing the Tree Committee to require a computer generated simulation should be stricken and that the section gave planning discretion to the Committee which was beyond their purview; that the Tree Committee shouldn't tell property owners where to plant a tree; and that the Tree Committee didn't always have a quorum for their meetings which delayed the process.

Councilmember Bragman stated that the ordinance gave the Tree Committee discretion in unique circumstances; that the removal of trees could affect neighbors who also had rights; and that the Tree Committee was flexible in the use of its authority.

Mayor Weinsoff opened the discussion to the public.

Chris Lang, Canyon Road, stated that the ordinance was flawed and overly draconian; that the current ordinance worked pretty well; that he had served on the Tree Committee for seven years; that the Tree Committee currently could be flexible but wouldn't be with the new ordinance; that the new ordinance would create problems and produce more appeals; that it would be burdensome for homeowners; and that it would make the Town look foolish.

Ryan O'Neil, Tree Committee Member, stated that he had been on the Tree Committee for three years; that most applications were approved without input from arborists; that sometimes the Tree Committee needed a report from a qualified arborist because the Committee members were volunteers, not arborists; and that the tree cutters were doing the reports and completing the applications, and that it was like asking a barber if you need a haircut.

Shelley Hamilton, Canyon Road, Planning Commissioner, stated that flexibility was good; that the Planning Commission needed a more solid base for findings for decisions regarding trees as part of projects they reviewed; and suggested that, if the Council sent the ordinance back to the Planning Commission for further review, that it be made clear which parts of the ordinance they supported and which parts they found burdensome.

M/S, Bragman/Tremaine, Motion to waive further reading and to read the title only of Ordinance No. 743, An Ordinance of the Town of Fairfax Regulating the Tree Removal and Protection Process in Fairfax.

AYES: Bragman, Brandborg, Tremaine, Weinsoff
NOES: None
ABSENT: Maggiore

M/S, Bragman/Tremaine, Motion to adopt Ordinance No. 743, An Ordinance of the Town of Fairfax Regulating the Tree Removal and Protection Process in Fairfax.

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

Second Reading and Adoption of Ordinance No. 744, Amending Section 2.12.070 (B) (3) regarding the powers and duties of the Town Manager to appoint and remove certain officers - Town Attorney

M/S, Tremaine/Brandborg, Motion to waive further reading and to read the title only of Ordinance No. 744, Section 2.12.070 (B) (3) regarding the powers and duties of the Town Manager to appoint and remove certain officers.

AYES: Bragman, Brandborg, Tremaine, Weinsoff
NOES: None
ABSENT: Maggiore

M/S, Tremaine/Brandborg, Motion to adopt Ordinance No. 744, Section 2.12.070 (B) (3) regarding the powers and duties of the Town Manager to appoint and remove certain officers.

AYES: Bragman, Brandborg, Tremaine, Weinsoff
NOES: None
ABSENT: Maggiore

Discussion/Consideration of updates to the MCSTOPPP (Marin County Stormwater Pollution Prevention Program) Joint Powers Authority Agreement – Public Works

Management Analyst Roberts presented the staff report in the absence of the Public Works Director.

M/S, Tremaine/Brandborg, Motion to approve the revised MCSTOPP Joint Exercise of Powers Agreement as presented and to authorize the Mayor to execute the agreement.

AYES: Bragman, Brandborg, Tremaine, Weinsoff

NOES: None

ABSENT: Maggiore

Reports From Town Officials

There were no reports given.

Council Reports And Comments

Councilmember Bragman reported on complaints he had received about the height of solar structures and the blocking of views. He agreed to discuss the issue after the meeting with the Planning Director.

The meeting was adjourned at 11:00 p.m.

Respectfully submitted,

Judy Anderson, Town Clerk